

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P. NO. (IB)-60(PB)/2017
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE PRINCIPAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 27.06.2017

NAME OF THE COMPANY: M/s. Portrait Advertising & Marketing Pvt. Ltd.
Vs
M/s. Mothers Pride Dairy India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: U/s 9 of Insolvency and Bankruptcy Code 2016

S. NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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ADVOCATE FOR THE RESPONDENT: Mr. Saurabh Kalia, Advocate
Mr. Sanjay Grover, Advocate

ORDER

The 'Operational Creditor', M/s Portrait Advertising & Marketing Private Limited has filed the instant application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity the 'Code') with a prayer for initiating Corporate Insolvency Resolution Process against the 'Corporate Debtor'-M/s Mothers

Pride Dairy India Private Limited (for brevity the 'Corporate Debtor').

2. Brief facts of the case necessary for disposal of the controversy raised in this petition are that the Operational Creditor is a registered Company and is engaged in providing marketing and advertising services to its clients. Likewise, the Corporate Debtor is also a Company registered under the Companies Act, 1956. The Corporate Debtor in the year 2016 hired the Operational Creditor for providing marketing and advertising services for promotion of its Company. Accordingly, the parties entered into a contract dated 14.04.2016 and the Corporate Debtor availed the services for which invoices were raised by the Operational Creditor. The details of invoices have been made available and the total outstanding amount has been struck after setting off the payments made. It is calculated to be Rs. 64,49,530/-The details of the invoices is as under:-

INVOICE NO.	DATE	AMOUNT	PMT. RECEIVED	BAL. PAYMENT	Remarks
AW/H07 0011/15-16	14-Jul- 2016	2,57,890.00	(1,25,889.00)	1,32,001.00	Birthday

AW/H07 0012/15-16	14-Jul- 2016	14,92,726.00	(6,87,840.00)	8,04,886.00	Event
PB/070013/16- 17	14-Jul- 2016	22,001.00		22,001.00	Ad in Punjab Kesari
PB/070014/16- 17	14-Jul- 2016	34,704.00		34,704.00	Ad in Uttar Keasri
AW/H07 0021/16-17	18-Jul- 2016	27,600.00		27,600.00	MUG Printing
AW/H07 0026/16-17	28-Jul- 2016	1,15,000.00	(1,00,000.00)	15,000.00	Tenting in Moradaba d
OD/H08 00001/16-17	1-Aug- 2016	45,16,752.00	(22,58,379.00)	22,58,373.00	Outdoor for 30 days
OD/H08 00002/16-17	1-Aug- 2016	7,38,299.00	(3,22,889.00)	4,15,410.00	Outdoor for 30 days
OD/H08 00004/16-17	1-Aug- 2016	17,825.00		17,825.00	Outdoor damage hoarding
OD/H08 00005/16-17	1-Aug- 2016	35,805.00		35,805.00	Outdoor damage hoarding
OD/H08 00019/16-17	17-Aug- 2016	12,81,100.00		12,81,100.00	Outdoor for 15 days


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MPD/001/PO/J W/16-17	29-Jun- 2016	1,61,000.00		1,61,000.00	Vehicle Painting
Extra Sec. Broadcast During period		50,590.00		50,590.00	Radio
Ch. No. 597175	Ch. Date : 07/08	9,50,000.00	(9,50,000.00)	-	Print Media PDC
Ch. No. 597176	Ch. Date : 07/08	3,55,480.00	(3,55,480.00)	-	Print Media PDC
Ch. No. 597178	Ch. Date : 09/08	9,90,000.00	(9,90,000.00)	-	Print Media PDC
Ch. No. 597179	Ch. Date : 09/08	9,90,000.00	(9,90,000.00)	-	Print Media PDC
Ch. No. 597180	Ch. Date : 09/08	9,90,000.00	(9,90,000.00)	-	Print Media PDC
Ch. No. 597181	Ch. Date : 09/08	9,39,140.00	(9,39,140.00)	-	Print Media PDC
Ch. No. 597182	Ch. Date : 17/08	9,50,000.00	(9,50,000.00)	-	Print Media PDC
Ch. No. 597183	Ch. Date : 17/08	3,42,269.00	(3,42,269.00)	-	Print Media PDC


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Ch. No. 597184	Ch. Date : 21/08	8,24,917.00	(8,24,917.00)	-	Print Media PDC
Ch. No. 597185	Ch. Date : 28/08	9,25,000.00	(9,50,000.00)	-	Print Media PDC
Ch. No. 597186	Ch. Date : 28/08	60,829.00	(60,829.00)	-	Print Media PDC
Ch. No. 597187	Ch. Date : 04/09	9,50,000.00		9,50,000.00	Print Media PDC
Ch. No. 597188	Ch. Date : 04/09	8,91,398.00		8,91,398.00	Print Media PDC
Ch. No. 597189	Ch. Date : 11/09	6,02,158.00		6,02,158.00	Print Media PDC
Ch. No. 597191	Ch. Date : 18/09	6,02,158.00		6,02,158.00	Print Media PDC
AW/HO80 036/16- 17	31-08-2016	4,95,485.00		4,95,485.00	Agency Service Charge Outdoor Activity

AW/HO80 037/16- 17	31-08-2016	22,42,500.00	(14,69,000.00)	7,73,500.00	Invoice of Wall Painting
AW/HO80 038/16- 17	31-08-2016	2,24,250.00		2,24,250.00	Agency Service Charge for Wall Painting
Total		2,31,01,876.00	(1,33,06,632.00)	97,95,244.00	
Less : Print Media Pending Cheque cleared				(30,45,714.00)	
Less : Cheque Received in behalf of Birthday					
Total Outstanding				64,49,530.00	

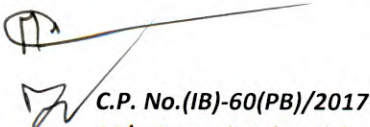
The Operational Creditor-applicant has asserted that it has engaged and entered into a contract with third parties so as to provide timely services to the Corporate Debtor and all such third parties have also been sending demand notices to the Operational Creditor.

3. After default had occurred, the Operational Creditor sent a demand notice under the provisions of the Code on 20.03.2017 for repayment of the outstanding amount. However, no reply was received even after expiry of 20 days from the Corporate Debtor. A

copy of the notice has been placed on record (Annexure-1). The copies of the invoices have also been placed on record (Annexure-2 colly). The copies of the ledger accounts from 01.04.2016 to 31.03.2017 have been placed on record too. A copy of the agreement dated 14.04.2016 for ATL and BTL services have also been added with the petition.

4. In response to the notice of the application served on the respondent a short reply dated 19.05.2017 has been filed. However, on account of ambiguities additional reply was filed on 24.05.2017.

5. The stand taken by the Corporate Debtor is that the vital facts have been suppressed from this Tribunal. The Corporate Debtor has attempted to clarify that it has raised various complaints and issues with regard to quality of service rendered by the Operational Creditor-applicant. In that regard pointed attention of the Tribunal has been drawn to email dated 06.09.2016 and it is claimed that the issue in relation to the poor quality of wall painting advertisement as well as hoardings/boards were raised internally. It was thereafter communicated to Ms. Karuna Sharma who is a


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Director of the Operational Creditor-applicant. A copy of the email has been placed on record (Annexure-A). Reliance has also been placed on other email dated 04.07.2016 (Annexure-B). It is claimed that the poor quality of the service was admitted (Annexure-C). The issue of making payment to third parties directly by the Corporate Debtor was also raised in the email dated 09.12.2016 (Annexure-D). There is no admission or confirmation of any amount due.

6. A casual glance at the email dated 06.09.2016 (Annexure-A) would show that one Sachin Shukla visited Dehradun, Haldwani and Nainital from 01.09.2016 to 03.09.2016 and communicated that there was almost no advertisement, hoardings and boards anywhere and the locality of the Dehradun and Haldwani had complaints that the locations provided by them were not considered for bill boards, wall paintings etc. There were efforts made to remove the grievances raised by the Corporate Debtor. On entirely different aspect reference has been made to other mails. Those are the emails sent by third party like one Gautam Jhanjee to the Operational Creditor for recovery of the amount on 07.12.2016 and 09.12.2016.



7. After perusal of the emails we find that there is no dispute sufficiently raised with regard to quality of service. All that could be made out from the perusal of the emails is that some dispute with regard to Dehradun hoarding/advertisement bills have been raised. After the date of the email transactions between the parties continued. There was no cessation of relationship. We are not impressed with the argument that there is an actual dispute and the quality or quantity of service were seriously doubted in such a manner that it may constitute a basis for defeating the initiation of Corporate Insolvency Resolution Process. It is well settled that one swallow does not a summer make. In other words, a small lapse will not be sufficient to decline the relief of initiation of Corporate Insolvency Resolution Process as claimed in the application. Accordingly, we reject the defence as moonshine particularly when Corporate Debtor has chosen to maintain silence to the statutory notice of demand issued by the Operational Creditor.

8. As a sequel to the above discussion this petition is admitted and the following directions are issued: -



- (i) The matter be referred to Insolvency and Bankruptcy Board of India for appointment of Corporate Insolvency Resolution Professional.
- (ii) In terms of Section 13 of the Code the Resolution Professional shall make public announcement concerning the initiation of the Corporate Insolvency Resolution Professional by making specific reference to this order immediately after his appointment.
- (iii) A moratorium would come in operation from today prohibiting all of the following acts namely: -
- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation

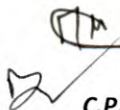


and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

However, the order of moratorium would not affect the supply of essential goods or services to the Corporate Debtor and the same may be specified by the Insolvency Professional. It shall also not apply to transactions which might have been notified by the Central Government in consultation with any financial sector regulator.

- (iv) This order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.
- (v) The Insolvency Professional shall perform all his duties in terms of Section 15, 17, 18, 20 & 21 of the Code.
- (vi) All the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend all



assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

9. The Petition is disposed of in the above terms.

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**(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT**

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**(DEEPA KRISHAN)
MEMBER(JUDICIAL)**

27.06.2017
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