

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU**

CP.No.248/15/(T.P.No.33/17)
U/s 433(e) & (f) 434 of Companies
Act, 1956 R/w Section 9 of IBC, 2016
and Rule -6 of I&B (AAA) Rules, 2016

In the matter of:

M/s Outsourcing Xperts,
A Proprietorship Firm,
Having its office at AIPL Business
Centre, Ground Floor,
The Masterpiece Golf Course Road,
Gurgaon 122009, Haryana.

...Petitioner

Versus

M/s Nitesh Estates Limited,
7th floor, NiteshTimesquare,
No.8, M.G.Road,
Bengaluru – 560 001

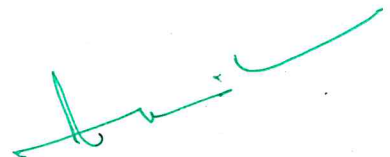
....Respondent

Date of Order: 5th September, 2018

CORAM: Hon'ble Shri Rajeswara Rao Vittanala, Member (J)
Hon'ble Dr.Ashok Kumar Mishra, Member (T)

Counsel/Parties Present:

For the Petitioner : Shri RaghuramCadmibi
For the Respondent : Shri NamanJhabakh with Mrs.Sheetal.




Per: Dr.Ashok Kumar Mishra, Member (T)

ORDER

1. COP No.248/15/(T.P.No.33/17) is filed by M/s Outsourcing Xperts under Section 433(e) (f) read with Section 434 of the Companies Act, 1956 before the Hon'ble High Court of Karnataka by inter alia seeking to initiate liquidation process against M/s Nitesh Estates Limited, respondent Company, by appointing Official Liquidator attached to Hon'ble High Court etc. The case is transferred to the Tribunal vide Gazette Notification dated 07.12.2016, and it is re-numbered as TP.No.33/17.

2. Brief facts, as mentioned in the Petition, are as follows:

- 1) M/s Nitesh Estates Limited is a Company incorporated under the Provisions of Companies Act, 1956 (Respondent herein). It has undertaken construction of various high end complexes in Bangalore, and was looking out for Channel Partners for the sale of such apartments. Accordingly, the respondents offered to enter in to a Channel Partner Agreement with the Petitioner with an attractive brokerage of 5 to 12% on the booking made by through the Petitioner. Accordingly, the Petitioner and the Respondents entered into a Channel Partner Agreement dated 23.07.2014, under which the respondents engaged the service of the Petitioner for marketing the apartments in some of its projects at Bangalore. Accordingly from the date of commencement of agreement till the date, the Petitioner has agreed to procure bookings of value of more than 25 Crores.
- 2) For the service rendered by the Petitioner, the Petitioner raised invoices in respect of each of the bookings. The Petitioner and the Respondents had made partial payments citing financial difficulties. However, the Respondents committed default for amount of Rs.11, 54,678/- (Rupees Eleven lakhs Fifty Four Thousand Six Hundred Seventy Eight Only). Accordingly, the Petitioners got issued legal notice dated 03.01.2015 calling upon



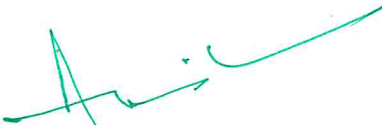
the respondents to pay the said outstanding amount with interest. Having failed to pay the amount, the Petitioner had filed the instant Company Petition.


3. The Respondents have filed statement of objection dated 26.09.2018 opposing the Company petition by raising several grounds. It is also stated that the respondents have paid 29.87 lakhs (Twenty Nine Lakhs and Eight Seven thousand only) and claimed damages for defective services rendered by the Petitioner. The Respondents have also filed I.A.No.178/18 by inter alia contending, that after filing of the instant Company Petition, the petitioner filed a claim Application No.460/18 before the Micro & Small Enterprises Facilitation Council of Haryana and notice was received by them on 13.03.2018, by claiming total amount of Rs.1,05,59,851/- against the Respondents. Therefore the present Company Petition is not maintainable
4. Heard Shri Raghuram Cadambi, learned counsel for the Petitioner and Shri NamanJabakh, learned counsel for the respondents.
5. The Learned counsel for the Petitioner submit that the Company Petition is filed duly following the procedure prescribed under the Companies Act, 1956 and also after complying with the provisions of relevant I&B Code, and the present CP is maintainable and the Tribunal may decide the matter.
6. The Learned Counsel for the Respondent that since the petitioner has already initiated proceedings claiming so many amounts including the amount claimed in the cases, the Company Petition is not all maintainable. The Hon'ble Supreme Court of India, and various High Courts have time and again held that a "Party cannot be permitted to pursue two parallel remedies in respect of the same matter at the same time, and if done it amounts to abuse of the process of court" Hence the petition is liable to be dismissed.
7. Both the learned counsel agreed that the instant petition may be disposed of leaving the parties to prosecute their pending disputes before MSME and thereafter, aggrieved party may be given liberty to take



appropriate legal remedy. Ms. Sheetal, authorised representative for the respondent is also present. The learned Counsel for the respondent submit that the issue in question in the petition would be resolved without waiting for decision on a case pending before MSME since the amount involved in the case is small amount when compared to total amount claimed before MSME.

8. In view of the above facts and circumstances of the case CP.No.248/15/(TP.No.33/17) ^{dispute} is disposed of by permitting the petitioner to prosecute the pending ^{dispute} before MSME and the respondent is also directed to take appropriate action as per the submission as stated supra. Liberty is also granted to the Petitioner to approach the Tribunal, by filing appropriate application/petition in accordance with law. IA No. 170 of 2018 is also stands disposed of .


(Dr..Ashok Kumar Mishra)
Member (T)


(Rajeswara Rao Vittanala)
Member (J)