

**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI (COURT NO. IV)****Company Petition No. IB-843/ND/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

**IN THE MATTER OF:****INGRAM MICRO INDIA PRIVATE LIMITED****...Applicant/Operational Creditor****VERSUS****DR JAIN VIDEO ON WHEELS LIMITED****...Respondent/ Corporate Debtor****Pronounced on:03.06.2021****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (Technical)**

**MEMO OF PARTIES**

**INGRAM MICRO INDIA PRIVATE LIMITED**

**Registered Office** at Godrej It Park B Block 5 Floor

Piroshanagar LBS Road, Vikhroli West

Mumbai-400079    **...Applicant/Operational Creditor**

**VERSUS**

**DR JAIN VIDEO ON WHEELS LIMITED**

**Registered office at** A-39 NDSE II

New Delhi-110049

**...Respondent/ Corporate Debtor**

**For the Applicant:** Mr. Saurabh Jain, Advocates

**For the Respondent:** ---

**ORDER****Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application was filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Ingram Micro India Private Limited (for brevity 'Applicant'), through its managing director vide power of attorney dated 26.12.2017 with a prayer to initiate the Corporate Insolvency process against DR Jain Video On Wheels Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 05.03.1996, having CIN 72900MH1996PTC136340 inter-alia, involved in the business of distributor of IT hardware equipments. The applicant is having its registered office at Godrej It Park B Block 5 Floor Piroshanagar LBS Road, Vikhroli West Mumbai-400079.
3. The Corporate Debtor is a limited company incorporated under the provisions of Companies Act, 1956 on 03.01.1991, having CIN U92199DL199PLC042609, inter alia involved in the business of provider of services such as TV Broadcasting, news gathering and video up linking. The applicant is having its registered office at A-39 NDSE II, New Delhi-110049.
4. The Applicant has stated that the corporate debtor had placed three purchase orders dated 12.10.2014 for total amount of Rs 63,213,672/- to the applicant. The payment terms under the purchase orders required the corporate debtor to make payment within a stipulated time frame.

5. The Applicant submits that the goods were supplied in terms of the purchase orders. The Corporate Debtor accepted the delivery of goods without any demur, as to the price of the goods, quality, delivery, quantity etc. Thus, the applicant herein has delivered goods of the required specification without any delay.
6. The Applicant submits that invoices were raised on 27.10.2014 & 28.10.2014 and required the Corporate Debtor to pay interest @ 24% for delayed payment. The Corporate Debtor has failed to make the payment as per the terms of purchase orders.
7. The applicant submits that the corporate debtor is closely associated with Noida Software Technology Park Limited (NSTPL). Hence, when the Corporate Debtor failed to make the payment, NSTPL by virtue of the Second addendum to the Distributorship Agreement, agreed to give Bank Guarantee for and on behalf of the Corporate Debtor to the extent of Rs. 40,20,000/-. However, NSTPL failed to give the bank guarantee for and on behalf of the Corporate Debtor.
8. The applicant submits that NSTPL on behalf of the corporate debtor had issued a cheque for Rs 42,20,000/- drawn on Dena bank dated 05.07.2016, which was deposited with its bank HDFC bank by the applicant. However, the cheque was dishonored for the reason of 'insufficient funds'. Copy of the intimation memo of HDFC bank is annexed along with the copy of cheque. The applicant has initiated proceedings under section 138 of the Negotiable Instrument Act, 1881.

9. The Applicant submits that Indian Bank has issued a notice 22.06.2017 under Section 13(2) of the SARFAESI Act on the Corporate Debtor herein in its capacity as Corporate Guarantor for the loan availed by NSTPL. The Applicant states that the Loan Account of the Corporate Debtor as well as of the NSTPL has been classified as an NPA.
10. The Applicant had filed an Insolvency Application bearing No. (IB)-46(PB)/2017 before NCLT, New Delhi. However, the same was dismissed, for non compliance of section 9 (3) (c) of the code as the Applicant was unable to produce a bank certificate for the entire duration, commencing from the originating point of the transaction between the parties till the date of filing of the application.
11. The Applicant, issued a fresh demand notice dated 30.10.2017 under section 8 of the I & B Code,2016, (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon to pay the outstanding amount of Rs 67,67,218.30/- that comprises principal amount of Rs 40,20,500/- due against invoices and Rs 27,46,717.81/- towards interest. The notice was duly delivered at the registered office of the Corporate Debtor on 06.11.2017 as reflected on MCA website as evident from the tracking report, reflecting 'Item delivered'.
12. The corporate debtor replied to the said notice on 11.11.2017, disputing their liability to pay, contending amongst their reasons that there exist dispute between the parties and that the notice is barred on the basis of principles of Res judicata.

13. The Applicant filed present Application under section 9 of IBC, 2016 on 17.07.2018 and served the copy of this application at its registered email as reflected on the master data, which was duly delivered to the corporate debtor as it did not bounce back. The affidavit of service is filed along with the proof of service.

The Hon'ble NCLAT in the matter '*K. B. Polychem (India) Ltd. vs Kaygee Shoetech Private Limited*' has held that any notice served as per Rule 38 of NCLTRules, 2016 is sufficient evidence to show the delivery as complete.

*Rule 38 of National Company Law Tribunal Rules, 2016:*

*Service of notices and process: (1) any notice or process to be issued by the tribunal may be served by post or at the email address as provided in the petition or application or in the reply'*

14. The corporate debtor has filed a reply and has contended as follows:
- i. That the statement of account filed by the applicant is false as there is levy of interest, there are no proof of debit entries, there is difference between invoice and the purchase order amount.
  - ii. That the cheque issued by NSTPL was security amount and not against the discharge of liability of corporate debtor. The applicant had wrongly tried to encash the security cheque which was of higher amount and not the amount payable by the corporate debtor.
  - iii. That the present application is barred by principles of res judicata, as the application filed under section 9 by the applicant for the said claim as of this application, is already dismissed order of which is already on record.

There cannot be adjudication of the claim which is already decided prior by any authority.

15. The applicant has filed a rejoinder controverting the averments made in the reply and has denied all the averments as made in the reply of the corporate debtor. The applicant submits that the direct payments, credit entries, have been duly acknowledged and given effect to by the applicant. Further, it is mentioned that debit entries for freight charges as well as interest @24% are as per the terms of the supply. The applicant further submits that the erstwhile application was dismissed on technical grounds, the adjudicating authority never had the occasion to examine the merits of the application and the present application is therefore not barred by the principles of res judicata.
16. At the stage of hearing of the application on 02.09.2019, the corporate debtor agreed and confirmed an amount of Rs.45,00,000/- would be paid in three instalments as: i) Rs. 8 lacs (vide cheque dated 23.08.2019 issued by People Energy Organization Limited) ii) Rs.2 lacs (vide cheque dated 07.09.2019 issued by NBA Group of Institution). iii) Rs. 35 lacs (vide cheque dated 07.10.2019 NBA Group of Institution). This schedule of payment was recorded in the Withdrawal Memo/Joint Application signed and filed by the parties with this bench on 02.09.2019. The application for withdrawal was allowed to the applicant after recording settlement and taking the same on record and the bench gave liberty to the applicant to revive the application in the event of default by the Corporate Debtor of any of the terms of the settlement. It is submitted that after the withdrawal application, first 2 instalments paid by cheques were realized,

however, the third instalment for Rs.35,00,000/- was not realized and the cheque when deposited was dishonored for the reason of 'insufficient funds'. A copy of the Cheque along with Bank Memo is annexed. That in view of the dishonor of the cheque a notice of demand is issued under the provision of the Negotiable Instruments Act but till the date of filing of this Application no payment is made.

17. In view of breach of the settlement filed before the court by the parties, the interim application was filed by the applicant seeking revival of the IB - 843/ND/2018, which was allowed on 06.01.2021.
18. The Corporate Debtor did not appear in spite of the service of the interim application, hence, the corporate debtor was proceeded ex-parte on 06.01.2021.
19. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs.67,67,218.30/- that comprises principal amount of Rs 40,20,500/- due against invoices and Rs 27,46,717.81/- towards interest.
20. In view of the dismissal of the prior application filed by the applicant against the corporate debtor on the ground of non-compliance of section 9(3)(c), as a precautionary measure, the applicant has filed bankers certificate issued by HDFC bank is annexed.
21. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
22. The Present application is filed within limitation. The date of default is 2014 as per the invoice and the first application was filed in 2017. Thereafter, due to dismissal of the said application on technical ground, fresh application filed in 2018. In 2019 the corporate debtor admitted the debt while settling the matter on



02.09.2019. Hence, the debt is not time barred and the application is filed within the period of limitation.

23. As a sequel to above the present application is admitted, in terms of section 9 (5) of IBC, 2016 and the Applicant has proposed the name of Mr. Manoj Kulshrestha as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-003/IP-N00005/2016-17/10024 (email –costadvisor@hotmail.com, is appointed by this Hon'ble Tribunal as IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
24. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Manoj Kulshrestha to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

25. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
26. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**Sd/-**  
**(MS. SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**