

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3978/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

MCT Cards & Technology Pvt. Ltd..

CIN: U72900KA2008PTC045316

Udayavani Building, Press corner,
Manipal- 576104

.....Operational Creditor

Vs

TMW Fintech Pvt. Ltd.

(CIN: U67190MH2015PTC267015)

Registered office at: Tower-3, 3rd
floor, Equinox Busi Off, Bandra kurla
Complex, L.B.S. Marg, Kurla (West),
Mumbai- 400070

.....Corporate Debtor

Order delivered on: 08.10.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Dakshesh Vyas, Advocate

For the Respondent: Aman Kacheria, Advocate

Per: Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company petition is filed by *MCT Cards & Technology Pvt. Ltd.* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *TMW Fintech Pvt. Ltd.* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt 38,36,557/-

SUBMISSIONS OF THE OPERATIONAL CREDITOR

2. The Operational Creditor is filed for initiating liquidation process of corporate Debtor viz. the Respondent Company-TMW fintech Pvt. Ltd.
3. The Corporate Debtor has approached the Operational Creditor for the purchase of the goods and material like base Master EMV Cards, EMV personalization etc from the Operational Creditor Company. The Corporate Debtor has issued various purchase orders upon the Operational Creditor.
4. The Operational Creditor Company supplied the goods and material to the Corporate Debtor Company and against that the Operational Creditor Company had issued various invoices against the Corporate Debtor Company. The Corporate Debtor Company has accepted the invoices as sent by the Operational Creditor Company without any objection, complaint and/or demur.
5. The total amount of the invoices so raised is Rs. 83,36,557/-. The Corporate Debtor Company has paid an amount of Rs. 45,00,000/- till 11.06.2019 in two instalments after that stop

paying any amount to the Operational Creditor, therefore balance outstanding amount is Rs. 38,36,557/-.

6. The Operational Creditor submits that by e mail dated 23.09.2019 issued by Mahesh Toshniwal of the Corporate Debtor, the Corporate Debtor has assured to send the schedule to make the payment by week, however the Corporate Debtor did not make any payment nor sent the schedule to make the payment.
7. The Operational Creditor further submits that due to persistent default of the Corporate Debtor to make payments of above stated operational debt, the Operational Creditor was constrained to issue to the Corporate Debtor a demand notice dated 18.10.2019 under the Code, 2016 and ruled as applicable thereunder. The said notice is duly served upon the Corporate Debtor and despite receipt of the demand notice, the Corporate Debtor has failed to reply or point out any pre-existing dispute in respect of the Operational Debt by the Corporate Debtor to the Operational Creditor.
8. The Operational Creditor submits in his additional affidavit that the Demand Notice dated 18.10.2019 was dispatched to the Corporate Debtor Company and the same was received to them by 23.10.2019. The Corporate Debtor Company failed to reply to the Demand Notice within the statutory period of i.e. 10 days from the date of receipt of the Demand Notice.
9. The Operational Creditor further submits in his additional affidavit that vide an email dated 06.11.2019 the Corporate Debtor Company sent their reply to the said demand notice to the Operational Creditor. In the said reply the Respondent Company for the first time raised the objection regarding the quality of the product sold to them.

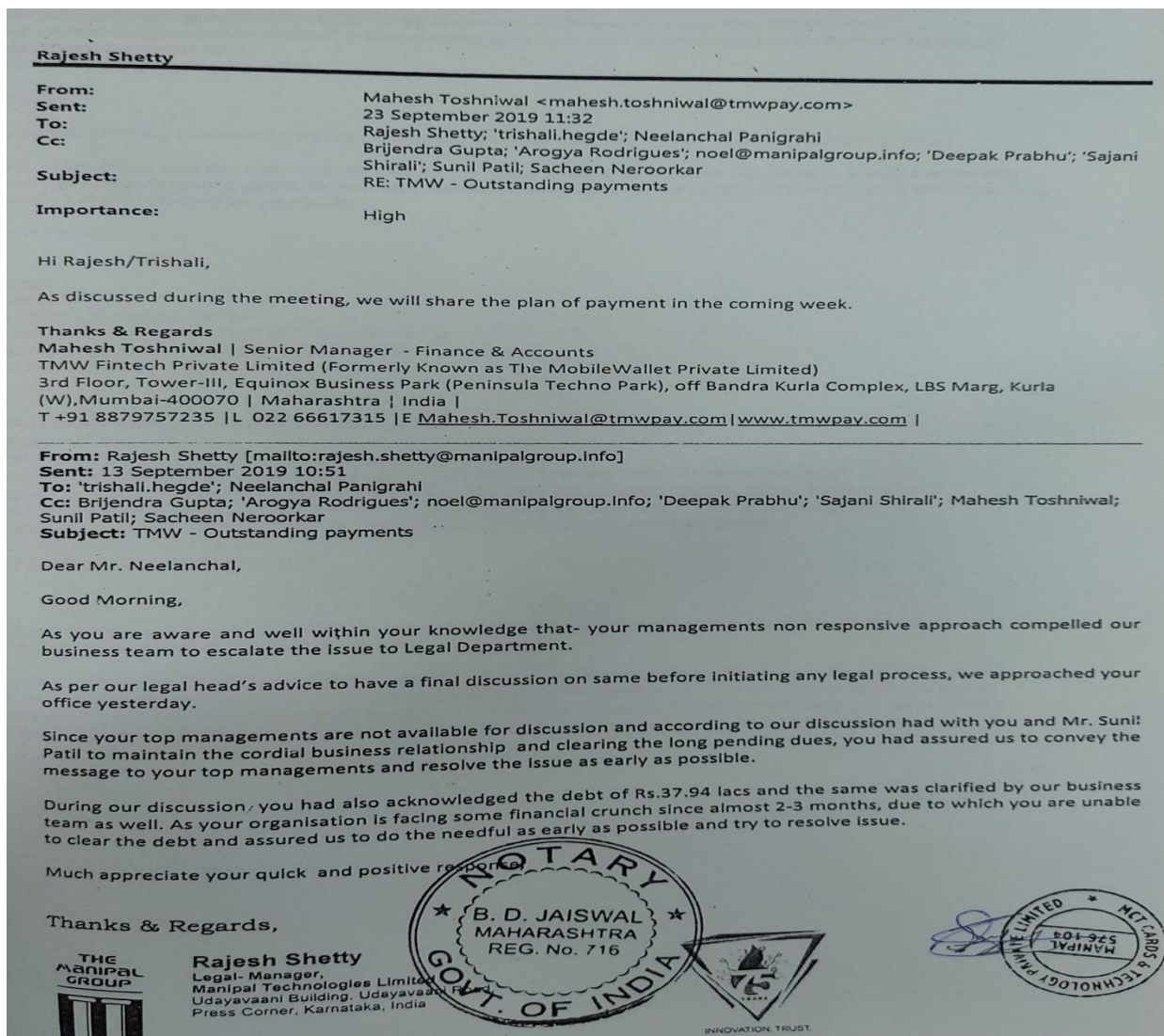
10. The Operational Creditor further submits that the said reply was not forwarded by the concerned officer of the operational creditor, who was present in Mumbai to finalized the present company petition. Further, the said reply to demand notice are completely manufactured and are denied totally.
11. Thus, it is clear that despite repeated commitment and assurance given by the Corporate Debtor to the Operational Creditor, the Corporate Debtor is unable to pay its operational debt and therefore liable to be wound up/liquidated in accordance with law.

FINDINGS

12. This Company petition is filed by *MCT Cards & Tehnology Pvt. Ltd.* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *TMW Fintech Pvt. Ltd.* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 Insolvency and Bankruptcy Code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 38,36,557/-
13. The Bench notes that the Operational Creditor has raised invoices upon the Corporate Debtor in respect of the supply of the said goods. The said Invoices were raised between 18.10.2018 to 17.08.2019 which are annexed to the petition.
14. The Bench further notes that the Corporate Debtor made last payment on 11.06.2019 to the Operational Creditor. No payment has been made by the Corporate Debtor thereafter. The Bench further notes that the Bank Certificates have been issued by the Banks i.e. Federal Bank & ICICI Bank

confirming that no payment has been made by the Corporate Debtor after 11.06.2019.

15. The Bench further notes that the Corporate Debtor has confirmed the liability to pay the debt amount by an email dated 23.09.2019 and has even agreed and acknowledged to share their plan of making payment. The said email dated 23.09.2019 addressed by Mahesh Toshniwal on behalf of the Corporate Debtor to the Operational Creditor and the subject matter of the email is the “outstanding payment” by the Corporate Debtor. The Operational Creditor has annexed the email with the petition in support of their claim, which is as under:



16. The Bench further notes that the matter was listed on various occasions. On 01.03.2021 Mr. Rahul Agarwal, counsel appearing for the Corporate Debtor requested time to file Vakalatnama and Reply and the bench passed the order directing the Corporate Debtor to file Vakalatnama and Reply before 20.04.2021. Again the matter was listed on board on 12.08.2021, and on that day the Corporate Debtor further requested the extension of time for filing reply which was refused by this Bench.

17. The Bench notes that the ample opportunity was given to the Corporate Debtor to file its reply. However, the Corporate Debtor failed to file reply before this Bench.
18. The Bench further notes that till the date of the final hearing the Corporate Debtor did not choose to file any reply contesting above Company Petition and also did not comply the order dated 01.03.2021 wherein he was directed to file reply. Therefore, the Corporate Debtor's right to file reply was forfeited.
19. Heard the counsel appearing for the Operational Creditor. The counsel appearing for the Financial Creditor invited the attention of this Tribunal to the relevant documents filed in proof of debt and default in support of above company petition. Since the Respondent/Corporate Debtor did not file any reply, the claim of the Financial Creditor remains unchallenged.
20. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. Thus, the present Company Petition satisfies all the necessary requirements for admission.
21. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -3978(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against TMW Fintech Pvt. Ltd.
- b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim

Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Pramod Dattaram Rasam** (pdrasam@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00722/2017-2018/11259 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)