

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No.157/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 17.03.2021

Name of the Company: Centillion Solutions & Services Pvt Ltd
V/s
Euphoria Technologies Pvt Ltd

Section: 9 of the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 17th day of March, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.157/9/NCLT/AHM/2019

(Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

M/s Centillion Solutions and Services Pvt. Ltd.

(CIN No. U72400KA2006PTC039877)

Regd. Office at;

No. 354, 1st Floor, 14th Cross Indiranagar,

Bangalore- 560038

Karnataka, India

..Operational Creditor

Versus

M/s. Euphoria Technologies Private Limited

(CIN NO. U72900GJ2010PTC063439)

Regd. Office at;

Office no. 403, 4th Floor,

Nisha Arcade, Near Vaishali Row House,

Green City Road, Surat

Gujarat- 395009

...Corporate Debtor

Order reserved on 10.03.2021

Pronounced on 17.03.2021

Coram: MADAN B. GOSAVI, MEMBER(J)

VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Ld. Lawyer Mr. Abdul Vohra appeared for the operational creditor.

Ld. PCS Mr. Kunjan Dalal appeared for the corporate Debtor.

ORDER**[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]**

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC 2016**") by Operational Creditor M/s Centillion Solution and Services Pvt. Ltd. to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Euphoria Technologies Private Limited for the default amount of Rs. 53,28,346/- and interest thereon.

2. The operational creditor submitted that the corporate debtor approached the operational creditor for the purchase of Kodak Scanners and support service. The corporate debtor issued the purchase order vide PO No. ETPL/PO/16-17/084 dated 14.03.2017 for the purchase of the aforesaid product. The operational creditor supplied the said goods and raised the 4 invoice Vide invoice No. M/SUP/17-18/465A for the amount of Rs. 5,12,479/-, SCN/17-18/1147A for Rs. 6,07,110/-, Invoice NO. SCN/17-18/1147B for Rs. 6,07,110/- and invoice no. SCN/17-18/1147C for Rs. 33,39,106/-, all four invoices were raised on 09.03.2018. The operational creditor raised the said invoices after entered

into a settlement agreement with the corporate debtor wherein, the corporate debtor acknowledged for paying the outstanding amount of RS. 45,55,596/- along with Goods and Service Tax within 45 days from the date of raising of fresh invoices and Rs. 2,92,762/- for tax-loss failing which an interest @ 1% per month would be levied from the date of the original invoice.

3. The operational creditor communicated several times to the corporate debtor through emails for the payment of the outstanding amount. The outstanding debt was acknowledged by the corporate debtor in an email dated 07.03.2018 and 03.12.2018 with the operational creditor.
4. The operational creditor sent a demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC 2016**") read with rule 5 of IBBI(Application to the Adjudicating Authority) Rules, 2016 (hereinafter referred to as "**AA Rules**") in form 3 on 20.09.2018 for the payment of the said outstanding amount. The corporate debtor replied to the said demand notice on 10.10.2018 wherein the corporate debtor raised the pre-

existing dispute and stated that the payment of the outstanding debt has been withheld by the corporate debtor due to the reason that, order for purchasing of goods were placed to operational creditor along with services of the purchased goods but, operational creditor failed to provide the agreed services.

5. Thereafter, the operational creditor filed the present application for initiation of the Corporate Insolvency Resolution Process against the corporate debtor. The Corporate debtor filed the reply to the present application and contended that the present application is not accompanied by the no dispute affidavit as envisaged under section 9 (3) (b) of IBC 2016, therefore, the present application is liable to be rejected on this ground. The corporate debtor further contended that the application filed by the operational creditor is not supported by an affidavit as prescribed under rules 10 of AA Rules read with Rules 20 to 24 and 26 of NCLT Rules.

6. The corporate debtor stated that the demand notice issued by the operational creditor is not under the prescribed

format and without any authorization. Therefore, the demand notice issued without authorization is invalid and the present application is liable to be dismissed on this ground. It is further stated that the demand notice issued by the operational creditor has not been filed with information utility as given under rule 5 (3) of AA Rules.

7. The operational creditor filed the rebuttal to the reply filed by the corporate debtor and submitted that the corporate debtor has raised the frivolous ground and the submission of the corporate debtor is without any basis of law. In respect to the affidavit under section 9 (3) (b) of the IBC, the operational creditor rebutted that the instant application was filed on 28.02.2019 at that time the affidavit under the aforesaid section was not mandatory. Moreover, the objections raised by the registry have complied with due diligence.

8. The operational creditor submitted in response to the submission of the corporate debtor in respect that the affidavit in support of the application is not in proper format as prescribed under rule 10 of AA Rules and Rule 20- to 24 and 26 of NCLT rules that the procedure followed by the

Tribunal is crystal clear and this present petition was listed after curing the objections raised by the registry. It is also submitted by the operational creditor that the production of the Information utility certificate is a procedural aspect and non-production of this certificate is in no manner prejudice against the interest of the corporate debtor as it is not mandatory.

9. Heard the counsel of operational as well as corporate debtor and perused the record. It appears that the objection raised by the corporate debtor that the operational creditor has not filed the affidavit under section 9 (3) (b) of IBC 2016 is a technical ground that is curable. The said affidavit is not mandatory unless affects the case or causes prejudice to the corporate debtor. Moreover, the reply made by the corporate debtor to the demand notice has been considered in the present application on merit, hence, such a plea of the corporate debtor has got no relevance.
10. The contention of the corporate debtor in the respect that the present application is not supported with an affidavit as prescribed under rule 10 of AA Rules and Rule 20 to 24 and

26 of NCLT Rules 2016 is not valid. On perusal of the affidavit in support of the instant application, it reveals that the contents of said affidavits are clear and consist of contents required for verifying the present application. No format as such has been prescribed by the aforesaid rules for verification affidavit. More so, said affidavit does not affect the merit of the present application.

11. The contention of the operational creditor in respect to the demand notice issued by the advocate on behalf of the operational creditor is without any authorization is not valid. This issue has already been settled by the supreme court in the matter of *Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. 2018* that the demand notice issued by the advocate is valid even without authorization. The advocate can issue the demand notice under section 8 of IBC 2016 without authorization merely instruction is sufficient. We also observed that the pre-existing dispute raised by the corporate debtor is baseless and without any supporting documents which can prove said dispute. On perusal of letter dated 16.02.2018 and email dated 07.03.2018 and 03.12.2018 it is noted that there is not pre-existing dispute

in regard to service for the supplied products. If, there is any such pre-existing dispute that should be raised at that point of time. In said two e-mails the corporate debtor through disputed the outstanding amount but the corporate debtor has stated in its mail dated 07.03.2018 that Rs. 49,37,549/- is outstanding instead of 53,28,347/- which amounts to an acknowledgment of debt being due and payable. The invoice has been raised by the operational creditor on 09.03.2018 after settlement between the operational creditor and the corporate debtor vide communicated dated 16.02.2018 issued by the operational creditor and the same was acknowledged by the director of the corporate debtor. Thus, this application has been filed within the limitation. The amount claimed as well as acknowledged by the corporate debtor also meets the threshold limit as prescribed under section 4 of IBC 2016. The plea as regards to pre-existing dispute raised by the corporate debtor has not been substantiated by bringing any cogent evidence on record.

12. The present application is defect-free and complies with all the relevant provisions of the IB Code. The operational

creditor has not proposed the name of Resolution Professionals, the same is not mandatory terms. In view of the above observations, the present application is allowed with the following directions;

ORDER

I. The instant application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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.*

II. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency

Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

III. The operational creditor has not recommended any Resolution Professional to appoint as an IRP, hence, we hereby appoint **Mr. Pradeep Srivastava having registration No. IBBI/IPA-002/IP-N01012/2020-2021/13299, email Id, shaktipradeep@yahoo.com** to act as an IRP under Section 13(1) (c) of the Code.

IV. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under Section 19 of the IB Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or

Co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

V. This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

VI. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.


VII. The IRP shall be under duty-bound to protect and preserve the value of the property of the Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

VIII. The Operational Creditor is directed to pay an advance of Rs. 25,000/- (Rupees Twenty five thousand Only/-) to the

IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

IX. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

X. Accordingly, CP(IB) No. 157/9/NCLT/AHM/2019 is allowed.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)

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