

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) No. 2336/NCLT/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of:

M/s. Sixth Sense Inc

...Operational Creditor / Applicant

V/s

**M/s. Chuo Senko Advertising India
Private Limited**

...Corporate Debtor / Respondent

Order Dated: 24th September 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Abdullah Qureshi

For the Respondent: None present

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This Application has already been admitted vide our Order dated 24.09.2019 and IRP has been appointed vide the same Order.
2. This is an Application being CP 2336(IB)/MB/2018 filed by **M/s. Sixth Sense Inc**, the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **M/s. Chuo Senko Advertising India Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
3. The Application is filed claiming a total default of ₹52,65,006/- (Rupees Fifty Two Lakh Sixty Five Thousand and Six Only) along with interest at 24% p.a. The Application is filed by Mr. Manish Modi, Partner of Operational Creditor. The working for computation of amount outstanding as on 31.03.2018 is annexed to the Application.
4. The Applicant submits that it supplied materials and executed work of installation and execution of advertising at sites and places of Corporate Debtor's clients as per the purchase orders / work orders raised by the Corporate Debtor. The purchase orders / work orders and the invoices for the materials and services supplied from April 2016 to October 2017 are annexed to the Application.

5. The Applicant submits that the Corporate Debtor has admitted its liability to repay an amount of ₹46,47,270/- (Rupees Forty Six Lakh Forty Seven Thousand Two Hundred and Seventy Only) as per the Ledger Account maintained by Corporate Debtor. Further, the Corporate Debtor has also vide its email dated 13.02.2018 admitted the balance payment due towards Applicant. Copy of Ledger Account of Applicant as maintained by Corporate Debtor for the period 17.12.2015 to 09.01.2018 and email dated 13.02.2018 are annexed to the Application.
6. The Applicant submits that despite being satisfied with the goods and services the Corporate Debtor failed to pay the due amount under the invoices. Therefore, the Applicant issued Demand Notice to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of ₹52,65,006/- (Rupees Fifty Two Lakh Sixty Five Thousand and Six Only). However, the Corporate Debtor failed to reply to the Demand Notice.
7. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 27.11.2018. The Applicant filed its Affidavit of Service of Notice on 13.02.2019. It is on record that the court notice was duly served upon the Corporate Debtor, but the Corporate Debtor chose not to file any objections in its defence even after providing ample of opportunities to do so. Further, there was no representation on behalf of the Corporate Debtor during hearing.
8. On perusal of the documents submitted by the Applicant, it is clear that Applicant has supplied goods and services for which Corporate Debtor has failed to make payment. Therefore, operational debt of more than Rupees One Lakh is due and payable by the Corporate Debtor which is also admitted by the Corporate Debtor in Ledger Statement of Applicant maintained by Corporate Debtor and in e-mail dated 13.02.2018.
9. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 31.03.2018 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 06.06.2018 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.
10. The Applicant, having supplied goods and services to the Corporate Debtor for which the Corporate Debtor has failed to

make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods or services or the debt due to the Applicant. To the contrary, the Corporate Debtor has acknowledged its liability in Ledger Account submitted by Corporate Debtor to the Operational Creditor through email dated 11.01.2018.

11. The Applicant has proposed the name of Mr Deepak Kumar Agarwal, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00584/2017-18/11778] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that there are no disciplinary proceedings pending against him.
12. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has been established. The application is complete.
13. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **M/s. Sixth Sense Inc**, Operational Creditor / Applicant against **M/s. Chuo Senko Advertising India Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 Securitization 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Deepak Kumar Agarwal**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-002/IP-N00584/2017-18/11778]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)

24th September 2019