

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH

**CORAM: SHRI P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

Company Petition No. (IB)- 233/9/JPR/2019

(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:

UNIWORD TELECOM LIMITED

**...OPERATIONAL CREDITOR/
APPLICANT**

VERSUS

M/s TAURUS EXPORTS PRIVATE LIMITED

**...CORPORATE DEBTOR/
RESPONDENT**

**For the Applicant :
For the Respondent :**

**Saurabh Malpani, CA
Prateek Kedawat, Adv.**

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VS.
M/s Taurus Exports Private Limited

DRN

MEMO OF PARTIES

Uniword Telecom Limited
A1/24, Azad Appartment,
Aurobindo Marg, New Delhi- 110016

...Operational Creditor/Applicant

VERSUS

M/s Taurus Exports Private Limited
A-17, Krishna Nagar-1, Gandhi Nagar Mod,
Jaipur- 302015

...Corporate Debtor/Respondent

Order Pronounced On: 05.03.2020

ORDER

Per : Shri Raghu Nayyar, Technical Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule-6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Uniword Telecom Limited through its Authorised Signatory Mr. Vijay Kumar Maurya ('Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s Taurus Exports Private Limited ('Respondent').

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2. The Applicant is a Public Limited Company incorporated under the provisions of Companies Act, 1956 on 19.02.1984 duly registered with the Registrar of Companies, Delhi, bearing CIN: U51503DL1985PLC020193 and its office is located at A 1/24, Azad Apartment, Aurobindo Marg, New Delhi- 110016.

3. The Respondent is a Private Limited Company incorporated under the provisions of Companies Act, 1956 on 06.09.1991, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U18101RJ1991PTC006177 and the Registered Office of the Respondent company is at A-17, Krishna Nagar-1, Gandhi Nagar Mod, Jaipur, Rajasthan- 302015. The authorized share capital of the company is Rs. 35,00,000 (Rupees Thirty Five Lakhs Only) and paid up share capital is Rs. 34,81,100/- (Rupees Thirty Four Lakhs Eighty One Thousand One Hundred Only), as per Master Data of the said Company.

4. It is the case of the Applicant that the Applicant had sold Connectors, Feeder Cables, Surge Arresters etc. to the Respondent and raised invoices worth Rs. 4,05,88,654/- (Rupees Four Crore Five Lakhs Eighty Eight Thousand Six Hundred Fifty Four Only), out of which there is a default of payment of Rs. 1,20,78,456.34/- (One Crore Twenty Lakhs Seventy Eight Thousand Four Hundred Fifty Six Only) against the invoices raised between 19.08.2010 to 11.01.2011.



5. The Applicant had sent several reminder letters from 06.07.2015 to 06.08.2018 for payment of Rs. 1,20,78,456.34/-, which was duly confirmed by the Respondent vide letters dated 20.07.2015 and 03.08.2016. Copy of all the letters and replies are annexed with the Application.
6. According to the Applicant, both the parties had signed a Memorandum of Understanding ('MOU') dated 16.08.2018, a copy whereof is annexed with the Application as Annexure-N, wherein the Respondent had agreed to pay the due amount of Rs. 1,20,78,456.34/- within the time frame of 6 months from the date of the MOU. However, no amount has been received by the Applicant till now.
7. Thus, the Applicant had issued a Demand Notice in Form 3 & Form 4 dated 10.07.2019 demanding payment of Rs. 1,20,78,456.34/- to the Respondent, which was duly received by the Respondent through post on 16.07.2019. Copy of the tracking report as proof of service is also annexed with the Application.
8. It is submitted that the Respondent neither replied to the said notice nor made any payment after receiving the Demand Notice. The Applicant therefore filed the present Application under Section 9 of IBC, 2016. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 1,20,78,456.34/- as an outstanding amount, as mentioned in Part IV of Form 5:

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PART IV

Sr. No.	Particulars of Operational Debt	
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	INR Rs. 1,20,78,456.34/- (One Crore Twenty Lakhs Seventy Eight Thousand Four Hundred Fifty Six Only)
2.	Amount claimed to be in default and the date on which the default occurred	Total amount of debt claimed to be in default is Rs. 1,20,78,456.34/- Date of default: 11.01.2011

9. The Respondent filed a reply on 12.12.2019 admitting the liability and stated that the Company is not in a position to clear the amount claimed by the Applicant.

10. On perusal of the records, it is noted that the last invoice was issued on 11.01.2011. Thereafter, on 20.07.2015 & 03.08.2016, the Respondent had admitted the past dues, which were beyond the threshold of Limitation, but stated that the Respondent was making every effort to effect payment of the relevant amount. Subsequently, both the parties had executed a MOU on 16.08.2018, whereby the Respondent had agreed to make payment within 6 months, i.e by 15.02.2019. Thus, in view of the Section 25 (3) of the Indian Contract Act, 1872 which overshadowed Section 18 of the Limitation Act, Uniword Telecom Ltd.
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1963, the matter is within the purview of the Law of Limitation under Article 137 thereof.

11. Upon a detailed consideration of the Application and documents filed, it is evident from the ledger statement filed by the Applicant / Operational Creditor annexed with the Application, that the payment of claim amount of Rs. 1,20,78,456.34/- has been defaulted by the Respondent / Corporate Debtor and has been agreed as due and payable. The Registered Office of the Corporate Debtor is situated in Jaipur and therefore, this Tribunal has jurisdiction to entertain and adjudicate this Application. Hence, this Tribunal is of the view that it is a fit case to initiate Corporate Insolvency Resolution Process (CIRP) against the Respondent / Corporate Debtor as envisaged under the provisions of IBC, 2016.

12. The Applicant has named the Interim Resolution Professional (IRP), and accordingly Mr. Anoop Bhatia, with the Registration No. IBBI/IPA-001/IP-P01142/2018-2019/11969 (email: ip.anoopbhatia@gmail.com), is appointed as the Interim Resolution Professional ('IRP') of the Respondent / Corporate Debtor. The Applicant has filed consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 stating therein that no disciplinary proceedings are pending against the named IRP, along with certificate of Registration of IRP.

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13. The consequences of initiation of CIRP shall be inter alia, as follows: -

- (i) The Resolution Professional Mr. Anoop Bhatia, with the Registration No. IBBI/IPA-001/IP-P01142/2018-2019/11969 (e-mail: ip.anoopbhatia@gmail.com), is hereby appointed as the Interim Resolution Professional (IRP) to take over the affairs of the Respondent / Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including issue of publication in widely circulated newspapers as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.
- (ii) Further, as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Respondent / Corporate Debtor which will be in vogue during CIRP of the Respondent / Corporate Debtor. The IRP shall carry out Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Respondent / Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Applicant / Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs only) to the account of IRP within 3

days from the date of this order. The IRP shall duly file the status report apprising this Tribunal about the progress of CIRP unfolding in relation to the Respondent / Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Respondent / Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended, will extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Respondent / Corporate Debtor shall vest with the IRP.

(iv) In terms of Section 9 of IBC, 2016, a copy of this order shall be communicated to the Applicant / Operational Creditor, Respondent / Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

14. Accordingly, CP No. (IB)- 233/9/JPR/2019 is admitted.

Sd/-

**SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)**

Sd/-

**SH. P.S.N PRASAD,
MEMBER (JUDICIAL)**