

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/354/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016)*

In the matter of **M/s. Inspan Infotech Pvt. Ltd.**

M/s. Kobian PTE Limited

No.07, Temasek Boulevard,
#15-02, Suntec Tower One,
Singapore 038 98

... Operational Creditor

-Vs-

M/s. Inspan Infotech Private Limited

278/5, 1st Floor, OMR Main Road,
Opp to Thiruporur Main Bus Stand,
Kanchipuram,
Tamil Nadu – 603 110

...Corporate Debtor

Order Pronounced on 22nd March 2021

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : Rathinakumar, PCS

For Corporate Debtor : Raghav Rajeev Menon, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed on 25.02.2020 by **M/s. Kobian PTE Limited** (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code,



2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Inspan Infotech Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the details of the Operational Creditor from which, it is evident that the Operational Creditor is a Company incorporated at Singapore. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U72900TN2001PTC048011 was incorporated on 08.11.2001 and that its Authorized Share capital and Paid Up Capital is Rs.40,00,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 278/5, 1st Floor, OMR Main Road, Opp to Thiruporur Main Bus stand, Kanchipuram – 603 110. Part-III of the Application shows that the Operational Creditor has proposed the name of one Mr. V. Senthil Kumar, with Reg. No. IBBI/IPA-001/IP-P01070/2017-2018/11761 as the "Interim Resolution Professional" (IRP).



3. From Part-IV of the Application, it is seen that a sum of USD 29,90,017.50 which is equivalent to ₹20,57,73,004.35/- is being claimed by the Operational Creditor as Operational Debt. The date of default is mentioned as August 2018.

4. The Learned Authorized Representative (AR) for the Operational Creditor submitted that based upon the Purchase Order placed by the Corporate Debtor, the Operational Creditor has supplied computer spare parts to the Corporate Debtor and accordingly raised a total of 115 Invoices against the Corporate Debtor for the period from 05.01.2015 to 08.08.2018. The copies of the invoices are placed at pages 1 to 168 of the additional typed set filed along with the Application.

5. The Learned AR for the Operational Creditor submitted that after receiving the goods supplied by the Operational Creditor, the Corporate Debtor has failed to make the payment to the Operational Creditor and the Learned AR for the Operational Creditor referred to the Ledger statement maintained by the Operational Creditor and submitted that a sum of USD 29,90,017.50 is still pending to be paid by the Corporate Debtor. It was further submitted that the



Operational Creditor sent a Demand Notice in Form 3 as stipulated under Section 8 of IBC, 2016 to the Corporate Debtor on 31.12.2019, which was delivered on 02.01.2020. The Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 wherein it has been stated that the Corporate Debtor has failed to bring to the notice of the Operational Creditor an existence of a valid dispute or pendency of a suit or arbitration proceedings being filed before the service of the Demand Notice. It was submitted by the Learned AR for the Operational Creditor that the Corporate Debtor has miserably failed to clear its dues in favour of the Operational Creditor and hence, the instant Application is preferred by the Operational Creditor under Section 9 of IBC, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

6. The Corporate Debtor has filed its reply, and submitted that the major supplier of the Corporate Debtor is the Operational Creditor and the Operational Creditor was regularly supplying their products such as motherboards, cabinets and computer peripherals to the Corporate Debtor, however when the Indian Rupee started depreciating, it was causing heavy loss arising out of the foreign fluctuation, which



impacted mostly the import and export operations with the Corporate Debtor.

7. It is stated in the reply that the Corporate Debtor attempted to get new investors to pump in their investment to settle the debt of the Corporate Debtor, however the same did not fructify and it is also admitted in the reply filed by the Corporate Debtor that the fact that there is a debt due and liable to be paid to the Operational Creditor, however the quantification of the amount by the Operational Creditor was being disputed by the Corporate Debtor, since according to the Corporate Debtor, they are liable to pay only a sum of Rs.16,85,52,082/-. Thus, it was submitted by the Learned Counsel for the Corporate Debtor to provide one opportunity to the Corporate Debtor to attempt to settle all the dues with the Operational Creditor.

8. Heard the submission made by the Learned AR / Counsel for both the parties and perused the records including the pleadings placed on file. From the reply filed by the Corporate Debtor, it is seen that it is admitting its liability of payment of dues to the Operational Creditor, however disputing only the quantum of sum, which is due and payable.



In this regard, it is to be noted that the Code gets triggered

the moment default is more than 1 Lakh (in the present case), which now of course stands increased to Rs.1 Crore on and from 24.03.2020 and as such in any case the quantum which is being disputed is more than Rs. 1 Lakh / Rs. 1 Crore. Further, the Corporate Debtor has accepted its default and sought for more time to settle the matter with the Operational Creditor. However given the mandate under the provisions of IBC, 2016 this Tribunal is required to dispose of the matter within the timeframe fixed thereunder and the moment the debt and default is established on the part of the Corporate Debtor, this Tribunal would be required to admit the Application as filed by the Operational Creditor.

9. In view of the same, the Operational Creditor has proved before this Tribunal the debt and default on the part of the Corporate Debtor. The default, it is also seen from the pleadings and documents filed on the part of the Operational Creditor are much prior to the advent of the Covid-19 pandemic. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years.



The registered office of the Corporate Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor

10. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. The Operational Creditor has proposed the name of **V SENTHIL KUMAR** with Reg. No. (IBBI/IPA-001/IP-P01070/2017-2018/11761) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 and the Authorization for Assignment (AFA) has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of



the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

11. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 the possession of the respondent.



Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

12. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be



terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

13. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.



14. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond