

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB-1445 /ND/2019

In the matter of :

BSMART TECH. (P) LIMITED,
REGISTERED OFFICE AT :
UNIT NO.808, 8TH FLOOR, MARATHON NEXTGEN
ICON, GANPATRAO KADAM MARG,
LOWER PAREL, WEST MUMBAI-400013,
MAHARASHTRA.

.. PETITIONER

Vs.

O-ZONE NETWORKS (P) LTD,
REGISTERED OFFICE AT :
91, SPRINGBOARD, E-43/1, OKHLA INDL. AREA,
NEW DELHI – 110020.

..RESPONDENT

SECTION

Under Section 9 of IBC, 2016

Order delivered on 04.9.2019

Coram :

Sh. R. Varadharajan,
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble member (Technical)

For the Petitioner /Op. Creditor : Mr. Rohan Kaushal, Ms. Ashmi Mohan, Advocates
For the Respondent/Corporate Debtor : Mr. B. Bhattacharyya, Advocate
For the Intervener :

ORDER DICTATED IN THE OPEN COURT

This Petition has been filed by the Petitioner in the capacity of Operational Creditor (OC) under the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016) seeking for the initiation of the Corporate

Insolvency Resolution Process (CIRP) in view of the default committed by the Corporate Debtor (CD) in relation to the operational debt.

Part-I of the prescribed Form as filed by the petitioner discloses that the petitioner is registered under the provisions of Companies Act, 1956.

Part-II discloses that the CD incorporated on 01.8.2007 and its registered office address is situated at 91, Springboard, E-43/1, Okhla Industrial Area, Phase-2, New Delhi-110 020, as mentioned in the petition which co-relates with the Master Data pertaining to the CD, as produced by the Petitioner and marked as annexed as P-4 filed along with the typed set to the petition.

In Part-III, no name of the IRP has been proposed. About the details of the transactions in relation to which, the operational debt had arisen, which in brief as disclosed in part-IV is to be that of a service Provider in relation to the SMS Network and for also providing bulk SMS MT services. On behalf of the OC, it is further represented that for the abovesaid services, Invoices were raised by the OC and 4 Invoices were raised to the CD as follows :

Sr. No.	Invoice No.	Invoice Date	Invoice Amt (INR)
1	BTPLINTBLK 0816-10	01/9/2016	15,23,409.74
2	BTPLINTBLK 0916-07	18/10/2016	2,81,754.65
3	BTPLINTBLK 1016-11	18/11/2016	105.37
4	BTPLINTBLK 111607	14/12/2016	150.97
		Total	18,05,420.73

and the amount in aggregate for the services rendered under the Invoices is to the extent of Rs.18,05,420.73 and that all the above said Invoices remain unpaid on the part of the Corporate Debtor. In the circumstances, the



Operational Creditor was constrained to issue Notice under Section 8 of IBC, 2016 being the notice of demand on 03.12.2018 making a claim of Rs.18,05,420.73 intimating the Corporate Debtor that the amount should be paid within 10 days from the date of service of notice or alternatively to apprise the Operational Creditor, if any dispute in relation to the unpaid Invoices. An affidavit under Section 9 (3) (b) of IBC, 2016 has also been filed bringing to the notice of this Tribunal that despite the receipt of demand notice by the Corporate Debtor, no payment has been received nor notice of dispute given and in the circumstances, the Operational Creditor is before this Tribunal for the initiation of CIR process against the Corporate Debtor.

From the record of proceedings dated 30.7.2019, it is seen that one Mr. D. Bhattacharya, Advocate on behalf of the Corporate Debtor had sought for some time to file reply, however, when the matter was called today for the purpose of completion of pleadings and enquiry, the said Mr. Bhattacharya, Advocate initially represented that the Corporate Debtor does not have any defence in relation to the claim as made by the Operational Creditor in all fairness and that, however, he is not able to file the Vakalatnama as the same has not been signed on behalf of the person sought to represent by the Management of Corporate Debtor and hence in the fitness of things, we are of the view that Mr. Bhattacharya cannot re-present on behalf of the Corporate Debtor and on its behalf he cannot also seek to accept the claim as made by the Operational Creditor against the Corporate Debtor.

However, it is seen that despite notice of the petition to the Corporate Debtor, the Corporate Debtor has not been able to be present before this Tribunal to defend its cause. Further, it is also evident that the Corporate Debtor despite service of notice of demand upon the Corporate



Debtor has not made any dispute of its liability towards the Operational Creditor nor paid the dues to the Operational Creditor and in the circumstances, this Tribunal is of the view that the claim stands proved against the Corporate Debtor and as the amount of claim is in excess of Rs. One Lakh and the Corporate Debtor it is seen is situated within the territorial jurisdiction of this Tribunal, this Tribunal admits the Petition and thereby unfolding the CIRP against the Corporate Debtor.

Since the Applicant has not named the Interim Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Shyam Arora, having Registration No. IBBI/IPA-002/IP-N-00546/2017-2018/11703, e-Mailid- arora.shyaam@yahoo.com (Mobile No. 9654202759) as the Interim Resolution Professional (IRP) and a sum of Rs 2 lakhs to be paid to the IRP by the Petitioner herein subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 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 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 the possession of the corporate debtor.

However, during the pendency of the moratorium period in terms of Section 14(2) 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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

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.

8. The IRP shall perform the functions assigned to him in accordance with IBC, 2016 as well as all attendance^E Regulations including Regulation 6 of

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. Based on the above terms, the Application/Petition 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 IRP 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.

10. Upon receipt of the copy of the Order, IRP to forward the same to the Registrar of Companies, NCT of Delhi & Haryana without any delay for the records of ROC to be updated.

With the above directions, this petition is admitted.

— sd —

(K.K. VOHRA)
MEMBER (TECHNICAL)

— sd —

(R. VARADHARAJAN)
MEMBER (JUDICIAL)