

In the National Company Law Tribunal  
Mumbai Bench.

No. C.P.(IB)-447/(MB)/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

European Projects & Aviation Limited : Petitioner/ Operational Creditor  
V/s

Infolink Solutions Pvt. Ltd. : Respondent/ Corporate Debtor

Heard on : 19.02.2019  
Order delivered on: 06.03.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mr. Balasaheb Yewale, Advocate.

For the Respondent(s) : (None)

*Per M.K. Shrawat, Member (Judicial).*

**ORDER**

1. A Petition has been filed in Form No.5 on 23.03.2018 by M/s. European Projects & Aviation Limited, in the capacity of Operational Creditor by invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor M/s. Infolink Solutions Private Limited, Mumbai-400051, to claim an outstanding Operational Debt of ₹80,45,364/-, reproduced below:-

"Computation of claim as at 28 February, 2018"			
Date	Particulars	Amount	
<b>01-Apr-12</b>	<b>Opening balance c/f</b>		<b>3,47,24,885</b>
17-Dec-12	Add: Payments made / inventory returned		
19-Dec-12	PO No. GPAL/03/005A/12-13 dated 4 Dec 12	3,00,00,000	
08-Feb-13	PO No. GPAL/03/005A/12-13 dated 4 Dec 12	50,00,000	
	PO No. GPAL/03/005A/12-13 dated 4 Dec 12	14,50,000	3,64,50,000
<b>31-Mar-13</b>	<b>Balance</b>		<b>7,11,74,885</b>
12-Aug-13	Less: Refund received	(50,00,000)	
29-Nov-13	Add: Inventory return as per Agreement	7,22,40,711	
			6,72,40,711
<b>31-Mar-14</b>	<b>Balance</b>		<b>13,84,15,596</b>
<b>06-Apr-16</b>	Assignment agreement received	(12,94,70,232)	
<b>05-Jan-17</b>	Refund received	(9,00,000)	
			(13,03,70,232)
<b>28-Feb-18</b>	<b>Outstanding dues receivable</b>		<b>80,45,364</b>

2. **Brief history of the case:-** The Petitioner/ Operational Creditor had entered into an agreement with the Respondent/ Corporate Debtor for installation and maintenance of their telecom tower. The Corporate Debtor allegedly **agreed to supply the material as per the requirement of the Petitioner/ Creditor**. As per the Industrial practice, the Corporate Debtor **asked for advance money towards procurement of material**.

3. Accordingly, on 02.03.2010 the Petitioner/ Creditor raised Purchase Orders vide P.O. No. GPAL/03/0002/09-10 amounting to ₹21,77,37,192/-. Advance payment of ₹19.46 Crores was paid by the Operational Creditor as on 31.03.2011. There were other dues of ₹20,56,494/- pertaining to earlier financial years and in addition to that, there were other dues amounting to ₹20,56,494/- pertaining to earlier financial years. Therefore, the outstanding dues as at 31.03.2011 was stated to be ₹19.67 Crores. The Corporate Debtor had delivered goods over the years and the outstanding dues as at 31.03.2012 was reduced to ₹3.47 Crores.

3.1. In the year 2012, the Petitioner/ Operational Creditor raised another Purchase Order on the Corporate Debtor vide P.O. No. GPAL/03/005A/12-11 on 01.12.2012 and Advance payment amounting to ₹3.65 Crores was made by the Operational Creditor in the months of December, 2012 and February, 2013. Hence, the total outstanding dues as at 31.03.2013 was ₹7.12 Crores. The Corporate Debtor had delivered goods over the years against the said Purchase Order. However, some of the material supplied by the Corporate Debtor allegedly had some inherent defects. Therefore, the Petitioner/ Operational Creditor requested the Corporate Debtor to rectify or refund the amounts paid against the said goods. In July, 2013, the Corporate Debtor made payment of ₹50 Lakhs to rectify the defect in the equipments supplied by the Corporate Debtor. However, it is submitted that the Operational Creditor explored various options to rectify the defect but no avail, therefore, decided to return the inventory to the Corporate Debtor and the amount of ₹50 Lakhs paid by the Corporate Debtor was adjusted against its outstanding dues. As a consequence, the outstanding dues further reduced to ₹6.62 Crores.

3.2. Later on, in the month of November, 2013, the Corporate Debtor agreed to take back the defective materials and entered into an agreement for inventory return of ₹7.22 Crores. Accordingly, the defective materials amounting to ₹7.22 Crores was returned by Operational Creditor to the Corporate Debtor on 18.12.2013 vide a Debit Note No. EPAL/DN/STK/012/13-14. Therefore, the outstanding amount of the Corporate Debtor was increased to ₹13.84 Crores after above return of goods.

4. In the month of December 2013, due to bad economic conditions, especially in telecom sector, **both purchase orders were cancelled by the Operational Creditor** and requested the Corporate Debtor to refund the outstanding advance money. The Corporate Debtor was unable to pay the said amount to the Operational Creditors. Thereafter several meetings were held between the Petitioner/ Operational Creditor and Respondent/ Corporate Debtor for recovery of outstanding dues. It was also submitted by the Operational Creditor that the Corporate Debtor had offered to assign its assets to the Operational Creditor to the extent of ₹12.94 Crores which was accepted by the Operational Creditor. The Corporate Debtor executed an assignment agreement for settlement of claims. As per the terms thereof, the Corporate Debtor agreed to assign its assets to the Petitioner/ Creditor. The Corporate Debtor promised to pay the balance dues of the Petitioner within a short period of time. In view of the said assignment agreement the amount of liability was reduced to ₹89,45,3764/-. Further, in January, 2017, the Corporate Debtor had remitted an amount of ₹ 9 lakhs. Thus, the outstanding Debt amount was further reduced to ₹80,45,364/-. Since this amount is still outstanding, the Petitioner/ Operational Creditor filed the impugned Petition now under consideration.

5. As the Corporate Debtor failed to pay the said outstanding amount of ₹80,45,364/- so far, the Petitioner/ Operational Creditor issued Demand Notice on 26.02.2018 by hand delivery. However, no reply has been sent by the Corporate Debtor against the said Demand Notice.

**FINDINGS:-**

6. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established. Demand Notice has been issued to the Respondent Debtor, however, the Respondent Debtor had not replied to the said Demand Notice within the prescribed time period of 10 days u/s.8(2) of The Code nor made the payment.

6.1. The Petition was listed on 19.11.2018, 08.01.2019 and 19.02.2019. However, the Corporate Debtor was not attending on any of the said dates of hearing. It was *inter alia*, specifically mentioned in Para 2 of the Order Sheet dated 08.01.2019 that quote, "*2. Last opportunity to the Respondent/Debtor otherwise shall be proceeded on merit.*" The matter was adjourned to next date of hearing, i.e. on 19.02.2019. However, even on 19.02.2019, none appeared from the side of the Respondent Debtor to defend its side.

7. As a consequence, keeping the admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Operational Creditor, it is my conscientious view that this Petition deserves "Admission".

8. The Petitioner/ Operational Creditor has proposed the name **Mr. Prashant Bhatia, Address: A-561, Sarita Vihar, New Delhi-110076, Registration No. IBBI/IPA-001/IP-P-01394/2018-2019/12232,** email id: bhatiaprashant.ca@gmail.com as the Interim Resolution Professional. The IRP has submitted his consent in Form No.2 and also certified that no Disciplinary Proceedings are pending against him. The said IRP is hereby appointed.

9. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this

Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

10. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium** Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

11. Accordingly, this **CP (IB)-447/(MB)/2018 stood** Admitted.

12. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-  
**(M.K. SHRAWAT)**  
Member (Judicial)

Date : 06.03.2019.  
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