

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH- III**

CP-IB-1406/ND/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Uniword Telecom Limited

...Applicant

Versus

Paras Spares and Accessories Limited

...Corporate Debtor

MEMO OF PARTIES

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

... Applicant

Versus



**Paras Spares and Accessories Limited,
1517/6,
Devika Towers,
Nehru Place, South Delhi -110019**

...Corporate Debtor

Coram:

**R,VARADHARAJAN,
Hon'ble Member (Judicial)**

**K.K. VOHRA,
Hon'ble Member (Technical)**

Counsel for the Petitioner : Mr. Arun Saxena, Advocate
Counsel for the Respondent : Ms. Radha Kumari Rai, Advocate

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ORDER

Delivered on: 20.09.2019

1. This is a petition filed by Uniword Telecom Limited invoking the provision of Section 9 of Insolvency and Bankruptcy Code, 2016 (“the Code”) against the Respondent (Paras Spares and Accessories Limited) for initiating Corporate Insolvency Resolution Process (“CIRP”) against the Respondent.
2. The Applicant has averred as follows:
 - a. Operational Creditor (OC) i.e. Petitioner had supplied goods to the Corporate Debtor (CD) or Respondent within the stipulated time and consequently raised invoices.
 - b. From 01.07.2010 to 07.01.2011, various invoices were raised by the OC to CD for supplying of various materials raising a debt of Rs1,00,71,901.62/- (Rupees One Crore Seventy-One Thousand Nine Hundred and One Rupee Sixty-Two Paisa Only).
 - c. On 06.07.2015 the OC vide letter dated 06.07.2015 sent a reminder to the CD to release the payment of Rs 1,00,71,901,62/-.
 - d. On 20.7.2015, the CD vide letter dated 20.7.2015 acknowledged the above-mentioned debt and stated that due to some financial

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constraints they were not able to make the payment for the same and further requested for a meeting at their office on 25.7.2015 at 12pm to discuss this matter.

- e. On 27.7.16, OC vide letter dated 27.7.16 again sent a reminder to the CD to make payment at the earliest.
- f. On 03.08.2016, the CD vide letter dated 3.8.16 stated that they are making every effort to make the payment of the aforesaid amount and requested for some cooperation.
- g. On 16.8.18, an MOU was signed by the OC and CD. In the MOU, the CD had put forward that they will make the payment of the due amount to the OC within 6 months from the date of this MOU. Therefore, it was agreed between both the parties that the payment of the due amount will be made by the CD to the OC within 6 months from the date of this MOU.
- h. On 27.2.19, OC had sent a demand notice under Section 8 of IBC,2016 to the registered office of the CD by speed post which was returned undelivered. However, on the same day the OC had also sent the demand notice to the Corporate office of the CD calling upon the CD to make payment to the OC to which as per the affidavit annexed



as Annexure-4 with the typed set there seems to be no reply as stated therein.

3. As evident from the reply filed on behalf of the CD

- a. The CD, states that amount of Rs1,00,71,901.62/- is still outstanding for the payment.
- b. From the year 2010 till present, there were several communications which took place between the CD and OC. For several times, it was assured by the CD that they will pay the outstanding amount. Lastly, both the parties entered into an MOU dated 16.8.2018 but CD could not pay due to financial problems.
- c. It is finally submitted that CD never denied its liabilities and it took all possible efforts to arrange the outstanding amount and payoff the dues of OC on time. In line of the same, senior management also took several efforts and made best possible efforts to accomplish its targets but due to lack of alignment of plans and due to financial crunch, it was not paid.
- d. The CD can make the payment of entire outstanding in 9 to 12 months considering present financial position.

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A. Even though the CD it is seen had admitted its liabilities as owed to OC in relation to the unpaid invoices including in the reply, however it seeks time to make good the default which this tribunal is not in a position to allede, as the petitioner has approached this Tribunal bringing to notice of the default in payment and thereby its insolvency as required under the provisions of IBC, 2016.

B. In view of the above this Tribunal is inclined to admit this application and accordingly initiate the process of CIRP of the Respondent. The Petitioner has proposed the name of Mr. Abhishek Anand, an Insolvency Professional having registration number IBBI/IPA-002/IP-N00038/2016-17/10077, to be the Interim Resolution Professional (IRP) 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 has been filed by the proposed interim resolution professional and he is appointed as the IRP. 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 CD:

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(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:-

(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-

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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.

6. 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, who in turn shall communicate with the Registrar of Companies, NCT of Delhi & Haryana with a view to enable the said authority to update its record as well as the Master Data maintained in MCA website.

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(K.K.VOHRA)
MEMBER (TECHNICAL)

- Sol -
20/09/2019

(R.VARADHARAJAN)
MEMBER(JUDICIAL)

U.D. Mehta/D