IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3058/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

Buneo Traders Private Limited
[CIN: U51900MH1991PTC063962]

...Operational Creditor

v/s.

Davin Info Private Limited
[CIN: U74999MH2017PTC297932]

...Corporate Debtor

Order Delivered on: 03.03.2023

Coram:

Mr. Prabhat Kumar	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:	Mr. Sandeep Kumar Singh, Ld Counsel.
For the Corporate Debtor:	Ex-parte.

ORDER

Per Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s. Buneo Traders Private Limited ("Operational

Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Davin Info Private Limited, ("the Corporate Debtor").

2. The Company Petition is filed on 16.08.2019 claiming an amount of Rs.71,71,562/- in default (Principal of Rs. 58,58,464/- and Interest up to 30.06.2018 Rs. 13,13,098). The Part IV of Form 5 specify the date of default as *"Total material supplied against which payment is outstanding & statement showing details of invoices, date of billing, date of default & interest calculation on account of which debt fell due is shown in separate table attached herewith as Exhibit "E'".* No specific date of default is stated in the petition. Instead the Operational Creditor has attached table at Exhibit "E" stating invoice wise details of the amount due, due date of payment and interest on over due amount.

   2.1. It is submitted by the Operational Creditor that the Corporate debtor had ordered for various office furniture, which was supplied as per the order of the Corporate Debtor from 20.12.2017 to 06.01.2018 and the payment against such supply was due from 28.03.2018 to 06.04.2018 against invoices issued and received by the Corporate Debtor with the material.

   2.2. However, as the corporate Debtor failed to make payment against the invoices raised by the Operational Creditor, the Operational Creditor through its advocate served the demand notice dated 24.06.2019 under rule 5 of the Insolvency Rules, 2016 calling upon the Corporate Debtor to make payments of the outstanding dues along with interest and to raise dispute if any.

   2.3. It is further submitted by the Operational Creditor that the said demand notice dated 24.06.2019 was received by the Corporate Debtor on 25.06.2019 at the administrative office of the Corporate Debtor. However, the notice served on the registered office, the pocket was returned with postal remark as unclaimed. It is also submitted by the Operational Creditor that no reply from the Corporate debtor has been received by the Operational Creditor.

2.4. Further, the Operational Creditor has also submitted the Statement of Account/Ledger maintained by the Operational Creditor wherein the Post dated cheques issued by the Corporate Debtor, returned unpaid subsequently on presentation, are recorded.

2.5. It is also submitted by the Operational Creditor that the Corporate Debtor has also admitted the liability of the Operational Creditor by sending a proposal for repayment of the due amount of the Operational Creditor vide email dated 10.10.2019 enclosed as Exhibit E with the Additional Affidavit filed by the Operational Creditor.

3. On 11.10.2019, when the matter was listed, this Court Notice was handed over in open court. The counsel for the Corporate Debtor had appeared on the next hearing i.e. 24.10.2019 and had requested time to file vakalatnama, board resolution and reply in the matter. However, in the subsequent hearing, no appearance was recorded on behalf of the Corporate Debtor. On 02.03.2020, this Bench ordered to issue directions to take out substituted service. On 22.12.2021, Ld. Counsel for the Operational Creditor drew attention of the Bench that despite substituted service in two daily leading newspapers, the Corporate Debtor did not appear. In view of this, the Corporate Debtor was set ***exparte.***

4. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.

5. We have heard the Counsel(s) and perused the material on record.

5.1. It is observed that the Applicant had supplied goods worth Rs. 58,58,464/- to the Corporate Debtor and had issued tax invoice under GST law upon the Corporate Debtor claiming the amount due against such supply. It is observed from the invoices that there no stipulation of levy of interest on amounts overdue for payment against such invoices. Further, no document has been filed in support of understanding between the parties for levy of interest on the over due amount. Accordingly, we find that the sum of Rs. 58,58,464/- is due and same is also corroborated by an email dated 10.10.2019 from the Corporate Debtor offering to pay Rs. 50 lakh in instalment as per payment plan contained therein. In view of these facts it is clear that debt in excess of the then threshold limit i.e. 1 Lakh is due and in default. The Corporate Debtor has neither Reply to the demand notice nor Reply to the present Application. The Corporate Debtor has also not appeared to defend except on one occasion. We observe there is no material on record suggesting existence of any prior dispute.

6. In view of the forgoing we find it to be a fit case for admission u/s 9 of the Insolvency and Bankruptcy Code 2016.

ORDER

1. The petition bearing CP(IB) 3058/MB-IV/2019 filed by Buneo Traders Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Davin Info Private Limited** ("the Corporate Debtor) is **admitted.**

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor

(c) Notwithstanding the above, during the period of moratorium, -

(v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The Operational Creditor has not proposed any name of Insolvency Professional to be appointed and has requested this tribunal to appoint an Insolvency Professional. Thus, this Tribunal appoints Mr. Pranab Kumar Kar registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00569/2017-2018/11110 Email Id: pranab.k.kar@gmail.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said

Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-	**Sd/-**
PRABHAT KUMAR	**KISHORE VEMULAPALLI**
Member (Technical)	**Member (Judicial)**
03.03.2023	