

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V**

CP (IB) No.177/MB-V/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

Swiftmail Communications Limited

[CIN: U30007TN1993PLC026216]

...Operational Creditor/Applicant

V/s

Chirva Private Limited

[CIN: U74999MH2017PTC293189]

...Corporate Debtor/Respondent

Order Dated: 07.06.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Narendra Kumar, Advocate.

For the Respondent(s) : None.

ORDER

Per: Anuradha Bhatia, Member (Technical)

1. This is an application bearing C.P. (IB) No. 177/MB-V/2020 filed by Swiftmail Communications Limited, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against Chirva Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Akshay Patwari, Director of Operational Creditor, vide Board Resolution dated 11.07.2019, claiming total outstanding amount of Rs.11,69,431/- (Rupees eleven lakh sixty-nine thousand four hundred thirty-one only) along with 18% interest p.a.
3. The Date of Default is not mentioned in Part-IV of the Petition. As per the last Invoice dated 01.06.2018, the payment was to be made within 30 days from the date of the said Invoice. Hence, the Debt fell due on 01.07.2018. The Invoices also categorically stated that the Operational Creditor would charge 2% interest for payment received after the due date. The Petition is filed on 14.01.2020 which is well within the period of limitation.
4. The case of the Operational Creditor is that:
- 4.1 The Operational Creditor is the Internet Service Provider. The Corporate Debtor placed an Order dated 25.04.2017 for availing dedicated internet bandwidth and shared links for supply of internet connectivity. Pursuant to the said Order, the Operational Creditor and Corporate Debtor entered into a Business Associate Agreement dated 25.04.2017.
- 4.2 The services were provided as per the requirement of the Corporate Debtor and subsequently Invoices were raised by the Operational Creditor on the Corporate Debtor. The details of the Invoices are as follows:

Sr. No.	Invoice Date	Invoice No.	Amount in Rs.
1.	01.06.2017	SCL/MH/1502	1,22,499/-
2.	01.07.2017	SCL/MH/1503	1,06,448/-

3.	01.08.2017	SCL/MH/1504	1,06,448/-
4.	01.09.2017	SCL/MH/1505	1,06,448/-
5.	01.10.2017	SCL/MH/1506	1,06,448/-
6.	01.11.2017	SCL/MH/1507	1,06,448/-
7.	01.12.2017	SCL/MH/1508	1,06,448/-
8.	01.01.2018	SCL/MH/1509	96,023/-
9.	01.02.2018	SCL/MH/1510	96,023/-
10.	01.03.2018	SCL/MH/1511	96,023/-
11.	01.04.2018	SCL/MH/1512	96,023/-
12.	01.05.2018	SCL/MH/1513	27,878/-
13.	01.06.2018	SCL/MH/1514	27,878/-
Total			12,01,035/-

5. The Operational Creditor issued a Demand Notice, dated 22.07.2019, upon the Corporate Debtor, for claiming an amount of Rs.6,76,033/- along with the interest at the rate of 18% p.a. The Corporate Debtor has not replied to the said Demand Notice. The Operational Creditor has filed the Bank Statements in the matter.
6. The Corporate Debtor has not appeared and neither filed reply in the matter.

Findings/Observations:

7. We have heard the arguments of the Learned Counsel for Operational Creditor and perused the records.
 - 7.1 It is observed that that it is the case of Operational Creditor that the Operational Creditor has provided service of dedicated Internet bandwidth to the Corporate Debtor, as per the Order dated 25.04.2017. Pursuant to the said service, the Operational Creditor has raised thirteen Invoices upon the Corporate Debtor. As per the said Invoices, the payment of the Invoice was to be made on monthly basis. Hence, the date of the default as per the last invoice

dated 01.06.2018 raised by the Operational Creditor will be 01.07.2018 as the payment was to be made on 30.06.2018. The Petition is filed on 14.01.2020 which is well within the period of limitation.

- 7.2 It is observed that the Corporate Debtor has not appeared and filed its reply after giving reasonable opportunity in the matter. Vide order dated 06.01.2020, the Court Notice was ordered upon the Corporate Debtor to appear and file its reply in the matter. Thereafter, the matter was listed on 03.02.2020, 01.12.2021 and 28.03.2022, the Corporate Debtor did not appear in the matter. Hence vide order dated 28.03.2022, the Corporate Debtor set ex-parte in the matter.
- 7.3 After carefully perusing the records, we hold that there has been an operational “**debt**” and “**default**” on the part of the Corporate Debtor and under the circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code.
8. The Applicant has proposed the name of Ms. Hemi Gupta, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.
9. It is ordered accordingly in following terms:

ORDER

- a. The Application bearing C.P. (IB) No. 177/MB-V/2020 filed by **Swiftmail Communications Limited**, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate

Insolvency Resolution Process against **Chirva Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against **Chirva Private Limited**.

- b. This Bench hereby appoints **Ms. Hemi Gupta**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00147/2017-18/10383 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)