NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.09.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP (IB) No.67/9/AMR/2020		9 Of IBC	Ingram Micro India Pvt ltd Vs Fastlane Information Pvt Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP (IB) No.67/9/AMR/2020 is admitted, vide separate orders.

SD/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI
*** *** ***

CP (IB) No. 67/9/AMR/2020

In the matter of a Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
AND

In the matter of
M/s. FASTLANE INFORMATION TECHNOLOGIES PRIVATE LIMITED

Between:

M/s.Ingram Micro India Private Limited,
5th Floor, Empire Plaza, Building A,
LBS Marg, Vikhroli (West),
Mumbai – 400083.

... Operational Creditor

AND

M/s. Fastlane Information Technologies Private Limited,
H.NO. 5-87-60, ATR Complex, 1st Floor, Main Road,
OPP: Chaitanya Techno School, Lakshmi Puram,
Guntur, AP- 522007

... Corporate Debtor

Date of Order: 20.09.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor :	Mr.Kedar Wagle & Ms.Divya Datla, Advocates.
For Corporate Debtor :	Mr.Gadipudi Venkateswarlu, Advocate.

ORDER

1. This petition is filed by the Operational Creditor (in short OC) i.e., **M/s.Ingram Micro India Private Limited** seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (in short CD) i.e., **M/s. Fastlane Information Technologies Private Limited** since, the Corporate Debtor failed to discharge the debt which is due to the Operational Creditor (OC) and has committed default.

2. The facts stated in the Petition are as briefly as follows:

   a. The Operational Creditor is a leading distributor of IT Hardware and Software products. The Corporate Debtor claims to be engaged in the business of providing Software and Hardware for surveillance and other equipment.

   b. Considering the reputation and standing of the Operational Creditor, the Corporate Debtor approached the Operational Creditor for procurement of products provided and supplied by the Operational Creditor. Pursuant to the aforesaid request and upon receipt of purchase order from the Corporate Debtor, the Operational Creditor from time to time provided and supplied goods.

   c. The Corporate Debtor accepted the goods without any demur. The invoices have been raised against the supplies and there was no demur on the part of the Corporate Debtor. The Operational Creditor raised invoices along with applicable GST on the Corporate Debtor.

d. After having acknowledged the liability to pay by several emails and further assuring multiple sources of funds by email dated 10.05.2019, to cover the pending payment of the Operational Creditor, the Corporate Debtor falsely claimed non-delivery of material and also sought support for implementation of the system for the end user. As regards the first alleged grievance relating to non-supply of material, the Corporate Debtor, by email dated 30.05.2019 contended that the Operational Creditor has not delivered the entire list of items, as according to the Corporate Debtor, supply of NCS Boxes was still pending, for which payment would be released within 60 days from the date of entire supply as per the terms of purchase order (PO).

e. In response to the aforesaid email, the Operational Creditor, by virtue of email dated 30.05.2019, furnished documents that showed that complete material was supplied as per the purchase order. The Corporate Debtor was informed that since, the material was supplied, payment should be released that was due for almost four months. The factum of receipt of material was also admitted in the correspondence in which MoU's were exchanged between the parties for a possible settlement.

f. Since repeated follow up for payment did not yield any result, the Operational Creditor, by letter dated 30.05.2019 demanded payment of the sum due which is Rs.18,83,36,116.27/- which includes a past outstanding due of Rs.13,87,00,785.07/- which was already acknowledged by the Corporate Debtor.

g. In response to the aforesaid communication, the Corporate Debtor, by email dated 07.06.2019, misconstrued that the demand letter dated 30.05.2019 has been limited only to the past dues of Rs.13,87,00,785.07/- and not the entire overdue amount.

h. The Corporate Debtor once again falsely contended that delivery of certain products was not made, but however, assured that certificate for an amount of Rs.55,00,000/- towards tax deduction at source would be provided.

i. By email dated 13.06.2019, the Operational Creditor replied to the letter dated 30.05.2019 of the Corporate Debtor, informing that boxes were delivered with the latest IOS available and the same was confirmed by CISCO, the supplier, the end user. Requirement of customization and upgrade was also made available and cheques issued for the aggregate value of Rs.7.37 Crores were dishonoured since payment was stopped. Demand was made therefore, for the payment of Rs.18.83 Crores with interest @ 24% p.a. from the due dates of the invoices and the Corporate Debtor was also informed that if payment was not made, the Operational Creditor would initiate legal proceedings.

j. By email dated 19.07.2019, the Corporate Debtor was informed that the scope of supply under the purchase order was only limited to supply of hardware. In response to the said email, the Corporate Debtor, by email dated 19.07.2019, claimed that without support of installation and integration, payment cannot be realized from the end user i.e., Andhra Pradesh State Fibernet Limited. The Corporate Debtor, due to paucity of funds, was attempting to raise false and dishonest contention.

k. The Operational Creditor came to know about the falsity of the contentions after confirmation was received by email dated 08.07.2020 from UST, disclosing that Corporate Debtor has collected Rs.34.29 Crores almost a year back. It is apparent from the email that in respect of supplies of the said products, that is subject matter of the present application, the Corporate Debtor has received payment from the nominee of the end user. The contention as regards the delivery of material is therefore, only a ruse to delay the payments. In view of the non-payment of the debt due by the Corporate Debtor, this application is filed seeking the above relief.

3. The Corporate Debtor filed counter, denying the averments made in the Petition filed by the Operational Creditor and further stating that:

a) the amounts claimed by the Operational Creditor are under serious dispute since the Operational Creditor failed to deliver possession of the equipment with respect to the purchase order No. ING/1562018, dated 15.06.2018. The Operational Creditor made defective and short-supplies with respect to the remaining two invoices which are dated 30.08.2018 & 25.01.2019. The Corporate Debtor has already mentioned the same in the reply notice to the demand notice about the existence of serious disputes.

b) The Corporate Debtor has issued three Purchase Orders (POs). The Operational Creditor had to deliver material as per the timeline. Since, the supply of goods/services under the aforesaid POs relates to information technology software and services thereto, the non-delivery of the components set out in the POs amount to non-delivery or defective delivery of the material.

c) As a security for the orders placed, the Corporate Debtor had initially offered cash advance against the supply of material, which was subsequently changed to issuance of the bank guarantee in favour of the Operational Creditor, which were intended for invocation on the condition of complete supply of all materials raised in the relevant purchase orders. Though there is defective/non-delivery of material, the Operational

Creditor invoked the bank guarantee and further started making false claims that the Corporate Debtor is liable to pay an amount of Rs.18 Crores and odd.

d) With regard to the purchase order dated 15.06.2018 for supply of Xponders, it is submitted that the purchase order was placed for supply of Xponders within two weeks, in order to provide the same to the end customer of the Corporate Debtor i.e., M/s.Andhra Pradesh State Fibernet Limited (APSFL). Since, the Operational Creditor failed to deliver the Xponders, the Corporate Debtor cancelled the aforesaid purchase order vide email dated 22.02.2019. A debit note dated 24.05.2019 for an amount of Rs.4,96,35,331/- against the invoice dated 29.03.2019, was raised. The alleged tax invoice, said to have been raised by the Operational Creditor, does not match with the purchase order and the description of goods set out therein. Having received the debit note and correspondence regarding non-delivery and cancellation of PO, the Operational Creditor has not raised any objection on the same, which clearly establishes that the Operational Creditor has not delivered the material under the aforesaid PO.

e) The Operational Creditor filed a false criminal case in Crime No.52/2020 before Dwaraka PS, Visakapatnam which is pending. To rule out the ambiguity and to substantially prove the case of the Corporate Debtor, the corporate Debtor addressed mails to the Original Equipment Manufacturer (OEM) i.e., Cisco Systems India Private Limited about the Xponders vide email dated 22.01.2021. The said OEM replied by mail dated 22.01.2021 stating that "as your company Fastlane Information Technologies Private Limited is not listed under these devices, we cannot share the details for them with you", which clearly demonstrates that these Xponders are not supplied to the Corporate Debtor herein. The customer relation manager of the Operational Creditor, in a telephonic conversation confirmed that the equipment covered under the said PO was diverted and delivered to another Cisco partner M/s.Nipun Net Solutions Private Limited.

f) The Corporate Debtor filed a criminal petition before the High Court of Andhra Pradesh which is pending. With regard to the purchase order dated 30.08.2018, it is stated that the Operational Creditor delayed the delivery of the goods and upon the inspection of the goods delivered with delay, it turned out that the Operational System (OS) in the goods delivered was not functional, which is the heart of the equipment and the same amounts to non-delivery of the equipment. Hence, the Operational Creditor is not entitled to claim the amount. Further, the Operational Creditor, instead of supplying the Power Modules which is the integral part of Zonal IP IMPLS Nodes in the name of the Corporate Debtor, supplied the same in its own name, due to which the Corporate Debtor is unable to serve the end customer properly and as latest as of October, 2021, multiple Power Module failures were escalated by the end customer, which remain unresolved even till date. Since, the Operational Creditor failed to replace the faulty parts, the Corporate Debtor faced huge business loss.

g) As regards the PO dated 25.01.2019, which is placed for providing services for the equipment supposed to be delivered under the PO dated 30.08.2018, as per the terms of which the Operational Creditor has to accept the said PO, within 3 days from the date of the said PO, the Operational Creditor did not confirm the same, and has not provided the service contemplated under the said PO and hence, he is estopped from making any claims. As in October, 2021, multiple Power Module failures occurred, which were escalated by the customer to the Corporate Debtor and the same remain unresolved till date. The Operational Creditor failed to supply the goods as per the requirements, till date. The Corporate Debtor sent several mails and the Operational Creditor highlighted the non-working of BNG and NCS Box equipment issues. The Corporate Debtor, in its mails, highlighted the issues and problems and requested to sort out the same. The contention of the Operational Creditor that a cheque was issued by Mr.Vijay Ranganathan Raghavan on 19.08.2019 is false, as the said person left the Corporate Debtor on 28.02.2019. Hence, the issuance of cheque does not arise. On the basis of the above facts, the Corporate Debtor seeks this Tribunal to dismiss the Petition.

4. Rejoinder was filed by the Operational Creditor contending that the PO dated 15.06.2018 was revised and was replaced by revised Purchase order with the same reference and date, which contains the rate, quantity, payment terms and taxes which contain the same rate and quantity. All the other terms, including the delivery period was deleted. The PO dated 25.01.2019 was revised and was replaced through email dated 08.03.2019 with the same reference and date deleting the delivery period. The Bank Guarantee (BG) was irrevocable and entitled the beneficiary to receive money under the guarantee with interest @ 24% p.a. The BG was issued in terms of PO dated 30.08.2018 for a value of Rs.23 Crores. Since, the payment was not made despite completion of all supplies, the applicant was constrained to invoke the BG, under intimation to the Corporate Debtor by email dated 15.01.2019. The Corporate Debtor requested modification of the letter for non-payment by Corporate Debtor to the words desired by the Corporate Debtor which acknowledge that the supply of equipment is complete. The rest of the rejoinder is reiteration of the contents of the Petition.

5. Heard the arguments of both the Counsel. Written submissions are filed by the either side which are mostly reiteration of the pleadings.

The important contention raised by the Corporate Debtor is with regard to the invoice dated 29.03.2019 for Rs.4,96,35,331/-. The Corporate Debtor contends that the Operational Creditor failed to deliver the Xponders under the said invoice and the Corporate Debtor has cancelled the Purchase Order (PO) vide email dated 22.02.2019 and a debit note was also raised on 24.05.2019. He also further submits that the invoice number does not match with the purchase order number and the description of the goods set out therein also do not match. It is also submitted that the Operational Creditor has not raised any objection on the same which establishes that the Operational Creditor has not delivered the material under the aforesaid PO in respect of the said invoice. Keeping aside the liability under the said invoice, the liability in respect of the other invoices can be looked into. It also has to be looked into whether there is any acknowledgment of debt by the Corporate Debtor. The argument with respect to the Purchase Orders (POs) dated 30.08.2018 and 25.01.2019, is that there is a delay in supplying the goods. The Bank Guarantee (BG) was also invoked by the Operational Creditor. A cheque which was issued by the Corporate Debtor also stands dishonoured. A look at the correspondence between the parties would throw light on the truth of the facts.

6. A Memorandum of Understanding (MoU) was entered into between the parties in the month of December, 2019 with regard to the amount under two invoices which are 201322724 dated 10.12.2018

for Rs.70800784.78/- and 210323690 dated 28.03.2019 for Rs.6,49,00,000.02/- totalling to Rs.13,57,00,784.80/-. The MoU, which is not disputed, records that the products and services were delivered and supplied by the Operational Creditor under the above two invoices and the Corporate Debtor offered to open an escrow account for clearing the above amount which is outstanding against the supplies made under the above invoices. An irrevocable instruction to the customer of the Corporate Debtor UST global to remit to the escrow account is also agreed to be given. It was agreed that once Fastlane opens escrow account with UST, the outstanding money shall be remitted to the Ingram as and when money shall be received by UST from the end customer APSFL. It was agreed that on the withdrawal of the amount from the said escrow account all legal claims by the Operational Creditor shall be withdrawn.

7. The MoU does not disclose that anything with regard to the invoice number GD121050323712 dated 29.03.2019 was discussed and whether there was any admission on the part of the Operational Creditor that the goods under the said invoice were not delivered. There was another email dated 03.12.2019 which mentions that the outstanding amount is Rs.18,53,36,116/- and a draft MoU was attached to the said mail showing the disputed invoice also along with the three invoices. Later on the said invoice was deleted and the MoU was restricted only to these two invoices. There is a mail without a date to which an MoU was attached, along with the MoU

for the PO that was said to be releasing on to Fastlane the Corporate Debtor. The MoU records that the parties agreed to promptly bill and deliver to Ingram goods worth Rs.4,96,35,331.20/-. It also mentions that the goods will be inspected by Ingram Micro/Operational Creditor before shipment by Fastlane/the Corporate Debtor.

8. The mail dated 11.12.2019 was addressed by one Adithi Sharma on behalf of the Corporate Debtor along which the MoU was attached. A mail dated 09.12.2019 was addressed to the Corporate Debtor by the Operational Creditor attaching an MoU for the entire claim amount. A letter dated 21.04.2019 issued on behalf of the Corporate Debtor shows that the delay in the payment was admitted by the Corporate Debtor. It is also undertaken that the entire pending of Rs.8.38 Crores would be cleared by the end of that month and interest would also be paid for the delay in the payment. A mail dated 08.07.2020 addressed by one Dileep Sivanpillai (UST, IN) to Prasad Rao Metpally state that Fastalane collected Rs.34.29 Crores almost a year before and pending is Rs.8.57 Crores, including tax, which will be due when all the supplied items are commissioned and accepted by the customer.

9. A letter dated 30.05.2019 issued to the Corporate Debtor states that the books of account of the Operational Creditor show total outstanding due of Rs.18,83,36,116.27/- which includes Rs.13,87,00,785.07/- which is already past due. The letter calls upon the Corporate Debtor to make the payment of the past due within ten

days. On the same day a mail was addressed by the Corporate Debtor to the Operational Creditor mentioning that the Operational Creditor has not delivered the entire list of items and the supply of MCs boxes is still pending, for which payment from the side of the Corporate Debtor will be released from 60 days from the date of entire supply as per the terms of the PO. It is after this mail that the MoU was exchanged for Rs.13 Crores and odd.

10. The first demand notice was issued on 26.09.2019 and the second demand notice was issued on 23.07.2019. Prior to the demand notice itself the Corporate Debtor, by virtue of the mail dated 31.05.2019, has informed the Operational Creditor that there has been an issue from day one with regard to Multi Task Service Code breakage. In the course of transaction between the Operational Creditor and the Corporate Debtor there appear to have been certain issues. But it can be seen that there is an acknowledgement of due by the Corporate Debtor. A mail by one Viplav Valluri on behalf of the Corporate Debtor states that he spoke to Kotak Bank Manager and he told him that Ingram Micro i.e., the Operational Creditor can submit the letter for encashment of BG. Along with the said letter he also wanted Fastlane i.e., the Corporate Debtor to submit a letter stating that the transaction is complete and the BG has to be broken for the payment of dues to Ingram Micro/Operational Creditor. In pursuance of the said mail, a letter is also submitted by the Operational Creditor to the Branch Manager, Kotak Mahindra Bank Limited seeking to invoke

the BG. A mail dated 21.04.2019 issued by one Viplav Valluri on behalf of the Corporate Debtor states that the patience of Ingram Micro/Operational Creditor regarding delay in payment is appreciated and an undertaking to clear the entire pending amount of Rs.8.38 Crores by the end of that month was given and it was also agreed that interest would be paid on the delayed payment. The same person sent another mail on 29.01.2019 instructing the Corporate Debtor to stop the cheque for Rs.11,37,99,015/- from depositing. It also states that they are expecting the RTGS from UST by last week which did not come by that date. Three weeks' time is sought for to transfer the amount. Though the Memorandums of Understanding (MoUs) exchanged between the parties were not signed by the Corporate Debtor, it is evident that there is an acknowledgment of due by the Corporate Debtor. It is not for this Tribunal to decide the amount that is due. If it is found that there is an undischarged debt, which is above the threshold limit of one crore, Corporate Insolvency Resolution Process (CIRP) can be ordered. It is for the Resolution professional to collate the claims and decide the amount due.

11. By virtue of mail dated 10.05.2019 the debt is clearly acknowledged and the source of funds was explained to the Operational Creditor. It states that, the pending payment from UST covers more than the required payment to Ingram Micro/Operational Creditor. It also states that they are working with their Banker for working capital

requirements of Rs.10 Crores and Bank has already evaluated their site. Finally it is confirmed that their accounts receivable is Rs.25 Crores and the accounts payable is Rs.17 Crores which was promised to be given as early as possible.

12. Hence, in view of the clear acknowledgement and also the mails which disclose the inability of the Corporate Debtor to pay the amounts, it can be concluded that the Corporate Debtor has defaulted the discharge of debt that is admittedly due to the Operational Creditor. Hence, in view of the above the Petition needs to be allowed and is accordingly, allowed.

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

i. **Mr. Mannava Divakara Sarma,** (Registration No. **IBBI/IPA-001/IP-P01192/2018-2019/11917**), having office at 5-4-11, 2/3, Brodiepet, Guntur, Andhra Pradesh-522002; Mobile: **9849085620**; e-mail: **mdsarma2003@yahoo.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.

ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.

iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.

iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.

v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.

vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu