

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

CP (IB)/424/MB/2021

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

In the matter of

RELIANCE TECH SERVICES LIMITED, a public limited company, having its registered office at “H” Block, 01st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai-400710.

..... **Applicant/ Operational Creditor**

Versus

GCX INDIA SERVICES LIMITED, having its registered office at: - “H” Block, 01st, Dhirubhai Ambani Knowledge City, Navi Mumbai-400710.

.....**Corporate Debtor**

Order Delivered on :- 02.11.2023

Coram:

Mr. Anuradha Sanjay Bhatia
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (Hearing through Physical Mode):

For the Operational Creditor: Adv. Rohan Agrawal a/w Adv. Mohammed Varawala i/b Adv. Rubina Khan, Fortis India Law

For the Corporate Debtor: Sr. Adv. Ashish Kamat a/w Adv. Asadulla Thangal i/b AZB & Partners

ORDER

Per: - Shri. Kuldip Kumar Kareer (Hon'ble Judicial Member)

1. This Company petition is filed by M/s. Reliance Tech Service Limited, a Public Limited Company (hereinafter referred to as "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against GCX India Service Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Company Petition was filed on 05.04.2021 claiming an amount of INR 44,80,97,946/- (Rupees Fourty-Four Crores, Eighty Lakhs, Ninety-Seven Thousand, Nine Hundred and Fourty Six Only), out of which the principal outstanding is INR 38,02,71,041/- and interest claimed on the principal outstanding is INR 6,78,26,905/-.

3. The case of the Applicant and the details of the transactions leading to the filing of this Application as averred by the Operational Creditor in the application are as follows:
- a) The Petitioner is concerned in the field of providing IT Solutions and IT Infrastructure Services. The Respondent Company sought the services of the Petitioner Company. The Respondent Company had sought the services of petitioner company right from November, 2008. The Respondent company and petitioner company had continuous business relationship.
 - b) Management Services Agreement dated April 01, 2006 was entered between FLAG Telecom Group Limited (FLAG) and Reliance GlobalCom Limited (Now known as GCX India Services Limited). Through this agreement, FLAG who provided telecommunications products and services had outsourced certain processes and services to the Respondent Company. That vide amendment agreement dated 30th July, 2014 to the Management Services Agreement dated April 01, 2006, the petitioner company was made party to the Management Services Agreement to obtain certain IT solution and IT Infrastructure Services from the Petitioner Company by the Respondent Company.
 - c) The Petitioner issued number of invoices out of which 39 invoices from 20/07/2016 to 03/07/2020 are outstanding and remain unpaid by the Respondent Company for a total amount of INR 38,02,71,041/- (Rupees Thirty-Eight Crores, Two Lakhs, Seventy-One Thousand and Forty-One only) along with Interest of Rs. 6,78,26,905/- (Rupees Six Crores Seventy-Eight Lakhs Twenty-Six Thousand Nine Hundred Five Only) in accordance with Clause 5 of

Management Services Agreement. **The total amount of default is Rs. 44,80,97,946/-** (Rupees Forty-Four Crores, Eighty Lakhs, Ninety-Seven Thousand, Nine Hundred and Forty-Six Only).

- d) The Hon'ble National Company Law Tribunal Mumbai Bench in the matter of Ajit Kumar Yadav & seven others v/s Reliance Tech Services Limited, through an Order in CP(IB) No.2483/MB/IV/2019 dated 04/08/2020 initiated the Corporate Insolvency Resolution Process ('CIRP') against the Petitioner herein and appointed CA Anjan Bhattacharya as the Resolution Professional. That thereupon in the first meeting the COC resolved vide e-voting (concluding on 09/09/2020) to continue the appointment of CA Anjan Bhattacharya, as Resolution Professional for conducting CIRP of the Reliance Tech Services Limited.
- e) The total debt outstanding as on 19/01/2021 (date of issue of Demand notice) was Rs. 44,70,97,781/- (Rupees Forty-Four Crores, Seventy Lakhs, Ninety-Seven Thousand, Seven Hundred and Eighty-one only) along with interest. The petitioner had sent emails to the Respondent informing that the amount is outstanding. There are no instances of complaints raised by the Respondents against the Petitioner's Services and the Respondents have never, in the past raised any such objection. Therefore, there is no scope of any pre-existing dispute regarding the outstanding payments. Further, any dispute arising at any later stage stands to be in bad faith on respondent's part.

f) The Petitioner through Resolution Professional served the Demand Notice to Respondent Company dated **19/03/2018** which was sent via e-mail dated **21st January, 2021** to make the payment within 10 days from the date of receipt of the notice under the Insolvency and Bankruptcy Code, 2016. Further, the Demand Notice was dispatched by courier at the Registered Office address of the Respondent 21st January, 2021 which was received by them on 22nd January, 2021. As the operational debt in respect of the provision of services still remain outstanding and unpaid, the Petitioner has filed this present petition against the Respondent seeking to initiate the CIRP against the Corporate Debtor (i.e. the Respondent) u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”).

4. **Submissions of the Respondent in brief:**

The Respondent has filed its Affidavit in Reply through its Director Mr. Pradeep Bhat along with the necessary board resolution. The Respondent/Corporate Debtor has objected to the Petition of the Petitioner/Operational Creditor on the following grounds which are briefly stated hereunder:

- a. **Limitation-** Section 238-A of the Code provides that the Limitation Act, 1963 is applicable to proceedings and appeals before this Hon’ble Adjudicating Authority. The Limitation Act, 1963 stipulates that for matters which are not specifically mentioned in its schedule, a suit/application is to be filed within 3 years from the accrual of right to make such an application. The Respondent states that in the present case, for the invoices raised between the period from 20.07.2016 to

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01.02.2017, the limitation period of three years for the respective invoices from their respective dates of accrual of the right to file an application u/s 9, expired on and between the period 19.08.2019 and 03.03.2020. A chart of the aforementioned invoices and the respective dates of expiry of limitation period pertaining to them for the purposes of the instant petition is provided below:

Sr. No.	<u>Invoice Number and Invoice Date</u>	<u>Amount (INR)</u>	<u>Payable by (Date of Default)</u>	<u>Limitation Period expired on</u>
1.	14-1/16-17, 20.07.2016	4,89,518.00/-	19.08.2016	19.08.2019
2.	17/16-17, 31.08.2016	1,15,65,400.00/-	30.09.2016	30.09.2019
3.	20/16-17, 30.09.2016	1,14,87,293.00/-	30.10.2016	30.10.2019
4.	2001560170, 31.10.2016	1,15,10,201.00/-	30.11.2016	30.11.2019
5.	2001560175, 30.11.2016	1,18,16,319.00/-	30.12.2016	30.12.2019
6.	2001560176, 01.12.2016	1,17,00,813.00/-	31.12.2016	31.12.2019
7.	2001560186, 02.01.2017	1,17,00,813.00/-	01.02.2017	01.02.2020
8.	2001560187, 01.02.2017	1,15,04,887.50/-	03.03.2017	03.03.2020

	TOTAL	8,17,75,244.50/-		
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- b. **Section 10A-** Certain invoices do not constitute a default u/s 10A as they fall due in the period between 25.03.2020 and 24.03.2021 and therefore, they cannot be relied upon for the purpose of a claim u/s 10A which suspended the filing of CIRP applications for the default arising during this period. Below is the detail of invoices raised between such period:

Sr. No.	<u>Invoice Number and Invoice Date</u>	<u>Due Date</u>	<u>Amount (INR)</u>
1.	2001560308, 26.02.2020	27.03.2020	3,42,200.00/-
2.	2001560312, 02.03.2020	01.04.2020	3,42,200.00/-
3.	2001560324, 10.06.2020	10.07.2020	3,42,200.00/-
4.	2001560325, 10.06.2020	10.07.2020	3,42,200.00/-
5.	2001560326, 10.06.2020	10.07.2020	3,42,200.00/-
6.	2001560333, 03.07.2020	02.08.2020	3,42,200.00/-
		TOTAL	20,53,200.00/-

- c. **IBC is not a Recovery Forum-** The Respondent is a going concern with 355 personnel comprising of employees and

contractors/consultants as of December 21, 2021. It is a commercially viable and net worth positive company which has made a profit (before tax) of INR 5,45,38,618/- for FY 2020-21, which is substantially more as compared to the profit (before tax) of INR 2,66,73,941/- for FY 2019-20. Therefore, it is submitted that if the present petition is allowed, it would cause grave prejudice to the Respondent who is otherwise a solvent company. The Respondent states that the provisions of the IBC, 2016 cannot be misused for the purpose of recovery, especially when the amounts thereto are denied.

- d. **Defective Services and Services not rendered:** The Respondent has time and again raised concerns regarding the deficiency in services rendered by the Petitioner. The deficiency in services, inter-alia, were with respect to the outdated versions of software susceptible to malware attacks, IT equipment being used much beyond their useful lives, mundane equipment such as printers often breaking down due to lapse of warranties, etc.
- e. **Existence of a Dispute-** Upon receipt of the Demand Notice, the Respondent in its reply dated 01.02.2021 had categorically denied every allegation raised by the Petitioner, including on the grounds of limitation as well as statutory bar u/s 10A of the Code.

ANALYSIS AND FINDINGS

5. We have heard the Learned Counsels for the Applicant-Operational Creditor and the Respondent-Corporate Debtor. We have also gone through the pleadings and the records.

6. In this case, the Operational Creditor has claimed that the Corporate Debtor has committed a default of INR 44,80,97,946/- (Rupees Fourty-Four Crores, Eighty Lakhs, Ninety-Seven Thousand, Nine Hundred and Fourty Six Only), out of which the principal outstanding is INR 38,02,71,041/- and interest claimed on the principal outstanding is INR 6,78,26,905/-. The amount has been remaining outstanding in respect of the 39 invoices remaining due and unpaid as per the workings, invoices and the running ledger account annexed by the Petitioner. On perusal of the running account ledger and the Application vide Form 5 filed by the Petitioner on record, it appears that the services of a total of INR 69,11,55,494.77/- has been rendered from 30.11.2008 to 03.07.2020. The payments made by the Corporate Debtor from time to time has been accounted by the Operational Creditor in its running ledger account with the Corporate Debtor. The total payments made by the Corporate Debtor to the Operational Creditor as per the running account ledger is INR 31,08,84,453.41/- and therefore, a principal sum of INR 38,02,71,041.36/- is still due by the Corporate Debtor to the Operational Creditor as on the date of filing this petition. The Corporate Debtor has denied and disputed its liability mainly on the grounds of limitation and the default arising in respect of some

invoices in the period covered by section 10A of the Code. The Corporate Debtor has contended in its Affidavit-in-Reply that the claim in respect of the invoices totalling to INR 8,17,75,244.50/- (Rupees Eight Crores, Seventeen Lakhs Seventy-Five Thousand, Two Hundred and Fourty Four and Fifty Paisa only) has become time barred.

7. However, on perusal of the some invoices remaining due and unpaid namely Invoice No. 2001560247 dated 31.07.2018 of INR 1,21,32,465/-, Invoice No. 2001560248 dated 31.08.2018 of INR 1,25,66,115/-, Invoice No. 2001560255 dated 30.09.2018 of INR 1,28,29,845/-, Invoice No. 2001560257 dated 31.10.2018 of INR 1,30,90,035/-, Invoice No. 2001560260 dated 06.12.2018 of INR 1,23,18,315/-, Invoice No. 2001560261 dated 31.12.2018 of INR 1,23,50,175/- & Invoice No. 2001560270 dated 31.03.2019 of INR 2,50,99,485/- and the running account ledger for the period from 30th June, 2018 to 02nd March, 2020, we find that the default of well over Rupees One Crore has been committed by the Corporate Debtor in respect of the invoices falling due in the aforesaid period. The petition has been filed on 05th April, 2021. It is also pertinent to note that the Hon'ble Supreme Court has excluded the period from 15.03.2020 till 28.02.2022 and all persons shall have a limitation period of 90 days from 01.03.2022 for the purpose of computing limitation vide Order dated January 10, 2022 in M.A. No. 21 of 2022 in Suo Motu Writ Petition (Civil) No. 03 of 2020. Hence, if the extended period of limitation is considered and even otherwise, during the period of three years prior to the filing of this petition, it can be safely inferred that the default of well over Rupees One Crore has been committed by the

Corporate Debtor in respect of the invoices falling due to the Operational Creditor in the aforesaid period.

8. As per the Clause 5.2 of the Management Services Agreement dated 01st April, 2006, the invoice for the services shall be prepared and sent on a calendar month basis and all the payments of service charges shall be made within 30 days from the receipt of invoice. Clause 5.2 also states that all payments delayed beyond the payment due date shall attract an interest of 6% p.a. Therefore, the Applicant/Petitioner is entitled to claim interest from the Respondent which can be considered for the purpose of computing the default in order to admit the application u/s 9 of the Code.

9. Further, the Corporate Debtor has averred that the default to the tune of INR 20,53,200/- arising in respect of the invoices falling due and remaining unpaid for the period from 25th March, 2020 to 24th March, 2021 cannot be considered for the purpose of CIRP. Even if the invoices covered by the period excluded under section 10A are not taken into reckoning, yet a default of over one crore rupees has been established from the records. Therefore, the plea of Section 10A raised by the Respondent will not have a bearing on the maintainability and admission of this petition. It is further pertinent to note that out of the default in claim of operational debt due and payable of INR 44,80,97,946/-, even if, as per the say of the Respondent, a sum of INR 8,17,75,244.50/- is deducted for want of limitation by excluding invoices which are beyond limitation and a further sum of INR 20,53,200/- is deducted on the ground that some of invoices fall due within the period covered under Sec.10A, yet a default of well over

rupees one crore is established from the evidence available on the records.

10. The Corporate Debtor has raised the concerns in its affidavit-in-reply regarding the deficiency in services rendered by the Petitioner. The deficiency in services, inter-alia, were with respect to the outdated versions of software susceptible to malware attacks, IT equipment being used much beyond their useful lives, mundane equipment such as printers often breaking down due to lapse of warranties, etc. The Corporate Debtor had also in its Reply to the Demand Notice dated 01st February, 2021 communicated to the Operational Creditor about the aforesaid deficiency in services. However, there is no exchange of communication or correspondence between the Corporate Debtor and the Operational Creditor with respect to the deficient services prior to the service of demand notice. As there is no evidence or document on record to show the deficiency in services rendered by the Operational Creditor to the Corporate Debtor in respect of the outdated versions of software susceptible to malware attacks, IT equipment being used much beyond their useful lives, mundane equipment such as printers often breaking down due to lapse of warranties, etc., the plea of pre-existing dispute taken by the Corporate Debtor with respect to the deficient services rendered by the Operational Creditor remains unsubstantiated and appears to be spurious and a mere bluster to escape the Corporate Insolvency Resolution Process. In the absence of any pre-existing dispute between the parties herein with respect to the services rendered by the Operational Creditor to the Corporate Debtor, the Petition is

maintainable.

11. The Respondent has stated that IBC is not a recovery forum and considering that the Corporate Debtor is a commercially viable entity having a positive net-worth, if the present petition is allowed, it would cause grave prejudice to the Respondent who is otherwise a solvent company. In this regard, it will not be out of place to state that the scheme of the code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. The moment adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete. To buttress the aforesaid proposition of law, reliance is placed on Paragraphs 27 and 28 of the judgment of Hon'ble Supreme Court in Innoventive Industries Ltd v/s ICICI Bank & Anr (Civil Appeal No. 8337-8338 of 2017) dated August 31, 2017.

12. On the basis of the foregoing discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of an Operational debt and its default having been committed by the Corporate debtor. The Application is also within time. Therefore, the Application deserves to be admitted. It is ordered accordingly, in the following terms:

ORDER

- a. **The above Company Petition No. (IB) -424 (MB)/2021 is hereby admitted and initiation of**

Corporate Insolvency Resolution -Process (CIRP)
is ordered **against M/s. GCX INDIA SERVICES
LIMITED;**

- b. This Bench hereby appoints **Ms. ASHA MANAJIT GHOSHAL**, Insolvency Resolution Professional, having Registration No: **IBBI/ IPA-001/ IP-P-01601/2019-20/12482** as the Interim Resolution Professional having email id :- asha.ghoshal@amgadvisory.in and having registered address at 301, Arenja Corner, Plot No.71, Sector 17, Vashi, Navi Mumbai-400705; to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5,00,000/- (Rupees Five Lakhs Only) towards the initial CIRP cost 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
13. Accordingly, **this Petition is admitted.**

14. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)