

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical hearing/ VC Mode (Hybrid)]



ITEM No.11
C.P.(IB)No.98/BB/2024

IN THE MATTER OF:

M/s. Total Solutions Intec Pvt. Ltd. ... Petitioner
Vs.
M/s. Buoyant Technology Constellation Pvt. Ltd. ... Respondent

Order under Section 9 of Insolvency and Bankruptcy Code, 2016

Order delivered on: 23.08.2024

CORAM:

SH. K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Shri Atul Madhavan
For the Respondent : Shri Anish Acharya

ORDER


1. The present Petition has been filed by the Petitioner/Operational Creditor on 02.02.2024, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/Code**'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **M/s. Total Solutions Intec Pvt. Ltd** (for brevity 'Operational Creditor/ Petitioner') *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Buoyant Technology Constellations Pvt. Ltd.** (hereinafter referred as 'Corporate Debtor/ Respondent') on the ground that the Corporate Debtor has committed a default for a total outstanding amount of **Rs.2,15,03,181/- (Rupees Two Crores Fifteen Lakhs Three Thousand One Hundred and Eighty one only) as on 11.11.2023.** Further, in Item No.2 of Part-IV filed with the Petition, it is stated that the total amount of default is Rs.2,15,03,181/- (*Rupees Two Crores Fifteen Lakhs Three Thousand One Hundred and Eighty one only*) and the date of default in Form No.5 is mentioned as 11.11.2023.



2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner as follows:

- i. The Corporate Debtor is engaged in the business of real estate, construction, sale and other related activities.
- ii. The Operational Creditor/Petitioner is engaged in the business of Integrated Solutions since 2000, specializing in fire safety equipment. Over two decades of dedicated service have established it as a leading player in the industry. The Operational Creditor supplied various fire safety equipment to the Corporate Debtor since 2015 and subsequently raised invoices amounting to Rs.8,00,26,850/- out of which the Corporate Debtor has paid only Rs.5,85,23,669/-. Therefore, the Corporate Debtor has an outstanding liability of Rs.2,15,03,181/- which stands due and payable till date. It is further submitted that the Corporate Debtor since 31.03.2023 had stopped making any payments to the Operational Creditor, despite several requests and reminders.
- iii. It is submitted that the Operational Creditor maintains a running Account with the Corporate Debtor. It is further submitted that the Balance confirmation documents, duly signed by the Corporate Debtor on 05.04.2016, 03.04.2017, 07.04.2018, 08.04.2019, 02.04.2020, 02.04.2021, 03.04.2022 and 03.04.2023 would reveal that the Corporate Debtor has admitted its liability.
- iv. It is submitted that as per the Section 8 of the Code, a statutory demand notice dated 19.12.2023 was sent to the Corporate Debtor, demanding the total default amount of Rs.2,15,03,181/- via speed post and the said demand notice was duly received by the Corporate Debtor on 22.12.2023. Despite lapse of ten days, which has expired on 01.01.2024, the Corporate Debtor had neither paid the said operational debt nor has raised any dispute in respect of the said debt. Therefore, this Petition has been filed U/s.9 of the IBC, 2016. As per Part-IV and Col.2 of Form-5, it is stated that total amount of default is Rs.2,15,03,181/- and the Date of default is mentioned as 11.11.2023.
- v. The Operational Creditor has proposed the name of Shri Shaikh Nafis

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Anjum, bearing Registration No. IBBI/IPA-003/IPA-ICAI-N-00211/2018-2019/12363 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. And he has filed Form-2 dated 02.01.2024, Written Communication.

3. The Respondent/Corporate Debtor has filed reply vide Dy.No.3184 dated 04.06.2024 in which it was stated as under:
 - i. It is stated that the invoices for the supply of goods and services pertaining to fire safety equipment and apparatus, based on work orders, total Rs.8,00,26,850/-. Out of this amount, the Corporate Debtor has duly paid a major portion of Rs.5,87,75,890/- to the Operational Creditor, and only an amount of Rs.2,12,50,960/- was outstanding. The Corporate Debtor has assured the Operational Creditor regarding making the payment in due course.
 - ii. It is further stated that the Corporate Debtor apprised the Operational Creditor about the precarious financial condition and had only sought a window of time from the Operational Creditor for settling the said liability from time to time. However, the Operational Creditor did not pay any heed. It is further contended that, though the Corporate Debtor had given the impugned Balance Confirmation, which has been relied upon by the Operational Creditor, it should not be considered as an admission of the liability since it did not mention the details of particulars regarding the amounts to be settled between the parties as part of their business arrangements. The Respondent further submits that they were more than willing to settle the liability with the Operational Creditor and the only request made by the Corporate Debtor to give some time to settle the said liabilities. It is also stated that a Company should not be subjected to the rigors of insolvency merely because it is unable to pay its debt, even if the debts have been admitted and the liability remains undisputed.
4. Heard the Learned Counsel appearing for the Petitioner and the Counsel for the Respondent, and perused the pleadings.
5. As stated supra, the Corporate Debtor did not dispute the debt and has requested for more time to clear the balance debt. It is clearly established

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that there is an outstanding debt in respect of the invoices mentioned in Form-5 and the Demand Notice U/s.8 in Form-3. The Petitioner was directed to furnish a list of such invoices and the outstanding amount pertaining to the same. It is noticed that the Petition was filed on 02.02.2024, and therefore under consideration would be the invoices pertaining to a period of within three years prior to the filing of the Petition so as to take care of the limitation aspect. The details of the outstanding invoices was filed vide Diary No.3874 dated 04.07.2024, which is reproduced below:

Sl. No.	Date of Invoice	Invoice Number	Invoice Amount (in Rs.)	Part Payment (in Rs.)	Remaining Outstanding Payment
1.	19-11-2015	Invoice No. 278	7,59,071	7,21,117	37,954
2.	13-01-2016	Invoice No. 381	55,55,629	51,13,647	4,41,982
3.	14-03-2016	Invoice No. 454	96,67,715	91,84,329	4,83,386
4.	09-08-2016	Invoice No. 174, 175, 176	60,75,791	62,72,339	-1,96,548
5.	07-11-2016	Invoice No. 318, 319, 320	42, 16, 446	38,41,424	3,75,022
6.	11-01-2017	Invoice No. 462, 463, 464	2,04,78,578	1,85,52,526	19,26,052
7.	06-03-2017	Invoice No. 553	27,03,965	30,54,378	-3,50,413
8.	08-12-2017	Invoice No. 105,106,107	16,22,115	15,41,009	81,106
9.	19-12-2017	Invoice No. 131, 132, 133	45,92,572	43,19,692	2,72,880
10.	04-01-2018	Invoice No. 156, 157, 158, 159	95,43,140	18,11,748	77,31,392
11.	20-01-2023	TSI-370/2022-2023	11,63,287	11,633	11,51,654
12.	02-05-2023	Invoice No. TSI- 43	12,03,279	-	12,03,279
13.	20-07-2023	Invoice No. TSI- 149	11,80,000	-	11,80,000
14.	04-11-2023	Invoice No. TSI- 302	45,84,234	-	45,84,234
15.	04-11-2023	Invoice No. TSI- 298	2,12,399	-	2,12,399
16.	04-11-2023	Invoice No. TSI- 299	1,30,265	-	1,30,265
17.	04-11-2023	Invoice No. TSI- 300	4,13,000	-	4,13,000
18.	04-11-2023	Invoice No. TSI- 303	50,66,477	-	50,66,477
19.	04-11-2023	Invoice No. TSI- 301	1,60,328	-	1,60,328
20.	-	Invoice No. 204	6,98,559	6,50,677	47,882
21.	-	On account payment mode	-	24,83,804	-24,83,804
22.	-	Debit Note	-	9,65,345	-9,65,345
Total			8,00,26,850	5,85,23,669	2,15,03,181



From the above table, it is abundantly clear that while the invoices listed from Sl.No.1 to 10 are beyond the three year period prior to the date of filing the Petition, the invoices from Sl.No.11 to 20, which are up to 04.11.2023, fall within the limitation period. The total amount of these invoices which are within the period of limitation, i.e. from Sl.No.11 to 20 works out to Rs.1,41,49,518/-, out of which payment of Rs.24,83,804/- and Rs.9,65,345/- have been made, as mentioned in Sl.No.21 and 22 of the table. Therefore, the remaining outstanding amount is Rs.1,07,00,369/-, which meets the threshold requirement of Rs. One Crore. This constitutes the admitted debt and default, after considering the submission made by the Respondent/Corporate Debtor as discussed above. Therefore, there is no reason to deny the Petition filed U/s.9 of the IBC, 2016.

6. In view of the above discussion, the existence of the debt and default is established. Therefore, the present Petition bearing **C.P.(IB)No.98/BB/2024** is **admitted** in respect of the Corporate Debtor **M/s. Buoyant Technology Constellation Pvt. Ltd.**, under Section 9 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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;*



- (e) *It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
- (f) *The provisions of Sub- Section 14 (3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;*
- (g) *The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;*
7. In Part-III of Form No.5, the Operational Creditor has proposed the name of Shri Shaikh Nafis Anjum, bearing Registration No. IBBI/IPA-003/IPA-ICAI-N-00211/2018-2019/12363 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Form-2 dated 02.01.2024, Written Communication by the IRP has been filed along with the C.P is found at Page 36 of the Petition.
8. In view of the above, we hereby appoint **Shri Shaikh Nafis Anjum**, bearing **Registration No. IBBI/IPA-003/IPA-ICAI-N-00211/2018-2019/12363** having registered address at No.A-34, Lower Ground, Vikas Puri, New Delhi – 110018, Contact No. 97171 28400, e-mail: sn.anjum123@gmail.com as the Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.
9. The Operational Creditor shall deposit a sum of **Rs.2,00,000/-** (Rupees Two 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.

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10. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

11. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-
K. BISWAL
MEMBER (JUDICIAL)

Shruthi