

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

CP No.1287/2017

Under Section 9 of IBC, 2016

In the matter of

Manipal Technologies Limited Petitioner

vs.

Reliance Communications Ltd. Respondent.

Order delivered on 25.09.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Ms. Namrata Biyawat, Advocate, i/b N B Legal, Ms. Dipti Mehta, Partner, Mehta & Mehta Company Secretaries.

For the Respondent: Mr. Shyam Kapadia, Counsel, Mr. Darius J. Kakalia, Advocate, i/b Mulla & Mulla Gargie Bunt & Caroc.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

1. It is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor herein, viz. Reliance Communications Ltd. on the ground that the Corporate Debtor availed goods worth ₹2,74,38,265/- from the Operational Creditor herein thereafter, the Corporate Debtor since defaulted in making repayment, the Petitioner herein filed this Company Petition for initiation of Insolvency Resolution Process against this Corporate Debtor.

2. The case of the Petitioner herein is that the bills were raised against Hewlett Packard Financial Services India Pvt. Ltd. but whereas the goods have been supplied to Reliance Communications Ltd. Since goods being

supplied to Reliance Communications Ltd and there being an undertaking for payments of the same by Reliance Communications Ltd, the Petitioner herein proceeded against the Corporate Debtor, i.e. Reliance Communications Ltd instead of proceeding against Hewlett Packard Financial Services India Pvt. Ltd. against whom bills were raised by the Operational Creditor herein.

3. To justify this claim, the Petitioner herein filed purchase orders given by the Corporate Debtor herein on 19.10.2016 and 12.11.2016 and the Bank Account statements reflecting the payment made by the Corporate Debtor herein on 5.4.2017 to say that the transaction indeed happened in between the Petitioner and the Corporate Debtor and not in between the Petitioner and Hewlett Packard Financial Services India Pvt. Ltd.

4. The Petitioner Counsel further relied upon an email sent by the Corporate Debtor to the Petitioner stating that they have already processed and closed the invoices in their system and as to the balance invoices under HPFC, it would take two more days in view of the issues in respect to their company.

5. On hearing these submissions, the Counsel appearing on behalf of the Corporate Debtor has submitted that invoices were raised by the Petitioner against Hewlett Packard Financial Services India Pvt. Ltd. and not against Reliance Communications Ltd. Since invoices have not been raised against the Corporate Debtor herein, there could not be any obligation on the Corporate Debtor to make payment towards the bills raised against Hewlett Packard Financial Services India Pvt. Ltd. In view of the same, the debt obligation shown by the Petitioner herein is not falling within the ambit of Section 8 of the Insolvency and Bankruptcy Code, 2016, hence this Petition is liable to be dismissed.

6. In view of the submissions made by both the Counsel, on verification of the records, it appears that the bills were raised against Hewlett Packard

Financial Services India Pvt. Ltd. and not against the Corporate Debtor herein, may be the Corporate Debtor herein made payments on behalf of Hewlett Packard Financial Services India Pvt. Ltd., it does not mean that this Corporate Debtor is under obligation to make the payments towards the invoices raised against Hewlett Packard Financial Services India Pvt. Ltd.

7. On reading Section 8 of the Insolvency and Bankruptcy Code, 2016, it appears that the cause of action will arise for filing case only when the demand for payment is made on the invoices raised by the Petitioner against the Corporate Debtor.

8. Here, in this case, invoices were raised against Hewlett Packard Financial Services India Pvt. Ltd. but whereas the case has been filed against Reliance Communications Ltd.

9. Since on face, it does not appear that Reliance Communications Ltd is under obligation to make payments towards the bills raised against Hewlett Packard Financial Services India Pvt. Ltd., if at all, the Petitioner has any case to prove that Reliance Communications Ltd is under obligation to make payment against the invoices raised against Hewlett Packard Financial Services India Pvt. Ltd., they are at liberty to proceed before Civil Court to establish the same but not under the Insolvency and Bankruptcy Code, 2016, the reason for this conclusion is that there shall not be any ambiguity or doubt in respect to the transaction when it is taken up under Insolvency and Bankruptcy Code, 2016, whereby this Petition is dismissed with liberty to the Petitioner to proceed in accordance with law.

10. This petition is decided without going into the merits of the case except all the points mentioned above, accordingly, the Petition is dismissed.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)