

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
BENCH- III**

IB-411/ND/2020

U/S 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF

M/s CSII India Pvt. Ltd.

(Formerly Known as CSDC India Private Limited)

...Petitioner/Operational Creditor.

Versus

M/s Telexcell Information Systems Limited

...Corporate Debtor/Respondent

Delivered on 05.10.2021

Coram:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

Appearances:

Operational Creditor : Kshitiz Karjee & Mrinal Agarwal (Advocates)

Corporate Debtor: None present

ORDER

Per: Narender Kumar Bhola, Member (Technical).

1. under consideration is IB-411/ND/2020 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor *M/s CSII India Pvt. Ltd.*, is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., *M/s Telexcell Information Systems Limited*, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

- a. The Corporate Debtor approached the Operational Creditor in the year of 2018 for supply of image scanner manufactured by the Operational Creditor. In pursuance of the aforesaid, Operational Creditor issued three purchase orders dated 01.01.2018, 06.03.2018 and 01.05.2018 against the Corporate Debtor. The operational Creditor raised several invoices dated 21.02.2018, 21.06.2018, 26.06.2018, 27.06.2018 and 12.11.2018 against the corporate debtor in lieu of the goods supplied to it in pursuance of the aforesaid purchase orders.

- b. It is submitted that the corporate debtor failed to make the payment in lieu of the goods purchased by it from the operational creditor despite various reminders sent through e-mails, text messages and phone calls. The Corporate debtor acknowledged the debt amounting to Rs. 1,00,56,064/- vide e-mails dated 06.09.2018 and 01.11.2018.
 - c. It is further submitted that the Operational Creditor sent a Demand Notice dated 30.11.2019 to the Corporate Debtor in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Section 8 of the Insolvency and Bankruptcy Code, 2016 and the same was duly served on the Corporate Debtor. The Corporate Debtor sent a reply to the aforesaid Demand Notice on 11.12.2019 belatedly raising fictitious disputes with respect to the aforesaid debt without referring to any document/communication which would prove the existence of a dispute prior to the issuance of the Demand Notice by the Operational Creditor.
 - d. In the light of the above, the petitioner prayed that the section 9 Application filed by the Operational Creditor may be allowed and the CIR Process may be initiated against Corporate Debtor.
3. The Corporate Debtor has been provided with several opportunities to cause appearance and file objection. However, only once appearance is caused on behalf of the corporate debtor during the proceedings dated

06.01.2021 and after that none appeared on behalf of Corporate Debtor. Hence, on being satisfied that the corporate debtor has not interest to pursue the matter, the corporate debtor is set as Ex-parte vide order dated 17.02.2021.

4. During the final arguments it is argued by the petitioner that the corporate debtor has acknowledged the debt amounting to Rs. 1,00,56,064/- and same is annexed as Annexure-D with the Petition. Hence, prayed that the Petition under section 9 of IBC, 2016 may be allowed and the CIR Process may be initiated against the Corporate Debtor.
5. We have perused the Petition, Written Submissions and arguments advanced by the Operational Creditor/Petitioner. There is clear acknowledgement of debt by the corporate debtor in emails dated 06.09.2018 and 01.11.2018 annexed as Annexure-D with the petition. Hence, this Adjudicating Authority is inclined to admit this application and accordingly initiate the process of CIRP of the Corporate Debtor. The Applicant has not proposed any insolvency resolution professional. Accordingly, this Adjudicating Authority hereby appoints Insolvency Professional namely, Mr. Mukesh Kumar Jain having Registration Number IBBI/IPA-001/IP-P01960/2020-2021/13089 (Email ID-fcafcs19@gmail.com) as Interim Resolution Professional from the List provided by IBBI.

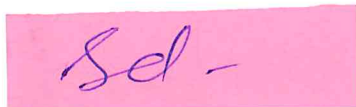
6. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

7. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
 - a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

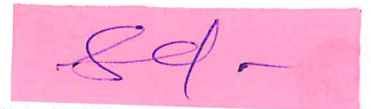
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.
9. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.
10. The Petitioner is directed to pay a sum of Rs. 2,00,000/- (Rupees Two Lakhs) to the interim resolution professional upon the IRP filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.

12. The order is pronounced by this Adjudicating Authority in virtual Hearing.



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



(P.S.N. PRASAD)
MEMBER (JUDICIAL)