IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP/190/IB/2018

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Karsha Thoughts Technologies Pvt. Ltd.***

M/s. Dimension Data India Private Limited
1701 – 1704, B- Wing, ONE BKC, "G" Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051

... Operational Creditor

-Vs-

M/s. Karsha Thoughts Technologies Private Limited
No.1/21, 3rd Floor, No.1,
Pinjala Subramanian Street,
T- Nagar, Chennai – 600 017

...Corporate Debtor

Order Pronounced on 22nd February 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : M. Arul Raj, Advocate
For Corporate Debtor : None present

ORDER

***Per:* R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. Under Adjudication is an Application that has been filed by **M/s. Dimension Data India Private Limited** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short,

'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Karsha Thoughts Technologies Private Limited** (hereinafter referred to as *'Corporate Debtor'*). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U74900TN2009PTC072258 which was incorporated on 10.07.2009 and that its Authorized Share capital is Rs.1,00,000/- and its Paid up Capital is Rs.1,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.1/21, 3rd Floor, No.1, Pinjala Subramanian Street, T- Nagar, Chennai – 600 017. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that a sum of Rs.21,27,148/- is being claimed by the Operational Creditor as Operational Debt, including interest. The present Application is filed before this Tribunal on 06.02.2018.

4. It is seen from the records that based upon a memo filed by the Corporate Debtor, this Tribunal on 27.08.2018 passed the following order;

> Counsel for Petitioner present. Representative for Corporate Debtor present and has brought one DD dated 20.08.2018 for an amount of Rs.3 lakhs to be drawn at City Union Bank Limited and filed a schedule for payment; copy of which is given to the other side. The DD is handed over to the Counsel for the Petitioner.
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> It has been submitted by the Representative for Corporate Debtor that in case his client will be in a position to pay rest of the amount in 12 equal instalments, he will make efforts to convince him to do the same failing which his client will make rest of the payment in 15 equal instalments as is recorded in the terms and conditions of the memo of settlement; which is placed on record.
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> In the light of the schedule of payment / terms and conditions for payment of the balance amount, which shall form part of this order, the petition stands **disposed of.**
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> However, in the event of default, Petitioner will be at liberty to revive the petition.

5. Subsequent thereof, the Operational Creditor has filed MA/1188/2019 before this Tribunal on 01.10.2019 seeking thereof to restore CP/190/IB/2018 on the file of this Tribunal

in view of the default committed by the Corporate Debtor. It was also submitted that apart from the first payment of Rs.3,00,000/- the Corporate Debtor has not made any payments thereafter as per the time schedule. Based upon the averments stated in the said Application, this Tribunal has passed an Order in MA/1188/2019 on 16.09.2020 as follows;

> Mr. Arulraj, Advocate for the Applicant/Petitioner is present through Video Conferencing Platform.
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> This is an Application seeking for a revival of the main Company Petition in CP/190/IB/2018 in light of the Order which was passed by this Tribunal dated 28.07.2018 in view of the settlement arrived at between the parties as follows: -
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>> "Counsel for Petitioner present. Representative for Corporate Debtor present and has brought one DD dated 20.08.2018 for an amount of Rs.3 lakhs to be drawn at City Union Bank Limited and filed a schedule for payment; copy of which is given to the other side. The DD is handed over to the Counsel for the Petitioner.
>> It has been submitted by the Representative for Corporate Debtor that in case his client will be in a position to pay rest of the amount in 12 equal instalments, he will make efforts to convince him to do the same failing which his client will make rest of the payment in 15 equal instalments as is recorded in the terms and conditions of the memo of settlement; which is placed on record.
>>
>> In the light of the schedule of payment / terms and conditions for payment of the balance amount, which shall form part of this order, the petition stands **disposed of.**
>>
>> However, in the event of default, Petitioner will be at liberty to revive the petition."
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> Ld. Advocate for the Applicant/Petitioner points out that in view of the averments made in the Application only a

sum of Rs.3 lakh was paid by the Corporate Debtor in relation to the earlier claim and remaining Principal Operational Debt of Rs.11,68,246/- is required to be paid in equal instalments of Rs. 77,883/- in 15 months has not been complied with. In the circumstances taking into consideration the above Order granting the liberty to the Petitioner to revive the main Company Petition, this Application.

Perusal of the averments as well as taking into consideration the Order passed by this Tribunal dated 28.07.2018 as extracted above, this Petition is required to be revived namely, CP/190/IB/2018.

In the circumstances, let notice be issued to the Corporate Debtor by the Petitioner in relation to the next date of hearing which is fixed on **28.09.2020** to the registered office address of the Corporate Debtor within a period of five (5) days from today along with copy of this Order; let the same be made available today itself. Accordingly, MA/1188/IB/2018 stands **ordered**.

6. When the matter came up for hearing thereafter, there was no representation from the Corporate Debtor, hence this Tribunal on 28.01.2021 was constrained to hear the matter in the absence of the Corporate Debtor.

7. It is seen that the Corporate Debtor himself has accepted the default and has given a memo by proposing a timeline for the payment of money to the Operational Creditor, which the Corporate Debtor itself was unable to adhere to. Further, the Corporate Debtor has not made any representation before this Tribunal, which shows that the

Corporate Debtor is deliberately evading the payments which are scheduled to be paid to the Corporate Debtor as per the terms agreed between the parties. In the said circumstances, this Tribunal is left with no other option than to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

8. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016. In relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor as by virtue of order passed in MA/1188/2019 dated 16.09.2020, the main Company Petition stood revived in view of the default committed.

9. In relation to the 'Question of Limitation' is concerned, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor in relation to the Corporate Debtor which discloses that the invoice has been raised on 24.02.2014 and the Corporate Debtor has issued a cheque to the Operational Creditor in discharge of his liability on 11.11.2015 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 06.02.2018 and as such it falls well within the period of limitation.

10. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **Mr. B. Bhaskar** with Reg. No. *IBBI/IPA-002/IP-N00644/2018-2019/12024* and email id:- *bhasja@gmail.com* as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against

such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

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;

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

11. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

> (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
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> (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or serices critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
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> (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

12. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

> (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:
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> Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

13. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** *(Rupees Two Lakhs Only)* to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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