

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI, BENCH-VI,
CP (IB) No. 4082/MB/2018**

*[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:

DIGIZONE TECHNOLOGY PRIVATE LIMITED

[CIN: U74999MH2012PTC230900]

Registered Office: A-504, Pranay Vidya
Sky Build Village, Off Borsapada Road
Kandivali West, Mumbai 400067
Maharashtra.

...Operational Creditor

VERSUS

SUMTECH INFOSYSTEM PRIVATE LIMITED

[CIN:U74120MH2012PTC231227]

Registered Office: A-402, Panchsheel Co-operative
Housing Society, Radhagram, Dhobi Ghat
Vakola, Santacruz (East), Mumbai 400055
Maharashtra.

...Corporate Debtor

Pronounced: 07.02.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Operational Creditor: Adv. Arjun Sathees and Adv Abdullah Qureshi

Corporate Debtor: None.

ORDER***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. Background**

- 1.1 This Application bearing C.P.(IB) No.4082/MB/2018 was filed by Digizone Technology Private Limited, the Operational Creditor on 26.10.2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Sumtech Infosystem Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor supplied certain goods to the Corporate Debtor worth Rs.2,89,44,913/- *vide* invoices dated 24.02.2017 and 10.03.2017. Payment for goods supplied was to be made within 30 days from the date of delivery. The Corporate Debtor made payment of only Rs.19,49,229/-. The balance amount of Rs.2,69,95,684/- (Two Crore Sixty-Nine Lakhs Ninety-Five Thousand Six Hundred and Eighty-Four Rupees) fell due to the Operational Creditor on 27.03.2017, which remained unpaid.
- 1.3 The Operational Creditor issued Demand Notice dated 14.09.2018 to the Corporate Debtor, as required under Section 8 of the Code seeking payment of outstanding operational debt within 10 days of receipt of the notice. The Demand Notice was delivered to the Corporate Debtor on 18.09.2018. The Corporate Debtor *vide* letter dated 24.09.2018 informed that due to adverse financial conditions, it was unable to make immediate payment. The Corporate Debtor sought two months’ time for clearing the

dues of the Operational Creditor. As the Corporate Debtor failed to make payment of the aforementioned operational debt that was due and payable to the Operational Creditor, the latter preferred the present Application seeking the commencement of CIRP in respect of the Corporate Debtor.

2. Averments of the Operational Creditor

- 2.1 The Operational Creditor submits that goods were supplied to the Corporate Debtor as per invoices dated 24.02.2017 and 10.03.2017. The Corporate Debtor duly received the goods on 24.02.2017 and 10.03.2017 and the same was acknowledged by the Corporate Debtor on the said invoices.
- 2.2 The total invoiced amount was Rs.2,89,44,913/- (Rs.94,13,747/-+ Rs.1,95,31,166/-) out of which the Corporate Debtor made a part payment of Rs.19,49,229/-, resulting in outstanding balance of Rs.2,69,95,684/- (Two Crore Sixty-Nine Lakhs Ninety-Five Thousand Six Hundred and Eighty-Four Rupees).
- 2.3 The Operational Creditor submits that the invoices raised by it explicitly outlined the payment terms. According to these terms, the Corporate Debtor was obligated to make payment within 30 days of delivery of goods. Specifically, with reference to the invoice dated 24.02.2017, the Corporate Debtor was required to make the payment on or before 26.03.2017.
- 2.4 Considering the date of delivery of goods as 24.02.2017, the Operational Creditor considered the date of default as 27.03.2017. It is asserted that the Corporate Debtor has failed to fulfill its payment obligations for the goods covered by the above-mentioned two invoices.

- 2.5 The Operational Creditor supports the claim of non-payment by furnishing the Bank Statement covering the period from 26.02.2017 to 04.10.2018 and the Ledger Account of the Corporate Debtor maintained by the Operational Creditor for the period from 01.04.2015 to 31.10.2018.
- 2.6 The Operational Creditor submits that the Corporate Debtor had not raised any dispute with regard to the said goods or invoices.
- 2.7 The Operational Creditor has placed on record copy of a letter issued by its bank, namely, Oriental Bank of Commerce, certifying that the Operational Creditor has not received Rs.2,69,95,684/- from the Corporate Debtor in its account from 26.02.2017 till September, 2018.
- 2.8 It is submitted that Demand Notice dated 14.09.2018 was issued under Section 8 of the Code wherein unpaid operational debt of Rs.2,69,95,684/- owed by the Corporate Debtor to the Operational Creditor was demanded. The Corporate Debtor responded to the Demand Notice through a letter dated 24.09.2018, wherein it admitted and acknowledged the debt. The Corporate Debtor requested for two-month extension to make payment, but till the date of this Application, no payment had been received from the Corporate Debtor.
- 2.9 After exploring all avenues of recovery of its legitimate dues, the Operational Creditor was constrained to approach this Tribunal by way of the present Application under Section 9 of the Code.
- 2.10 The debt acknowledged has not been repaid by the Corporate Debtor, which amounts to default. There being a clear debt and default, the essential ingredients required to initiate CIRP against the Corporate Debtor such as 'operational debt' as defined under Section 5(21) and 'default' as defined

under Section 3(12) of the Code are proved, according to the Operational Creditor.

2.11 Further, the Hon'ble NCLAT, New Delhi in the case of ***Naresh Choudhary v. Streling Enamelled Wires Pvt. Ltd and Others (Company Appeal (AT) (Insolvency) No. 39 of 2023 & I.A. 137 OF 2023)*** by way of Judgment dated 16.08.2023, upheld the action of the Adjudicating Authority in admitting the application of the operational creditor filed under Section 9 of the Code on more or less identical facts.

2.12 It is clearly evident from the records produced that the operational debt amounting to more than Rs.1,00,000/- (One Lakh Rupees) is due and payable by the Corporate as on the date of filing the present Application. Further, there is an admission of default and outstanding liability by the Corporate Debtor in the correspondence annexed to the Application.

3. Contentions of Corporate Debtor

3.1 It is noticed from the record that the Operational Creditor duly served notice of the hearing to the Corporate Debtor through speed post/registered post on several occasions viz., 28.03.2019, 02.12.2022, 01.03.2023, 14.08.2023, 24.08.2023, 13.09.2023 and 12.10.2023. Despite proper service of notices, the Corporate Debtor remained absent.

3.2 The Corporate Debtor failed to provide a written reply during the ongoing proceedings and did not appear either personally or through authorised representative to make oral or written submissions. We, vide Order dated 31.07.2023, granted a final opportunity to the Corporate Debtor to submit its reply before the next date of hearing, failing which it was ordered that its

right to file reply would be forfeited. However, the Corporate Debtor did not make any representation on subsequent occasions, leading to the Corporate Debtor being set *ex-parte vide* order dated 17.10.2023.

3.3 In the absence of any pleadings or reply by the Corporate Debtor, the Application is disposed of based on the pleadings of the Operational Creditor and the materials available on record.

4. Analysis and Findings

4.1 Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor, our findings in the matter are as under:-

4.2 As stated above, despite multiple opportunities provided by this Adjudicating Authority to the Corporate Debtor to appear and present its case, the Corporate Debtor has failed to take any steps to furnish its reply or present any defence. Consequently, the Corporate Debtor was set *ex-parte* on 17.10.2023 and the matter was heard based on the pleadings in the Application and arguments presented by the Ld. Counsel for the Operational Creditor.

4.3 It is observed that the Operational Creditor supplied goods to the Corporate Debtor *vide* invoice No.DI/SB/MU/16-17/16 dated 24.02.2017 for Rs.94,13,747/- and invoice No.DI/SB/MU/16-17/26 dated 10.03.2017 for Rs.1,95,31,166/-. Out of the total invoiced amount of Rs.2,89,44,913/- (Rs.94,13,747/-+Rs.1,95,31,166/-), a part payment of Rs.19,49,229/- was made by the Corporate Debtor, leaving a balance outstanding amount of Rs.2,69,95,684/- (Two Crore Sixty-Nine Lakhs Ninety-Five Thousand Six Hundred and Eighty-Four Rupees). We hold that the said amount clearly

represents an 'operational debt' within the meaning of Section 5(21) of the Code.

- 4.4 It is observed that the Operational Creditor maintained an account with the Oriental Bank of Commerce. The bank has issued a letter certifying that the Operational Creditor had not received Rs.2,69,95,684/- in its account from 26.02.2017 till September, 2018 from the Corporate Debtor. It is noticed from the record that the aforesaid amount of operational debt owed by the Corporate Debtor to the Operational Creditor remains unpaid till date.
- 4.5 It is observed that in its reply to the statutory Demand Notice *vide* letter dated 24.09.2018, the Corporate Debtor had explicitly admitted its inability to clear the outstanding dues of the Operational Creditor due to adverse financial conditions and sought time for repayment. However, it is found that the default continues and no payment has been made by the Corporate Debtor to the Operational Creditor till date.
- 4.6 The amended date of default mentioned by the Operational Creditor in Part-IV of the Application is 27.03.2017. The present Application filed by the Operational Creditor on 26.10.2018 is, thus, well within the period of limitation under Section 238A of the Code read with Article 137 of the Limitation Act, 1963.
- 4.7 Since the Corporate Debtor in its letter dated 24.09.2018, in response to the statutory Demand Notice, had admitted and acknowledged the unpaid operational debt in respect of supply of goods and no dispute had been raised in this regard, the Operational Creditor can be found to have made out a case for admission of the present Application.

4.8 From the above discussions, it is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt to the Operational Creditor, exceeding Rs.1,00,000/- (One Lakh Rupees), being the threshold monetary limit under Section 4 of the Code prevailing on the date of filing of the present Application. Thus, this Application under Section 9 of the Code, preferred by the Operational Creditor, is found to be maintainable. The Application is complete and has been filed in the prescribed form. There is no payment of the unpaid operational debt till date. The Demand Notice has been delivered by the Operational Creditor to the Corporate Debtor and no notice of dispute has been received by the Operational Creditor. In view of the above, we find that all requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

4.9 The Operational Creditor has proposed the name of Mr. Naren Sheth, a registered Insolvency Professional with Registration Number IBBI/IPA-001/IP-P00133/2017-18/10275 and email mkindia58@gmail.com, as the Interim Resolution Professional (IRP). However, it is observed from the record that his Authorisation for Assignment expired in December,2023. In these circumstances, another Insolvency Resolution Professional (IRP) is now being appointed from the panel of Insolvency Professionals for the Mumbai Zone as circulated by the IBBI.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.4082/MB/2018 filed under Section 9 of the Code by Digizone Technology

Private Limited, the Operational Creditor, for initiating CIRP in respect of Sumtech Infosystem Private Limited, the Corporate Debtor is **admitted** .

We further declare moratorium under Section 14 of Code with consequential directions as follows:

I. We prohibit-

- 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 of 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 Securitisation 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 possession of the Corporate Debtor.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for the

liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.

- IV. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.
- V. That this Bench hereby appoints Mr. Surendranath Karat Thazhethethil Nair, a registered Insolvency Professional having Registration Number-IBBI/IPA-003/IP-N-00244/2019-2020/12835 and Email ID-surendranathnair@gmail.com as the Interim Resolution Professional (IRP) to carry out the functions under the Code. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of sections 17 and 25 respectively of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the Committee of Creditors (CoC) becoming available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the CoC.

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP including by way of email and WhatsApp.
- X. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER(JUDICIAL)

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