

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**CP(IB)/290(CHE)/2021**

*(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 **Madurai Krishna Network Private Limited***

**Jiangsu Yinhe Electronics Co. Ltd,**

Represented by its Authorized,  
Signatory Mr.M.Gopirajan,

**Communication Address:**

3/4, NSC Bose Nagar,  
Near Alex Nagar A Colony, Madhavaram,  
Tiruvallur Tamil Nadu- 600 051,

**Registered Office Address:**

No. 188, Nanhuan Road, Tangqiao,  
Zhangjiagang, Jiagsu, P.R.China.

*... Operational Creditor*

Vs.

**Madurai Krishna Network Private Limited,**

No.1, Malligai Malar Street,

Bharathi Nagar,

Krishna Colony,

Madurai – 625014.

*... Corporate Debtor*

*Order Pronounced on 22<sup>nd</sup> July 2022*

CORAM :

**JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : Mr.T.V.Suresh Kumar, Advocate*

*For Corporate Debtor : Mr.R.Julian, Advocate*

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by one **Jiangsu Yinhe  
Electronics Co. Ltd** (hereinafter referred to as 'Operational



*Creditor'*) on 11.11.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **Madurai Krishna Network Private Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company having its Registered address as No. 188, Nanhuan Road, Tangqiao, Zhangjiagang, Jiagsu, P.R.China and communication address as 3/4, NSC Bose Nagar, Near Alex Nagar A Colony, Madhavaram, Tiruvallur Tamil Nadu- 600 051. The application has been signed by Mr.M.Gopirajan, who has been authorized by Board Resolution dated 15.10.2021.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 on 28.10.2020 with CIN: U74900TN2010PTC077867 the registered office of the Corporate Debtor is situated at No.1, Malligai Malar Street, Bharathi Nagar, Krishna Colony, Madurai – 625014.



4. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of USD 6,38,157/- which is converted to INR based on foreign exchange rate as notified by RBI as on 21.08.2021 amounts to Rs.4,74,01,312/- as on 31.08.2021, which is due and payable by the Corporate Debtor. As regards the date of default as averred in Part-IV of the Application that as per the understanding of the parties 15% of the total purchase order value shall be paid as an advance and the balance 85% payment shall be paid within 180 days from the date of delivery. The dates on which the amounts under each set of invoices fell due, are mentioned as 01.09.2019, 30.11.2019 and 07.01.2020 all defaults were prior to 25.03.2020.

6. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default.

Following documents have been attached with the application:-

- a) Invoices relating to supply of materials and ledger account of the Operational Creditor.
- b) List of Bank accounts which states that the Operational Creditor has not received any payment from the Corporate Debtor.

7. It is submitted by the Ld. Counsel for the Operational Creditor that the Operational Creditor is engaged in the business of



manufacturing digital TV intelligent terminal equipment fields, new energy electric vehicle key components etc.,.The Corporate Debtor is a licensed Local Cable Operator ("LCO") distributing cable TV signals through fiber net and Set Top Boxes (STB).

8. It was further submitted that the Corporate Debtor vide its Purchase Order dated 01.10.2018 had ordered 66,000 pieces of DIGITALHD Set Top Box (STB) from the Operational Creditor and it was agreed between the parties that 15% of the total purchase order value shall be paid as an advance and the balance 85% payment shall be paid within 180 days from the date of delivery.

9. Accordingly, the Operational Creditor had supplied 66000 STBs and raised the following invoices

S.No	Date	Invoice No.	Amount (in USD)
1	18.02.2019	VO-190204001	80,500.00
2	18.02.2019	VO190204002	80,500.00
3	18.02.2019	VO- 190204003	91,310.00
4	15.05.2019	VO- 1900407001	1,26,384.60
5	15.05.2019	VO- 1900407002	1,26,612.32
6	18.06.2019	VO-190617001	1,26,500.00
7	18.06.2019	VO-190617002	1,26,500.00
<b>TOTAL</b>			<b>7,58,307.92</b>

10. It was further submitted that the Corporate Debtor had paid only the advance amount of USD 1,20,150/- and an amount of USD 6,38,157/- could have been paid within 180 days from the date of delivery is still unpaid.



11. Aggrieved by the inaction of the Corporate Debtor, the Operational Creditor had caused Demand Notice under Section 8(1) of I&B Code on 23.08.2021, demanding the outstanding payment. In reply, the Corporate Debtor has admitted that it had procured 66000 STBs from the Operational Creditor and had raised a frivolous contention that the corporate debtor had procured the STBs on behalf of another Company viz., Akshaya Dignet Cable Vision Private Limited (Akshaya) and as the Akshaya has not made a payment towards the purchase of the STBs, therefore the Corporate Debtor is unable to make a payment towards the outstanding dues.

12. *Per contra* the Ld. Counsel for the Corporate Debtor in the counter submitted that the Corporate Debtor had purchased the STBs from the Operational Creditor on behalf of the Akshaya based on the Memorandum of Understanding (MoU) dated 19.09.2019, entered into between the Corporate Debtor and the Akshaya. Accordingly, the Operational Creditor had delivered 66000 STBs in 3 shipments.

13. It was further submitted that after the down payment was made by the Akshaya as per the above MoU, the 1<sup>st</sup> shipment was sent by the Operational Creditor on 18.02.2019. It was contended that the Corporate Debtor was not intimated about the arrival of



shipment instead the Operational Creditor had directly intimated it to the Akshaya. Pursuant to that the Director of the Corporate Debtor has instructed the Operational Creditor to keep him informed about the future shipments.

14. It was contended that due to non- receipt payment from the Akshaya as per the above MoU, the Corporate Debtor had requested the Operational Creditor to hold the 2<sup>nd</sup> and 3<sup>rd</sup> shipments. Despite clear instructions from the Corporate Debtor, the Operational Creditor colluded with Akshaya and sent the 2<sup>nd</sup> shipment. Only on 31.06.2019, it was learned by the Corporate Debtor from the e-mail received from the Akshaya that Akshaya had directly remitted the Customs Duty on 04.06.2019 and took the above said shipments to its warehouse without an E-way Bill.

15. It was further contended that after reception of the 2<sup>nd</sup> shipment the Akshaya had stopped making payments to the Corporate Debtor aggrieved by the action of the Akshaya the Corporate Debtor has filed CP(IB)/122/2021 under Section 9 of I&B code before Bench-I of this Tribunal against the Akshaya.

16. It was further contended that the Akshaya had forced the Corporate Debtor to sign the Joint Compromise Memo dated 24.03.2022, entered into between the Corporate Debtor and the Akshaya and further submitted that based on the above memo the



Bench-I of this Tribunal had dismissed the CP(IB)/122/2021 for non-prosecution. In light of the above, the Corporate Debtor alleges that there is a pre-existing dispute between the Corporate Debtor and the Operational Creditor and the application is not maintainable.

17. In response to the above contentions the Ld. Counsel of the Operational Creditor in the rejoinder submitted that the STBs are imported from the Operational Creditor by the Corporate Debtor. After landing of all the consignments the Corporate Debtor has filed the necessary Bill of Entries with the Customs and cleared the goods. There is no dispute about the receipt of the goods from the Operational Creditor. It is further submitted that as per section 46 (1) of the Customs Act 1962, the importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting (Electronically) (on the Customs automated systems) to the proper officer, a Bill of Entry for Home Consumption or Warehousing". After receipt of the STBs, no dispute raised has been raised by the Corporate Debtor about the quality or quantity of the STBs.

18. It was further submitted that the disputes narrated by the Corporate Debtor are their internal affairs and the Operational Creditor has no role to play and the alleged disputes were settled



in the Joint Compromise Memo dated 24.03.2022. Moreover, the Corporate Debtor has admitted the debt and default in its reply to the demand notice. In view of the above, sought admission of this application.

19. We have heard learned counsel for both sides. On perusal of the documents placed on record, it is seen that the Purchase order dated 01.08.2018 was made in the name of Corporate Debtor viz., **Madurai Krishna Network Private Limited**. In all the Bill of Landing and Bill of Entry, the importer detail depicts the name of the Corporate Debtor.

20. It is noted from para 12 of the counter that on 04.06.2019 the Corporate Debtor learnt that Akshaya had taken the STBs without the permission of the Corporate Debtor by influencing the customs officers. But in the e-mail dated 05.10.2020, 08.10.2020 and 14.11.2020 the Corporate Debtor and the Operational Creditor conversed as follows

From: Admin\_mktv  
Date: 2020-10-05 21:45  
To: Ivan.II  
Subject: Re: Declaration to avail credit to Yinhe for Krishna Digital  
Hello Ivan,

1. I have told you earlier to take action on stb, to get the payment from akshaya as they are not settling the complete dues, but there is no reply from you or you are not taking action to get the full payment from them.  
我早些时候告诉过您对stb采取行动，从akshaya那里获得付款，因为他们没有解决全部应付款，但没有收到你的答复，或者您没有采取措施从他们那里获得全额付款。

2. Send me the complete details on outstanding due on akshaya stb till date  
请寄给我有关akshaya stb到期的应付款的完整详细信息

3. Akshaya bought 66k boxes from you through me, having many transactions before and after. If you can get the payment from akshaya directly, is it ok for you? akshaya is ok to transfer directly to you.  
Akshaya通过我从您那里购买了66 k盒，前后都有很多交易，如果您可以直接从akshaya处获得付款，那么可以吗？ akshaya可以直接转让给您。



**From:** IVAN,LU <ivan.lu@yinhe.com>  
**Sent:** 08 October 2020 12:35  
**To:** Admin ,mkty <admin@mktelevision.com>  
**Cc:** Harichinna <harichinna@akshayadigital.com>  
**Subject:** Re: Re: Declaration to avail credit to Yinhe for Krishna Digital

Dear Mohana

Thanks for your mail.

pls check the below complete outstanding as below:

The total over due payment is USD759000-ADV 120150=Balance USD638850

This transaction is between Yinhe and MKTV, also Sinosure is in MKTV's company Title, we don't want to be involved in your internal matters, that is why I cc this mail to Mr.Hari from Akshaya pls discuss it internally and get back to us, we just want our payment back. Kindly understand our position.

INVOICE NO.	MODEL NO.	RCS	UNIT PRICE IN USD	AMOUNT	PAYMENT RECEIVED DATE	RECEIVED AMOUNT
NO-190108002	YH-777	22000	11.5	253000	2018/12/10	42000
NO-190411027	YH-777	22000	11.5	253000	2018/12/11	36750
NO-190507034	YH-777	22000	11.5	253000	2019/1/29	41400
TOTAL PAYMENT				759000		120150

**Re: Re: Declaration to avail credit to Yinhe for Krishna Digital**

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Admin ,mkty <admin@mktelevision.com>  
 To: "IVAN,LU" <ivan.lu@yinhe.com>

Sat, Nov 14, 2020 at 9:52 AM

IVAN

Even after your payment due email on Oct-8 and after my numerous analysis, hari did not transfer the full amount.

Also on pressing on the payment, hari has blocked the SMS for my Cable and removed my 3 Satellite channels from network.

Even though I remain a director and the shareholder of Akshaya, I've been dummed by hari & Srinivasan and the management is inappropriate.

Now I am limited to only one option, to instruct you to temporarily disconnect or block a part or full the supplied SIB to recover payment or Court is the remedy. So I instruct you to do it immediately.


If you do the above, and still not able to recover, only then I will proceed to Court for recovery so that your funds are released completely asap.

If you are not willing to or able to I will move away from this, I'm ready to face the consequences and I will prove that supplier has failed to block and recover the fund with this email.

Thank you,  
 S Mohana poseeth.

a conjoint reading of the above conversation, it is observed that the Director of the Corporate Debtor is a shareholder and Director in the Akshaya and the dispute is between the Corporate Debtor and the Akshaya. It is also noted that the Corporate Debtor had admitted that due to the default of the Akshaya the Corporate Debtor is unable to make its payment towards the Operational Creditor.

21. Here it is relevant to refer to the decision of the Hon'ble Appellate Authority in **Chetan Sharma Vs. Jai Lakshmi Solvents**, wherein it was observed as follows



"15. ...the 'dispute' under Section 5(6) of the 'I&B Code' has to be between the 'Corporate Debtor' and the 'Operational Creditor'..."

which makes clear that the dispute with third parties cannot be taken as a dispute as stated in Section 5(6) of the IBC, 2016.

22. Apart from the above it is seen that in para 9 of the Joint Compromise Memo dated 24.03.2022 entered into between the Corporate Debtor and the Akshaya it was recorded as follows

*"9. The Creditor (**Corporate Debtor herein**), Corporate Debtor(**Akshaya**), Confirming Party 1 and Confirming Party 2 expressly agree that the Creditor shall take it upon itself to settle within 3 months of signing this joint memorandum of compromise, the claim of Jiangsu Yinhe Electronics Co. Ltd.,(Chinese Supplier) in respect of the aforesaid 66,160 HD digital Set Top Boxes ultimately purchased by the Corporate Debtor from the Creditor which forms basis for the claim made under C.P.No.122/(IB)/CB/2020. It is further expressly admitted by the creditor that CP(IB) 290 of 2021 has been filed by the Chinese Supplier against the Creditor before this Hon'ble Tribunal towards claims relating to the same transaction being sale of the aforesaid 66,160 HD digital Set Top Boxes which ultimately was purchased by the Corporate Debtor from the Creditor and that on payment of the sums mentioned under Paragraph 4 & 5, the Creditor shall undertake to indemnify the Corporate Debtor of any and/or all claims, actions, losses, etc., that shall arise as a consequence of non-fulfilment of obligations by the Creditor by not clearing the dues with the Chinese Supplier under the terms detailed under this paragraph."*

Reading the above makes clear that the dispute between the Corporate Debtor and the Akshaya was also settled.

23. 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 proposed the name of Interim Resolution Professional, **Ms.Asha Rathod** with **Reg.No. [IBBI/IPA-001/IP-P-02017/2020-2021/13108]** (email id:- **asharathod86@gmail.com**) is appointed as the Interim Resolution Professional (IRP) from the panel of IRP recommended by IBBI for the period 01.07.2022 to 31.12.2022, upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 22.05.2023. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,19,18 of the Code and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. As a consequence of the Application being admitted in terms of Section 9 of the Code, moratorium as envisaged under



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 Operational 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.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the



time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

25. However, during the pendency of moratorium period in terms of Section 14(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage 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.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central



Government in consultation with any Operational sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

26. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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.

27. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as





prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 19, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

29. The IRP shall comply with the provisions of Sections 13 (2), 15, 19 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

30. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. Based on the above terms, the Petition stands **admitted** in terms of Section 9 of the Code and the Moratorium shall come into



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 shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned. Operational Creditor is directed to pay to IRP a sum of Rs. 2,00,000/- (Rupees Two Lakh) in order to meet the initial expenses.

32. The IRP is directed to file the 1<sup>st</sup> Progress Report before this Tribunal on or before the 45<sup>th</sup> day of initiation of CIRP by this Adjudicating Authority.

33. Post this CP/IB/290/CHE/2021 for hearing on **05.09.2022**.

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

**JUSTICE (RETD) S.RAMATHILAGAM**  
MEMBER (JUDICIAL)

Gopishankar. D