IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

CP/357/IB/2018

Under Section 9 r/w Rule 6 of the IBC, 2016

In the matter of M/s. Noni Bio-Tech Private Limited

M/s. Glocaledge Consultants Private Limited
---Operational Creditor

V/s

M/s. Noni Bio-Tech Private Limited

---Corporate Debtor

Order delivered on: 24.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: Ms. Anachal Nichani, *Advocate*
For the Corporate Debtor : **Non-Present** on the date of hearing

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order pronounced on: 24.09.2019

Under consideration is a Company Petition filed by M/s. Glocaledge Consultants Private Limited (in short **"Operational Creditor"**) against M/s. Noni Bio-Tech Private Limited (for brevity, **"Corporate Debtor"**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency

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Resolution Process **(CIRP)** on the ground the Corporate Debtor defaulted in paying the amount of Rs.13,43,168/- with interest thereon as stated in the Company Petition.

2. The learned counsel for Operational Creditor submitted that this Operational Creditor entered into a Master Services Agreement on 01.07.2014 for providing Ads, Promotion, Website, Growth, Relationship and Campaign services to the Corporate Debtor. Pursuant to the Statement of work, the Operational Creditor raised six invoices on different dates for a total value of Rs.15,24,240/- for which the Corporate Debtor partially paid Rs.1,98,333/- for the above invoices as specified hereunder:

Date	Amount in Rupees
01.02.2015	1,08,333
01.03.2015	22,500
31.03.2015	22,500
01.05.2015	22,500
01.06.2015	22,500
Total	**1,98,333**

3. After accounting for the above sums, the Corporate Debtor is yet to pay a sum of Rs.13,25,907/- which ought to have been paid in the financial year 2014-2015.

4. It is further submitted that the Corporate Debtor has acknowledged on 01.07.2015 that a sum of Rs.15,73,816/- is due from them. Transaction-1 debt fell due on different dates starting from 1st February 2015 and Transaction-2 amount due should have been deposited by the Corporate Debtor with the Income Tax Department by April 30th 2014. Moreover, vide e-mails dated 30.06.2015, 21.07.2015, 07.01.2016, 02.05.2016 and 06.06.2017, the Corporate Debtor promised to repay the amount. Subsequent to the events mentioned in the above transactions, the Operational Creditor issued Section 8 Notice to the Corporate Debtor on 31.10.2017 demanding repayment of operational debt due. However, the Operational Creditor has neither received any payment of the amount due nor any notice of dispute in relation to the amount due. The Operational Creditor has furnished Bank Certificate dated 09.02.2018 as a proof for not receiving any amount from the Corporate Debtor.

5. On perusal of material documents placed before this Bench, it appears that this Corporate Debtor having not paid the outstanding debt despite Operational Creditor giving additional time to settle the dues and reminded the Corporate Debtor to pay the claim amount to the Operational Creditor, finally, when no payment came from the Corporate Debtor, this Operational Creditor issued Section 8 Notice on 31.10.2017 demanding payment of the amount aforesaid. On receipt of Section 8 Notice, the Corporate Debtor in their reply dated 6th February 2018 stated that the services rendered by the Operational Creditor were not satisfactory and the same was disputed from the beginning and that the amount Rs.13,25,907/- claimed under this Petition is not due from the Corporate Debtor. To substantiate this argument, the Corporate Debtor has not placed sufficient material before this Adjudicating Authority.

6. As per Clause 3 Sub clause 3.1 of the Master Services Agreement entered into between the Operational Creditor and Corporate Debtor ***"all the invoices are to be paid on receipt"***. It is seen that there is no security held by the Operational Creditor with

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respect to the debt. There has been no order of a Court, Tribunal or Arbitral Panel adjudicating on the default.

6. When this matter came up for hearing, none appeared on behalf of the Corporate Debtor on 04.02.2019, 06.06.2019, 13.06.2019, 19.06.2019, 21.06.2019, 12.07.2019, 26.07.2019, 29.07.2019, 20.08.2019 and 21.08.2019. However, on 30.08.2019, both the Corporate Debtor and Operational appeared before this Bench, signed and filed a joint memo praying for an adjournment as the Corporate Debtor wishes to settle the matter and undertook to pay Rs.5.5 lakhs to the Operational Creditor by 16th September 2019. Further, the Corporate Debtor submitted that the asset value of the company is more than its liabilities and sought an adjournment to settle the matter. However, no payment has been made towards the outstanding amount by the Corporate Debtor.

7. On looking at the facts available, we are of the view that this Operational Creditor has proved existence of debt and default. Moreover, no dispute has been raised by the Corporate Debtor before the receipt of Section 8 Notice. Therefore, this Bench is inclined to

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admit this Company Petition by appointing Ms. J. Karthiga as Interim Resolution Professional (IRP) looking at the consent given by the Operational Creditor stating that this Operational Creditor would pay remuneration to the IRP and the expenditure thereto until constitution of CoC.

8. In view of the aforesaid reasons, we hereby admit CP/357/IB/2018 with the directions as follows:

(I) That Moratorium is hereby declared prohibiting all of the following actions, namely,

(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 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 (SARFAESI Act);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the 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 moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of this Order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints **Ms. J. Karthiga as Interim Resolution Professional, having (Reg. No. IBBI/IPA-001/IP-P00752/2017-2018/11284), Sri Nivas, No.1, Old No. 1052, 41st Street, Korattur, Chennai-600 080, E-mail: karthigasri@holtmail.com, Mobile No: 8754402125** with her consent to carry the functions as mentioned under The Insolvency & Bankruptcy Code.

9. Accordingly this petition is hereby **admitted.**

10. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

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(S. VIJAYARAGHAVAN)
Member (Technical)

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

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