



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V**

Company Petition No. (IB)- 295/(ND)/2022

**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:

M/s. Sun Infinity Devices
Through its Proprietor Mr. Hanish Sahni

.... Operational Creditor

Vs.

M/s. Sunstrike Telecom Private Limited

.... Corporate Debtor

CORAM:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

**Counsel for Mr. Prateek Gupta, Adv.
Petitioner/Operational
Creditor:**

**Counsel for Corporate Ex-Parte
Debtor**

Date: 10.02.2023



ORDER

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

The instant petition was filed by M/s. Sun Infinity Devices (hereinafter referred as 'Applicant'/ 'Operational Creditor') through its Proprietor Mr. Hanish Sahni, having office at 7th Floor, Unit-D, Gemstar Tower, 23 Man Lok Street, Hunghom, Kowloon, Hong Kong under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Sunstrike Telecom Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Principal Amount of Rs.28,22,04,725/- only.

2. The Respondent Company M/s. Sunstrike Telecom Private Limited having CIN:U51909DL2005PTC135684 was incorporated under the provisions of the provisions of the Companies Act, 1956 having its registered office situated at WZ-207, Second Floor, Shiv Nagar Extensions, Delhi-110058. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.



3. Briefly stated the facts of the present case as averred by the applicant are that the applicant is engaged in the business of business of supplying mobile phones and its accessories and the Corporate Debtor is in the business of mobile phone distributors in India as well as having presence in Hong Kong, United Kingdom, Canada and USA. It is submitted that the Corporate Debtor had placed a verbal purchase order from 2009 to 2018 to the Applicant for supply of the "Mobile Phones" of various models along with accessories. The Applicant in compliance of the purchase order had supplied the material to the Corporate Debtor from 2009 to 2018 and raised its Invoices along with the packing list of the material and freight payment in confirmation for the same upon the Corporate Debtor.

4. Further, it is submitted that as per the terms and conditions mentioned in each of the Invoices, the payment was to be made within 60 days of the Air-way Bill. It is submitted that the Corporate Debtor was maintaining a running account with the Applicant and always made payment on piece-meal basis, without any reference to the Invoices and the last payment made by the corporate debtor towards the invoices raised by the Applicant was on 07.08.2018. It is submitted that thereafter, the Corporate Debtor had failed to make any payment to the Applicant towards the outstanding invoices.



5. It is submitted that the Corporate Debtor had defaulted in payment of the total debt of US \$5096063 which at the conversion rate prevailing as on the date of the present application comes to Indian Rupees 38,22,04,725 /-. In view of default on part of the Corporate Debtor to make the payment to the Applicant against the material so supplied the Applicant had raised Demand Notice dated 17.02.2022, under Section 8 of the Code upon the Corporate Debtor and the same was duly delivered upon the Corporate Debtor by email on 22.02.2022 and by hand delivery with acknowledgement on 24.02.2022. The Corporate Debtor in response to the Demand Notice issued dated 17.02.2022 by the Applicant, had given its reply dated 01.03.2022 to the demand notice and admitted its liability towards the Applicant and sought time to make the payment.

6. We have heard Ld. Counsel for the Applicant and perused the averments made in the application filed by the Applicant. The relevant documents annexed with the Application have been examined.

7. Notice was issued to the Corporate Debtor by this Tribunal vide order dated 21.04.2022. The Applicant in compliance of the order dated 21.04.2022. has issued notice to the Respondent by Speed Post on 27.04.2022 as well as by Email to the Respondent on 04.05.2022. Despite giving several opportunities to the Corporate Debtor to appear and represent in the matter, the Corporate Debtor failed to appear in the



present application, and resultantly the Corporate Debtor was set ex-parte vide order dated 25.08.2022 of this Adjudicating Authority,

8. On-going through the submissions made by the Learned Counsel for both the Applicant and on perusing the documents placed on record, this Adjudicating Authority is of the considered opinion that the “debt and default” in this case are proved beyond doubt as the Corporate Debtor has acknowledged and assured to repay the overdue amount in its reply dated 01.03.2022 to the demand notice dated 17.02.2022 sent by the applicant.

9. Further, the Corporate Debtor in its reply dated 01.03.2022 to the demand notice dated 17.02.2022, had clearly acknowledged the outstanding liability. The relevant extract of the reply dated 01.03.2022 to Demand Notice is reproduced below:-

“ It is to be submitted that our client is maintaining cordial relationship with you since past but due to the outbreak of the Coronavirus 2019 (COVID-19), which was later declared a pandemic by the World Health Organization, our client's business got disrupted and facing the financial crisis' Our client is one of the leading worldwide mobile phone distributors in the region, having diversified Sunstrike Group will presence in Hong Kong, Limited Kingdom, Dubai, Canada and USA but currently it's into the financial trouble .

Since, the outstanding amount is very high and beyond the current payment capacity, it is hereby requested to kindly grant time for arranging the funds.



Our client is unable to make payments within the due dates of the invoices and will make the payments as soon as our client will be able to arrange the funds. Your cooperation till then will be appreciated in this unprecedented event.”

10. Further, on perusal of the invoices and the account maintained, we come to conclusion that the nature of debt is a “Operational Debt” as defined under section 5 (21) of the Code and the amount of outstanding Operational Debt is above the pecuniary threshold limit of Rs.1 Crore as envisaged under Section 4 of the Code, 2016. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Corporate Debtor. Therefore, the two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 9 of the Code, 2016 have been met in this case.

11. The Hon’ble Supreme Court in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34,** wherein the Hon’ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9.

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*



(iii) *Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

12. With regard to the corporate debtor’s submission of seeking time to repay the operational debt due to the applicant, it is a settled proposition of law that an application under Section 9 of the Code, 2016 has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.

13. At this juncture, it will be advantageous to refer to the judgement dated 12.07.2022 of the Hon’ble Supreme Court in the case **Vidharbha Industries Power Limited vs. Axis Bank Limited [Civil Appeal No. 4633 of 2021]** wherein the Hon’ble Supreme Court observed as follow: -

“74. Sub-section (5) of Section 9 of the IBC provides that the Adjudicating Authority (NCLT) shall, within 14 days of the receipt of an application of an operational creditor under sub-section (2) of Section 9, admit the application and communicate the decision to the Operational Creditor and the Corporate Debtor, provided, the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied. The Adjudicating Authority (NCLT) must reject the application of the Operational Creditor in the circumstances specified in clauses (a) to (e) of Section 9(5)(ii) of the IBC.

An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the



application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.”

14. Having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)- 295/(ND)/2022) stands admitted and the CIRP is hereby initiated against M/s. Sunstrike Telecom Private Limited.**

15. The applicant in Part -III of the application has proposed the name of IRP, accordingly, this bench appoints Mr.Kamall Ahuja, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01025/2020-2021/10006 and email id – nclt.srassociate@lawmax.in. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 is attached with the application. However, the Authorization for Assignment attached with the application was valid from 13.04.2021 to 13.04.2022, therefore the IRP is directed to file



the renewed Authorisation for Assignment Certificate and other required disclosures be made as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 with this Adjudicating Authority within a period of 3 days from the Pronouncement of the order.

16. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Kamall Ahuja to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however shall be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 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 corporate debtor.”

(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution



Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

20. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
21. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(P.S.N. PRASAD)
MEMBER (JUDICIAL)