

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**CP No.2940 (IB)/MB/C-IV/2019**

Under Section 9 of the IBC, 2016

In the matter of

**Hardik Pankaj Jotangia**

...Operational Creditor

v/s.

**Nilitech Software Private Limited**

...Corporate Debtor

**Order Delivered on 25.10.2019**

**Coram:** Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner : CS Varada Prasad Bhide.

For the Respondent : CS Maithili Nandedkar.

**Per: Ravikumar Duraisamy, Member (Technical)**

**ORDER**

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Mr. Hardik Pankaj Jotangia an individual person** ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Nilitech Software Private Limited** ("the Corporate Debtor") [CIN: U72300MH2010PTC201295].



2. The Corporate Debtor is a company incorporated on 25.03.2010 under the Companies Act, 1956, as a Private Company limited by shares with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Shop No. 003, Ground Floor, Pooja Nagar, Building No. 2 CHS Ltd., Cabin Cross Road, Bhayander East, Thane, 400014. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed on 08.08.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹8,50,000.00 (Rupees Eight Lakh Fifty Thousand only) as principal and ₹1,01,441.00 (Rupees One Lakh One Thousand Four Hundred and Forty One only) as interest as on 28.10.2018, totalling to ₹9,51,441.00 (Rupees Nine lakh Fifty one thousand Four Hundred and Forty One only) which is the date of default as per terms and conditions of invoice dated 28.09.2018 payment shall be made within 30 days of invoice.
4. The Operational Creditor states that the Corporate Debtor entered into an agreement dated 20.06.2018 with the Operational Creditor for development of software on the terms and conditions as more particularly mentioned in the Agreement (pp. 43-52 of the petition).
5. The Operational Creditor submitted that the purchase order dated 21.06.2018 was issued by the Corporate Debtor (**Exhibit '4'** to the petition at pp.53-54).



6. The Operational Creditor raised invoice dated 28.09.2018 (**Exhibit '5'** to the petition at p.55) for Rs.8,50,000/- (Eight Lakh Fifty Thousand Only), as Operational Creditor didn't receive payment within 30 days as per condition in invoice, Operational Creditor issued First Notice for payment dated 30.11.2018 (**Exhibit '6'** to the petition at p.56) and Second Notice for payment dated 08.01.2019 (**Exhibit '7'** to the petition at p.57).
7. The Operational Creditor submits that it received a letter dated 30.01.2019 (**Exhibit '8'** to the petition at p.58) from the Corporate Debtor stating that Corporate debtor received invoice dated 28.09.2018 and will shortly make payment for same. The Operational Creditor further submits that Corporate Debtor accepts and confirms liability vide ledger account confirmation dated 01.04.2019 for Rs. 8,50,000/- (**Exhibit '9'** to the petition at p.59)
8. The Operational Creditor had served a Demand Notice in Form 3 dated 28.06.2019 to the Corporate Debtor (**Exhibit '1'** to the petition at pp.39-41) in terms of section 8 of the IBC and proof of service is submitted (pp. 60). The Corporate Debtor has not replied to the Demand Notice.
9. In its reply to the petition dated 17.10.2019, the Corporate Debtor does not dispute the liability towards Operational Creditor but due to slow down in the economy and the overall industrial scenario, the Corporate Debtor is not in a position to pay of its liability.



10. We have heard the arguments of both sides and perused the records.
11. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
12. The Operational Creditor also proposed Mr. Bhavesh Manukhbhai Rathod as Interim Resolution Professional (IRP).
13. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing **CP No.2940 (IB)/MB/C-IV/2019** filed by **Hardik Pankaj Jotangia**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for CIRP against **Nilltech Software Private Limited** ("the Corporate Debtor") [CIN: U72300MH2010PTC201295], the Corporate Debtor, is **admitted**.
  - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
    - (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Operational Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,
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- (i) 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;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.



- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Bhavesh Manukhbhai Rathod**, Registration No.IBBI/IPA-001/IP-P01200/2018-19/11910, having address at A/101, Shelter CHSL, CSC Road, Opp Shakti Nagar, Dahisar East, Mumbai-400068, is hereby appointed as IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated under sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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.
- (h) The Operational Creditor shall deposit a sum of ₹1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).



- (i) The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order. A copy of this Order shall also be communicated to the IRP immediately such appointment.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**RAVIKUMAR DURAISAMY**  
Member (Technical)  
25.10.2019

Sd/-

**RAJASEKHAR V.K.**  
Member (Judicial)



Certified True Copy  
Copy issued "free of cost"  
On: 11/12/2019

  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench