

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.120/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Dimension Data India Pvt. Ltd.
1701-1704, 'B' Wing,
One BKC, G-Block,
Bandra Kurla Complex,
Bandra East,
Mumbai – 400 051.

- Petitioner/Operational Creditor

Versus

M/s. NxtGen Datacenter and Cloud
Technologies Private Limited
Regd. Off: Plot No.72 & 73,
EPIP Area, Hoodi Village,
K.R. Puram, Hobli, Whitefield,
Bangalore – 560 066.

- Respondent/Corporate Debtor

Date of Order: 29th July, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Dore Raj
For the Respondent : Ms. Ayshwarya Chandar

ORDER

Per: Dr. Ashok Kumar Mishra, Member (Technical)

1. C.P. (IB) No.120/BB/2018 is filed by M/s. Dimension Data India Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 read with Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia

seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. NxtGen Datacenter and Cloud Technologies Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for a total outstanding amount of Rs.10,89,10,293/-, which includes principal amount of Rs.9,60,58,611/- due under the Asset Purchase Agreement and Rs.1,28,51,682/- being interest calculated on Rs.9,60,58,611/- @ 12% p.a. till April 30, 2018.

2. The case was listed for hearing on various dates viz. 09.07.2018, 18.07.2018, 06.08.2018, 27.08.2018, 10.09.2018, 27.09.2018, 24.10.2018, 29.11.2018, 21.12.2018, 24.01.2019, 21.02.2019, 28.03.2019, 23.04.2019, 28.05.2019, 04.06.2019, 21.06.2019, 08.07.2019, 15.07.2019, 22.07.2019, 26.07.2019 and 29.07.2019 . The case stands adjourned on those dates due to various reasons at the request of the parties for completion of the pleadings; to settle the issue, etc.
3. Heard Shri Dore Raj, learned Counsel for the Petitioner and Ms.Ayshwarya Chandar, learned Counsel for the Respondent. We have carefully considered the pleadings of the parties and extant provisions of the Code.
4. Learned Counsel for the Petitioner has submitted that the Tribunal may permit the Petitioner to withdraw the instant Company Petition with a liberty to make its claim before the IRP appointed in C.P. (IB) No.153/BB/2017 with respect to the Corporate Debtor. He has also filed a Memo for Withdrawal dated 29.07.2019 (which is taken on record), which reads as under:

"The undersigned Counsel appearing for the Operational Creditor submits that this Hon'ble Tribunal on 24.07.2019 has admitted an application 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 CP (IB) No.153/2017 against the above named Corporate Debtor by appointing Insolvency Resolution Professional Mr.Srinivas Thatikonda (IBBI/IPA-002/IP-N00631/2018-19/11886) who has called upon the Creditors by Paper Publication in The Hindu, dated 27.07.2019 to submit their claims with proof on or before 08.08.2019. Therefore, the Operational Creditor may be permitted to withdraw the application consequently allowing them to file their claims before the appointed Insolvency Professional in the interest of justice and equity."

5. Since the case is not yet admitted and this Tribunal has already initiated Corporate Insolvency Resolution Process (CIRP) in C.P. (IB) No.153/BB/2017 vide order dated 24.07.2019 and appointed Shri Srinivas Thatikonda having Registration No.IBBI/IPA-002/IP-N00631/2018-19/11886 as the Interim Resolution Professional (IRP). Therefore, the instant Company Petition is not maintainable and the claim made in the instant Company Petition can be made before the IRP appointed in C.P. (IB) No.153/BB/2017.
6. In the result, C.P. (IB) No.120/BB/2018 is disposed of as withdrawn by permitting the Applicant/Petitioner to make its claim before Shri Srinivas Thatikonda, IRP appointed in C.P. (IB) No.153/BB/2017 vide order dated 24.07.2019 within a period of one week from the date of receipt of copy of the order, and thereafter, IRP is directed to consider the claim of the Petitioner in accordance with law and communicate his decision to the Petitioner immediately thereafter. No order as to costs. *IA No. 209/2019 is also disposed of.*


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna