

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

CP/IB/67/CHE/2021

*(filed under Section 9 Rule 6 of the Insolvency and Bankruptcy
(Application to adjudicating Authority) Rules, 2016)*

In the matter of **Felix Infotech Private Limited**

BEETEL TELETECH LIMITED

(Erstwhile M/s. Brightstar Telecommunications India Limited)
First Floor, Plot No.16, Udyog Vihar,
Phase IV, Gurgaon, Haryana – 122 015

... Operational Creditor

- Vs -

FELIX INFOTECH PRIVATE LIMITED

67/7, Kalaimagal Nagar, Third Main Road,
Ekkaduthangal,
Chennai – 600 032

... Corporate Debtor

CORAM:

Justice (Retd) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Kunwar Pal Singh, Advocate
For Respondent : Vairava Subramanian, Advocate

Order pronounced on 18th July 2022

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under Adjudication is an Application that has been filed by

Beetel Teletech Limited (hereinafter referred to as 'Operational



Creditor") under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Felix Infotech Private Limited** (hereinafter referred to as '*Corporate Debtor*'), to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out the details of the Applicant from which, it is evident that the Operational Creditor is a Company incorporated under the provisions of the Companies Act, 1956. From Part-II of the Application it is seen that the Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and the registered office of the Corporate Debtor as per the Application is stated to be situated at 67/7, Kalaimagal Nagar, Third Main Road, Ekkaduthangal, Chennai - 600032. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. Part IV of the Application states that the Operational Creditor has claimed a principal sum of Rs.2,53,34,992/- and interest of Rs.43,85,004/- and in all aggregating to a sum of Rs.2,97,19,996/-.

4. The Learned Counsel for the Applicant submitted that the Corporate Debtor and the Operational Creditor had executed a Proposal Form for the supply of goods by the Operational Creditor to the Corporate Debtor and in pursuance of the same the Corporate Debtor have raised Purchase Orders vide purchase order no. 42 dated 08.11.2019 and Purchase Order no. 41 dated 15.11.2019 upon the Operational Creditor for the procurement of various goods.

5. It was submitted that as per the agreed payment terms the payment for the aforesaid supplies were to be made with 90 days from the date of each invoice. However, the Corporate Debtor has failed to make the payment within the agreed timelines against each invoice. It was submitted that the parties have agreed that in case the Corporate Debtor failed to remit the amounts towards the invoices within 90 days, interest at 18% P.A. would be payable to the Operational Creditor.

6. It was submitted that the Operational Creditor has raised the Tax invoices against the supply of the goods in the name of the Corporate Debtor and the Corporate Debtor defaulted the payment against the following invoices:

PURCHASE ORDER No.	TAX INVOICE No.	DATE	DUE DATE	AMOUNT IN INR
41	RV1927811522	16.11.2019	14.02.2020	2,12,54,717.67
41	RV1933810603	04.12.2019	03.03.2020	80,37,774.14
42	RV1933810072	27.11.2019	25.02.2020	79,67,435.52
42	RV1933810173	28.11.2019	26.02.2020	33,80,124.16
42	RV1933810412	30.11.2019	28.02.2020	40,80,292.74
42	RV1933810602	04.12.2019	03.03.2020	38,87,142.78

7. It was submitted that on 18th May 2020, the Corporate Debtor admitted the outstanding and has also issued a balance confirmation certificate verifying the principal outstanding as per their books of accounts as Rs.4,30,17,827/- on 31.03.2020 due and payable to the Operational Creditor.

8. It was submitted that in discharge of the Corporate Debtor's liability, certain cheques were issued to the Operational Creditor and all the said cheques were returned dishonoured upon presentation by the Operational Creditor for various reasons on 20.05.2020. It was submitted that a complaint under Section 138 of the Negotiable Instruments Act, 1881 has been filed and the same is also pending adjudication before the Learned Judicial Magistrate 1st Class, Gurugram.

9. It was submitted that the Corporate Debtor has made the following payments to the Operational Creditor after 31.03.2020 i.e. after the balance confirmation and after the dishonour of the cheque;

S. No.	DATE	AMOUNT RECEIVED (INR)
1	27.07.2020	24,60,417/-
2	25.08.2020	31,87,143/-
3	24.09.2020	50,00,000/-
4	06.10.2020	29,67,436/-
5	09.10.2020	20,00,000/-
6	23.10.2020	15,00,000/-
7	30.10.2020	10,92,000/- (through credit note from OEM)
8	07.11.2020	15,00,000/-
TOTAL		2,04,06,996/-

10. It was submitted that the Corporate Debtor has time and again assured to the Operational Creditor that the outstanding amount would be cleared vide various emails including emails dated 13.07.2020, 17.07.2020 and 12.08.2020, however the Corporate Debtor has failed to make the payment of the outstanding liability to the Operational Creditor.

11. It was submitted that on 18.08.2020 a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued upon the Corporate Debtor by the Operational Creditor and that it was submitted that 6-part payments were made (*and a credit note was issued*) after the issuance and service of the aforementioned Demand notice.

12. It was submitted that the Corporate Debtor upon multiple failures to pay despite opportunities has belatedly i.e. after passage of 57 days (excluding statutory period of 10 days) choose to respond

to the Demand notice on 28.10.2020 vaguely refuting the claims and raising false and frivolous grounds. In reply to the same, it was submitted that the Operational Creditor has sent a rejoinder notice on 10.12.2020.

13. It was submitted that as on 15.04.2021 the outstanding liability is Rs.2,97,19,996/- and that the Corporate Debtor has failed to repay the said operational debt and under the said circumstances the learned Counsel for the Operational Creditor prayed for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

14. The Respondent has filed counter and submitted that the Operational Creditor has delayed the delivery of the materials for more than 3 months and the Corporate Debtor chased up the application for the delivery even after the delay. It was submitted that the delay aggravated and created a huge dent in the relationship and also the finance of the Corporate Debtor where the client of the Corporate Debtor cancelled the order due to no-fault of the Corporate Debtor which is purely attributable to the delay in the deliveries.

15. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor was very particular in getting their payment irrespective of the facts that they have delayed the delivery and

thereby arm-twisting the Corporate Debtor to accomplish their objective. It was submitted that the Corporate Debtor wrote an email dated 19.12.2019 with regard to the delayed deliveries and due to that the order got cancelled and the materials which are received late were lying in their yard. It was submitted that the Corporate Debtor reminded the Applicant in their email dated 28.01.2020 and 07.02.2020 and that finally vide their email dated 25.02.2020, the Corporate Debtor requested the Operational Creditor to take back the materials worth Rs.87 Lakh due to delayed delivery.

16. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor issued the confirmation of balance which included the disputed amount of Rs.87 Lakh as well and that the Operational Creditor informed the Corporate Debtor that they were discussing about this at a higher level and they would come up with a favourable outcome and in the meanwhile the Operational Creditor asked the Corporate Debtor to send the confirmation of balance for records and the Corporate Debtor believing the statement of the Operational Creditor has sent the confirmation of balance on 18.05.2020.

17. The Learned Counsel for the Corporate Debtor submitted that EG8141A4 batch ONT's were reported with lot of issues and weak

Wifi performance. It was submitted that the Corporate Debtor took up with the Operational Creditor and as per their advice with the principal manufacturer. It was submitted that the issues were reported in bulk and from that time, it became a regular practice to report fault and defective pieces and the Corporate Debtor wrote another email dated 25.05.2020. It was submitted that as it continued in high volumes and the Operational Creditor completely neglected this issue, the Corporate Debtor raised the same with the Applicant vide their email dated 12.08.2020 asking for replacement. However, it was submitted that the Operational Creditor again neglected the issue and made the Corporate Debtor to suffer at the hands of their client. It was submitted that the Operational Creditor has supplied completely faulty products which remained unusable for any client and that the products which were faulty and are not usable are worth Rs.72,55,584/-.

18. Thus, it was submitted that as per the Corporate Debtor, if the disputes are put together and after adjusting all the payments made so far, the total outstanding would fall below the threshold limit which is required to file the Application under Section 9 of IBC, 2016:

DESCRIPTION	AMOUNT (₹)
Amount as per confirmation of balance	4,30,17,827/-
Payments made by the CD (shown in Application)	2,04,06,996/-
Further payments made by CD on 21.10.2021	25,00,000/-
Goods to be taken back as per email dated 25.02.2020	87,00,000/-
Defective / faulty products	72,55,584/-
Net Outstanding	41,55,247/-

19. Thus, it was submitted by the Learned Counsel for the Respondent that there exists dispute between the parties and hence sought dismissal of the present Petition.

20. Heard both sides and perused the records including the documents placed on record. From the submissions made by the Learned Counsel for both the parties, the only point which fell for consideration and adjudication before this Authority is;

- (i) *Whether the Corporate Debtor has raised any dispute as against supply of goods by the Operational Creditor in the present petition before issuance of the Demand Notice?*

21. Before venturing into the merits of the present case, it is significant to point out here that the Operational Creditor has undergone a name change and was originally known as Brightstar Telecommunications India Limited. A perusal of the typed set of documents filed by the Corporate Debtor would reveal the fact that there are series of e-mails which have been exchanged between the parties even before issuance of the Demand Notice.

22. In relation to the delay of supply of materials, it could be seen that the Corporate Debtor as early as on 26.11.2019 and the same is extracted hereunder;

Samuel David Raj (Felix InfoTech)

From: Samuel David Raj <david@felixinfotech.com>
Sent: 26 November 2019 17:53
To: 'Ramesh Babu'; 'Laswaran R'
Cc: 'Debiprasanna Mishra'; 'Sanjeev M Pali'
Subject: Final Delivery confirmation

Dear Team

We were waiting for past 10 days and holding the customer today , tomorrow . But still now there is no clarity on the delivery plan.

Tomorrow I have meeting with customer on my final commitment . if I am not getting the material billed today . I feel the order will get cancelled to me .

We have paid the interest almost 15 lakhs only to make the transaction active as you requested and we given all the cheques as per your proforma invoice which you have raised on 12th November .

We are following with Ramesh , Laswaran , there is commitment it will get billed daily but still now there is no process.

If there is no Confirmation on my billing by today , we are forced to cancel this order .which we will confirm by tomorrow after meeting the customer .

Partner who agreed all your terms and condition and paid all the interest and you confirm the billing will happen on 12th November for complete items. We are facing big issue from customer now .

Hope you can understand my pain , I know your supporting to get it done but if the support is not on time ,then there is no value for this support .

Almost we have huge payment pending from customer because of your delivery . we arranged the fund which is due on 28th to clear for you .

Thanks & Regards



Samuel David Raj,K
Felix Infotech Private Limited
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Ekkaduthangal, Chennai - 600032
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23. Thereafter, on 19.12.2019, it could be seen that the Corporate Debtor has again sent an email to the Operational Creditor stating that due to delay in delivery the materials are still lying with the Corporate Debtor. The said email is captured hereunder;

A handwritten signature in green ink, appearing to be a stylized 'K' or similar character.

1/27/22, 12:07 PM

Felix infotech Pvt Ltd Mail - Huawei OLT late delivery-Brightstar



Samuel David Raj <david@felixinfotech.com>

Huawei OLT late delivery-Brightstar

4 messages

Samuel David Raj <david@felixinfotech.com>

Thu, Dec 19, 2019 at 6:45 PM

To: Easwaran R <easwaran.r@brightstarcorp.in>

Cc: Ramesh Babu <rameshbabu.gv@brightstarcorp.in>, Debiprasanna Mishra

<debiprasanna.mishra@brightstarcorp.in>, Sanjeev M Patil <Sanjeev.Patil@brightstarcorp.in>

Dear Team,

This is to inform you that your Invoice number RV1933810603 Dated 4-12-19 Huawei 30 numbers OLT still lying with us due to late delivery from your side.

Still trying to convince to bill the customer but couldn't bill it. Kindly help us to bill the same or suggest me how to come out of this.

Thanks & Regards



Gold Partner

Samuel David Raj.K

Felix Infotech Private Limited,

67/7 Kalaimagal Nagar, 3rd Main Road

Ekkaduthangal, Chennai - 600032

Tel: 044-42613839, 9790950909

Email: david@felixinfotech.com

www.felixinfotech.com

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24. It could be seen that again on 28.01.2020, the Corporate Debtor has sent an email to the Operational Creditor reiterating the same stand and the said email is again captured hereunder;

Samuel David Raj <david@felixinfotech.com>

To: Easwaran R <easwaran.r@brightstarcorp.in>

Tue, Jan 28, 2020 at 9:41 AM

Cc: Ramesh Babu <rameshbabu.gv@brightstarcorp.in>, Debiprasanna Mishra

<debiprasanna.mishra@brightstarcorp.in>, Sanjeev M Patil <Sanjeev.Patil@brightstarcorp.in>

Dear Team,

With regards to the below mail, still material is lying with us only. As we are unable to bill. Kindly take the material back or consider the credit days.

Thanks & Regards

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25. The Corporate Debtor again on 07.02.2020 has sent an email to the Operational Creditor as follows;

1/27/2022, 12:07 PM

Felix Infotech Pvt Ltd Mail - Huawei OLT late delivery -Brightstar

Samuel David Raj <david@felixinfotech.com>

Fri, Feb 7, 2020 at 9:00 AM

To: Easwaran R <easwaran.r@brightstarcorp.in>

Cc: Ramesh Babu <rameshbabu.gv@brightstarcorp.in>, Debiprasanna Mishra

<debiprasanna.mishra@brightstarcorp.in>, Sanjeev M Patil <Sanjeev.Patil@brightstarcorp.in>

Dear Team,

Please note that because of intermittent deliveries made by you, we have made late deliveries to clients and many of projects suffered. Because of delayed deliveries, some of the orders got cancelled and hence there is a backlog of material at warehouse.

Having had this situation, either we need time to liquidate the stock & then to pay or you may please take back the goods.

Awaiting your response.

Thanks & Regards



Samuel David Raj.K
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26. A conjoint reading of the above e-mails as exchanged between the parties clearly posits the fact that there exists a 'dispute' between the parties even before the issuance of the Demand notice. Also, the issue as to whether there was delay in supply of materials and that the Operational Creditor is required to take back the defective or

faulty products are all issues which is required to be adjudicated before the Civil Court after letting in evidence and it cannot be a subject matter of the proceedings under Section 7, 9 and 10 of IBC, 2016 before this Tribunal which is summary in nature. Further, the Corporate Debtor has clearly pointed out the dispute which existed between the parties, much prior to the issuance of the Demand Notice, which is explicit from the exchange of emails.

27. Further, the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited**; 2017 1 SCC Online SC 353 held that the 'existence of dispute' and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the Demand Notice or Invoice as the case may be and observed as follows;

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.."

At paragraph 51 it is held:

"51.Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence."

28. Thus, from the above, the decision of the Supreme Court in **Mobilox** (*supra*), it could be seen that this Tribunal need not be satisfied as to whether the defence raised by the Corporate Debtor is likely to succeed or not and also need not examine the merits of the dispute. The fact that dispute truly exists between the parties in fact is sufficient for this Tribunal to reject the Application, so long as the said defence is not spurious, hypothetical or illusory.

29. As to the facts of the present case, it is seen that there exists dispute between the parties before the issuance of the Demand Notice itself and the contentions raised by Corporate Debtor is a plausible contention which requires further investigation and in the said circumstances, we are constrained to dismiss the Application. As a result, CP(IB)/67(CHE)/2021 stands **dismissed**. No order as to costs.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

Raymond

-sd-

Justice (Retd) S. RAMATHILAGAM
MEMBER (JUDICIAL)