

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No. 1431/MB-IV/2020**

Under Section 9 of the IBC, 2016

*In the matter of*

**Redington (India) Limited**

[CIN: L52599TN1961PLC028758]

...Operational Creditor

v/s.

**Everest International Private Limited**

[CIN: U32200MH1996PTC099972]

...Corporate Debtor

Order Delivered on: \_\_.11.2021

*Coram:*

Mr. Rajesh Sharma  
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner	:	Mr. Preet Chhedda, Advocate.
For the Respondent	:	Mr. Rushabh Thacker i/b Sudhakar Lakhani, Advocate.

ORDER

*Per: Rajesh Sharma, Member (Technical)*

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Redington (India) Limited, ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Everest International Private Limited ("the Corporate Debtor"), [CIN: U32200MH1996PTC099972].

2. The Corporate Debtor is a company incorporated on 04.06.1996 under the Companies Act, 1956, as a Private Company Limited by Shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U32200MH1996PTC099972. Its registered office is at 45 Udyog Bhavan, Sonawala Road, Goregaon East, Mumbai, Maharashtra-400063. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Rs.3,67,90,919.91/- (Rupees three crore sixty-seven lakh ninety thousand nine hundred nineteen and ninety-one paise only) as on 28.02.2020 along with interest @ 24% p.a. from the date of default of the respective invoices due till 28.02.2020.
4. The case of the Operational Creditor is as under:
  - a) The Operational Creditor is engaged in the business and trade in supply of high-end technology and telecom products. Pursuant to the orders placed by the Corporate Debtor for goods, the Operational Creditor sold, supplied and delivered high-end Apple I-Phones to the Corporate Debtor. The Operational Creditor has issued 5 invoices with respect to the above order against which Rs.3,67,90,919.91/- (Rupees three crore sixty-seven lakh ninety thousand nine hundred nineteen and ninety-one paise only) is due and payable by the Corporate Debtor to the Operational Creditor.
  - b) Under the terms of Invoices, the payment is to be made within the date of the respective invoices, failing which the Corporate Debtor is bound and liable to pay interest @ 24% per annum for the delayed period. The details of the invoices and the debt fell due is as under:

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Sr. No.1	Invoice Date	Invoice Number	Date of Default/Debt when fell due	Invoice amount (in Rupees)	Balance Amount Payable (in Rupees)
1.	04.12.2015	I040384	03.01.2016	87,99,000.00	17,83,919.91
2.	22.12.2015	I040820	21.01.2016	1,05,00,000.00	1,04,79,000.00
3.	22.12.2015	I040821	21.01.2016	1,05,00,000.00	1,04,16,000.00
4.	22.12.2015	I040822	21.01.2016	1,05,00,000.00	1,04,16,000.00
5.	25.12.2015	I040963	24.01.2016	37,80,000.00	36,96,000.00
		<b>Grand Total</b>		<b>4,40,79,000.00</b>	<b>3,67,90,919.91</b>

- c) The Corporate Debtor has never raised any dispute as to the quality, quantity or price of goods. Account balance confirmation was given by the Corporate Debtor dated 30.06.2016 to the Operational Creditor. Vide cheque dated 15.06.2017 bearing No. 174582 drawn on Kotak Mahindra Bank, Goregaon (west), Mumbai branch, the Corporate Debtor sought to pay partial outstanding amount of Rs.3,73,40,913/- (Rupees three crore seventy-three lakh forty thousand nine hundred thirteen only). However, the said cheque was dishonoured as per bank return advice dated 16.06.2017. In view of the said cheque, the Operational Creditor filed a complaint under section 138 of the Negotiable Instrument Act, 1881 before relevant court in Tamil Nadu being S.T.C. No. 275 of 2018. The proceedings of the same are pending before the Magistrate Court in Tiruchirapalli, Tamil Nadu.
- d) The Corporate Debtor has made on account of part-payment a sum of Rs.5,00,000/- (Rupees five lakh only) to the Operational Creditor on 30.12.2017 vide bank transfer, reference no. 26454523, Transaction Cheque No. 017123000009687. Further, the Corporate Debtor has made

another part-payment of sum of Rs.50,000/- (Rupees fifty thousand only) to the Operational Creditor on 31.03.2019 vide bank transfer, reference no. 1400100778, Transaction Cheque No. BCBMH19088553358.

5. The Operational Creditor issued the Demand Notice dated 17.05.2018 to the Corporate Debtor demanding the total outstanding debt with interest. The said Demand Notice has been duly served upon the Corporate Debtor and the Corporate Debtor has replied vide its letter dated 24.05.2018 to the said Demand Notice admitting the liability to pay a sum of Rs.57,78,676/- (Rupees fifty-seven lakh seventy-eight thousand six hundred seventy-six only) to the Operational Creditor.
6. On 10.08.2021 the Corporate Debtor appeared in the matter but did not file the reply. As the Corporate Debtor chose not to file its Reply even after giving opportunities to file, hence, the right to file reply was forfeited and the matter Reserved for Orders.
7. The Corporate Debtor has filed its Written Submissions and submits as under:
  - a) The Corporate Debtor is into the business of distribution of electronic gadgets, smart phones etc. The Corporate Debtor replied vide letter dated 24.05.2018 to the Operational Creditor's Demand Notice wherein the Corporate Debtor disputed the alleged amount as claimed by the Operational Creditor.
  - b) The Corporate Debtor vide its reply dated 24.05.2018 informed to the Operational Creditor that they have a claim of Rs.3,10,62,240.60/- (Rupees three crore ten lakh sixty-two thousand two hundred forty only) on the Operational Creditor. It was further informed them that the aforesaid amount shall be set off from the alleged claim amount. The summary of the aforesaid set off amount is as under:

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1.	Claim receivable from Redington Old	16,82,454.64
2.	Old Claim	98,712.00
3.	DOA of Pas	1,59,858.64
4.	Anil Choudhary 1 iPad Phone	8,35,495.00
5.	Anil Choudhary 2 iPhone	2,97,000.00
6.	Anil Choudhary 3 Apple Commitment	24,52,643.00
7.	Anil Choudhary 4 Ms. Malini (EDPL 2/11/16)	59,615.00
8.	Anil Choudhary 5 Loss on iPhone Launch 2015	25,60,705.00
9.	Claim pending from Rim	79,84,732.00
10.	Current Year Claim	1,48,65,508.00
	<b>EDPL ledger balance receivable</b>	<b>65,517.32</b>
	<b>Total claim amount receivable from Redington</b>	<b>3,10,62,240.60</b>
	<b>Less payable to Redington</b>	<b>3,68,40,916.52</b>
	<b>Net Payable to Redington</b>	<b>57,78,675.92</b>

- c) The Operational Creditor sent a re-joinder to the said reply vide its letter dated 04.06.2018 but the Operational Creditor has not referred and relied upon the same in the Application filed by him. The Corporate Debtor specifically informed to the Operational Creditor in the reply dated 24.05.2018 that the Corporate Debtor upon receipt of credit notes and correct balance confirmation from Operational Creditor will immediately release the payment.
- d) The Demand Notice was issued on 17.05.2018. the Corporate Debtor replied to the said notice within 10 days of its receipt. The Corporate Debtor in the said notice has disputed the claim made by the Operational

Creditor and has very clearly stated that as per their ledger the outstanding amount due and payable to the Operational Creditor is Rs.57,28,675.92 (Rupees fifty-seven lakh twenty-eight thousand six hundred seventy-five and ninety-two paise only). The Corporate Debtor is willing to release that amount on receipt of credit note and correct balance confirmation from Operational Creditor. The Operational Creditor did not take any steps for more that two years and filed this present Petition.

- e) In the present Application filed by the Operational Creditor, the outstanding claim amount is Rs.3,67,90,919.91/-, whereas in the notice issued under section 8, the outstanding claim amount is Rs.3,73,40,913/-.
  - f) The Corporate Debtor submits that the Operational Creditor has in the Application alleged that the Corporate Debtor issued a cheque dated 15.06.2017 for Rs.3,73,40,193/- and the same was dishonoured and therefore complaint under section 138 of Negotiable Instruments Act, is filed before the relevant court at Tamil Nadu. The said cheque was not given by the Corporate Debtor to the Operational Creditor. The Corporate Debtor has given about 5/6 blank cheques to the Operational Creditor towards security and the same were not to be deposited but the Operational Creditor misused the same after filing up the amount and name of the Operational Creditor without the consent and acknowledgement of the Corporate Debtor.
8. The present matter was for the first time listed on 11.01.2021, wherein no one was present for the Corporate Debtor, thereafter the matter was listed on 09.03.2021, the Director of the Corporate Debtor appeared in person and sought some time to appoint a lawyer and file reply. This Bench adjourned the matter to 12.04.2021, with a direction to file reply in the matter. The matter did not reach on the given date due to paucity of time. However, there was a

lockdown due to rise in COVID cases after April, therefore the Corporate Debtor could not file reply. The matter was listed on 10.08.2021, wherein the Counsel appearing for the Corporate Debtor sought time to file reply but the request was turned down and the matter was reserved for orders with a direction to file written submissions.

*Findings:*

9. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
10. The last date of invoice was 25.12.2015 and as per the terms of payment of invoice, the due date of payment was 24.01.2016.
11. The Operational Creditor has also submitted the Statement of Accounts of Operational Creditor viz-a-viz Corporate Debtor which is placed at pp.376-386 as Exhibit 'I' of the Petition.
12. Invoices have been placed on record at pp.37-68 as Exhibit 'D' of the Petition. The total debt due and payable to the Operational Creditor is Rs.3,67,90,919.91/- (Rupees three crore sixty-seven lakh ninety thousand nine hundred nineteen and ninety-one paise only), as mentioned at p.8 of the Petition.
13. The Operational Creditor has also submitted the NeSL Report dated 06.01.2020 which is at pp 387-394 as Exhibit "J" of the Petition. The date of default as mentioned in the said report is 03.01.2016 and the default amount is Rs.7,08,90,270.30.
14. The Corporate Debtor issued cheque dated 15.06.2017 to the Corporate Debtor which was dishonoured and returned by the Bank on account as

“insufficient funds”. The said cheque is placed at p 69 as Exhibit “E” and the Bank cheque return advice dated 16.06.2017 is at p 70 of the Petition.

15. It is also noticed from the petition that-
  - a) There is unequivocal admission of liability on the part of the Corporate Debtor in confirmation of balance statement dated 30.06.2016 signed by both the Operational Creditor and the Corporate Debtor which is at p.395 of the Petition;
  - b) The Corporate Debtor also admitted the amount of Rs.57,78,676/- vide its letter of reply to the Demand Notice which is at pp 416-418 as Exhibit “M” of the Petition.
  - c) The Date of Default is 25.01.2016.
16. It is observed by the Bench that the Corporate Debtor has time and again by its letter and by making part payment acknowledged its liability. Therefore, the Petition 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 rupees one lakh stipulated under section 4(1) of the IBC. Therefore, the debt and 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.
17. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter. However, this Bench has appointed Mr. Hemant Kumar Shah, registration No. IBBI/IPA-001/IP-P01936/2020-2021/13037; E-mail: shahkhemant@yahoo.com, as Interim Resolution Professional in the matter.
18. It is, accordingly, hereby ordered as follows:

- (a) The petition bearing CP(IB) 1431/MB-IV/2019 filed by Redington (India) Limited, 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 initiating Corporate Insolvency Resolution Process (CIRP) against Everest International Private Limited (“the Corporate Debtor”), [CIN: U32200MH1996PTC099972], 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 Financial 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,-

- (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. Hemant Kumar Shah, registration No. IBBI/IPA-001/IP-P01936/2020-2021/13037; E-mail: shahkhemant@yahoo.com, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (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 Rs.5,00,000/- (Rupees five 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, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (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/-

Rajesh Sharma  
Member (Technical)

26.11.2021

Sd/-

Suchitra Kanuparthi  
Member (Judicial)