



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
C.P (IB)/662(ND)2023**

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 THE MATTER OF:

JAZZ COMMUNICATIONS INC

(SOLE PROPRIETORSHIP FIRM)

Registered Office: SHOP No. 22, 5/68,
G/F PADAM SINGH ROAD, KAROL BAGH,
NEW DELHI-110005.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

SUICH INDUSTRIES LIMITED

Registered Office: PLOT No-68,
III RD, FLOOR, BLOCK-5 NAIWALA,
KAROL BAGH, NORTH
DELHI-110005

EMAIL: info@suichgroup.com

...RESPONDENT/CORPORATE DEBTOR

Order Delivered on: 19.11.2024



CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Dhruv, Adv.

For the Respondent : Mr. Yash Tewari, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The instant application is filed by Jazz Communication Inc (hereinafter referred as 'Applicant'/'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') 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 ("CIRP") against Suich Industries Limited (hereinafter referred as 'Respondent/Corporate Debtor') for failing to make the payment amounting Rs.22,05,77,744.65/- (Rupees Twenty-Two Corers Five Lakhs Seventy-Seven Thousand Seven Hundred and Forty Four and Sixty Five Paise Only) along with an interest at the rate of 18% from date on which the debt fell due i.e, 01.10.2022. The Respondent Company i.e., Suich Industries Limited was incorporated under the provisions of the Companies Act, 1956 having its registered office at Plot No-68, IIIrd Floor, Block No-5, Naiwala, Karol Bagh, North Delhi, New Delhi-1110005. 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 subsection (1) of Section 60 of the Code.

Averments of the Applicants:

2. Briefly stated the facts of the present case as averred by the applicant are that the Operational Creditor is engaged in the business procurement and trading of mobile handsets. The Corporate Debtor on the basis of purchase order(s) issued by the Corporate Debtor supplied the mobile handsets to the Corporate Debtor on regular basis. The Operational Creditor against material supplied from time to time raised various invoices.
3. Applicant submitted that the Operational Creditor maintains a running ledger account of the Corporate Debtor and the ledger account reflects a debit balance of Rs. 22,05,77,744.65/- (Rupees Twenty Two Corers Five Lakhs Seventy Seven Thousand Seven Hundred and Forty Four and Sixty Five Paise Only) as on 01.10.2022 which was duly acknowledged by the Corporate Debtor.
4. The Applicant further submitted that the Corporate Debtor failed to discharge the outstanding dues of the Operational Creditor. Consequently, the Operational Creditor issued Form 3 and Form 4 Demand Notices under clause (a) of sub-rule (1) of rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, both dated 28.03.2023, to the Corporate Debtor via email on 08.05.2023.
5. Applicant submitted that the the Operational Creditor on the elapse of 10 days from the date of said Demand Notice, there has been no repayment of the unpaid Debt till date. There is no dispute of unpaid debt pending



between the Operational Creditor and Corporate Debtor before the issue of Demand Notice as per IBC in any court of law or authorities as on date. The Operational Creditor/Applicant has not received any reply to its Demand Notice from the Corporate Debtor. Hence, this application has been filed.

Reply of the Respondent Corporate Debtor:

6. On the other hand, the respondent through his reply submitted Corporate Debtor admits to the said debt due towards the Operational Creditor and undertakes to pay the same in due course of time.
7. The para 4, 5 6, and 7 (page no. 1 and 2) of the reply read as under:
 4. *That it is submitted that, the Corporate Debtor admits to the said debt due towards the Operational Creditor and undertakes to pay the same in due course of time.*
 5. *That the Corporate Debtor, undertakes to pay an amount under the default of Rs.22,05,77,744.65 (Rupees Twenty-Two Crore Five Lakh Seventy-Seven Thousand Seven Hundred Forty-Four and Sixty-Five Paise Only) to the Operational Creditor in the near future in easy money instalments.*
 6. *That the Corporate Debtor further, craves the leave of this Hon'ble Tribunal to pay the default amount in instalments of Rs 62,00,000 (Rupees Sixty-Two Lakhs Only) per month for a tenure of 3 years.*
 7. *That the Corporate Debtor submits that, the Corporate Debtor has been facing certain financial distress due to the sudden economical impact created after COVID-19 in the country. Due to the aforesaid reason, the business of the Corporate Debtor is not operating to its 100% potential.*
8. Further, the Respondent, through its reply, prays as follows:



- I. Allow and grant some time to the Corporate Debtor to discharge the debt due towards the Operational Creditor to the tune of Rs.22,05,77,744.65 (Rupees Twenty-Two Crore Five Lakh Seventy-Seven Thousand Seven Hundred Forty-Four and Sixty-Five Paise Only) on a monthly instalment of Rs 62,00,000 (Rupees Sixty-Two Lakhs Only) for a tenure of 3 years.
- II. Pass any such order(s), which this Tribunal may deem fit and proper in the facts and circumstances in the present matter.

Analysis and Findings

9. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application. The relevant documents annexed with the submissions have also been examined.
10. It is noted that there was a business relationship between the Applicant/Operational Creditor and the Respondent/Corporate Debtor wherein the Operational Creditor has supplied mobile handset to the Corporate Debtor and various invoices were raised against the said goods supplied. The default amount stated by the Applicant/Operational Creditor is Rs.22,05,77,744.65/- for which a demand notice under section 8 of the IBC was issued on 28.03.2023 by the Applicant/Operational Creditor and duly served to the Respondent/Corporate Debtor. The proof of service of Demand Notice is also placed on record. But the Corporate Debtor neither replied to the Demand Notice nor paid the outstanding amount to the Operational Creditor.



- 11.** Vide order dated 21.03.2024, this bench directed the Applicant and the Respondent to file their affidavit indicating that the instant petition and reply is not filed for the collusive purpose.
- 12.** In compliance of the order dated 21.03.2024, the Applicant through an affidavit dated 09.07.2024 submitted that the present petition under Section 9 of the IBC, 2016 filed by the Deponent/Applicant for initiation of CIRP against Corporate Debtor has not been filed in collusion with the Corporate Debtor. Further the Applicant submitted that the Deponent/Applicant and the Corporate Debtor are not related to each other.
- 13.** In compliance of the order dated 21.03.2024, the Respondent also filed an affidavit dated 02.07.2024 and submitted that the present petition filed by the Operational Creditor is not collusive and the same has not been filed by the Operational Creditor in collusion with the Corporate Debtor.
- 14.** Further, vide order dated 18.07.2024, this bench directed the Applicant to explain the period of limitation. In compliance of the order dated 18.07.2024, the Applicant through its written submission submitted that the date of admitted debt was defaulted on 01.10.2022 and the Applicant sent the demand notice on 08.05.2023.
- 15.** Upon perusal of the para 4 (page 1) of the reply filed by the Respondent herein, we observed that the Respondent accepted to the Applicant's allegation that the above-mentioned debt amount, i.e., Rs. 22,05,77,744.65/-, is due from the Respondent.
- 16.** Further, upon perusal of the reply filed by the Respondent, we observed that the Respondent has neither raised any objection nor produced any document to establish that there is a pre-existing dispute regarding the goods or services provided by the Operational Creditor to the Corporate Debtor.



17. Upon perusal of the invoices and the account maintained by the applicant, 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.

18. 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.”

- 19.** It is a settled preposition 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.
- 20.** 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)-662/(ND)/2023) stands admitted and the CIRP is hereby initiated against Suich Industries Limited.
- 21.** The Applicant has not proposed the Interim Resolution Professional (“IRP”) with te instant Application. However the applicant through an Application i.e., IA/5108/2024 in IB-662/ND/2023 has proposed the name of Mr. Bhim Sain Goyal to act as the Interim Resolution Professional (“IRP”) of the Corporate Debtor, accordingly, this bench appoints Mr. Bhim Sain Goyal, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N00726/2018-2019/12216 and email id – bsgoyal1@gmai.com. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 is attached with the present application. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within five working days (5) of pronouncement of this order.



22. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Bhim Sain Goyal 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.

23. 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.”

- 24.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.
- 25.** 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.
- 26.** 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 IBC 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’.



27. 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/-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)