



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-5934/2022, IA-5725/2021, IA-4139/2021 & IA-1550/2021

And

(IB) –998(ND)/2020

**IN THE MATTER OF (IB) – 998(ND)/2020:**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Operational Creditor**

**VERSUS**

**M/s. BGM TELECOMMUNICATIONS PRIVATE LIMITED**

**..... Corporate Debtor**

**AND IN THE MATTER OF IA-5934/2022:**

**M/s. BGM TELECOMMUNICATIONS PRIVATE LIMITED**

**..... Applicant**

**VERSUS**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Respondent**

**AND IN THE MATTER OF IA-5725/2021:**

**M/s. BGM TELECOMMUNICATIONS PRIVATE LIMITED**

**..... Applicant**

**VERSUS**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Respondent**

**AND IN THE MATTER OF IA-4139/2021:**

**M/s. BGM TELECOMMUNICATIONS PRIVATE LIMITED**

**..... Applicant**

**VERSUS**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Respondent**

**AND IN THE MATTER OF IA-1550/2021:**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Applicant**

**VERSUS**

**M/s. BGM TELECOMMUNICATIONS PRIVATE LIMITED**

**..... Respondent**

**Order Pronounced On: 18.10.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Krishnendu Datta, Sr. Adv., Mr. Pranaya  
Goyal, Ms. Apoorva Kaushik, Mr. Rajat Sinha,  
Mr. Girish Shankar, Advs.

For the Respondent : Mr. Amit Singh Chadha, Sr. Adv., Ms. Sonakshi  
Dhiman, Ms. Aakriti Mathur, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**1. (IB) – 998(ND)/2020**

- i.** This Application has been filed by M/s. Drive India Enterprise Solutions Limited, the Applicant/Operational Creditor on 24.09.2020, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. BGM

**M/s. Drive India Enterprise Solutions Ltd. vs. M/s. BGM Telecommunications Pvt. Ltd.  
IA-5934/2022, IA-5725/2021, IA-4139/2021, IA-1550/2021 And (IB) – 998(ND)/2020  
Date of Order: 18.10.2023**





Telecommunications Private Limited, the Respondent/Corporate Debtor, on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 35,57,89,682/- [(Rupees Thirty Five Crore Fifty Seven Lakh Eighty Nine Thousand Six Hundred and Eighty Two Only), principal amount of Rs. 23,19,42,081/- along with interest amount of Rs. 13,69,05,456/- calculated @ 18% per annum, unpaid between the period from August 2017 till August 2020].

- ii.** The Outstanding Debt due to the Operational Creditor from the Corporate Debtor is in connection to the supply/delivery of telecommunication devices in Semi Knocked Down ["SKD"] state and batteries under various High Sea Sale Agreements ("HSS Agreement") executed between the Operational Creditor and Corporate Debtor. Under the HSS Agreements, the SKDs were sold by the Operational Creditor to the Corporate Debtor or its authorized entities at high sea on the terms and conditions, including consideration as fixed under each HSS Agreements.
- iii.** On perusal of records, it is apparent that there is similarity between the present Application with the matter of M/s. Drive India Enterprises Solution Limited Vs. M/s. Essline Engineers and Consultants Private Limited in (IB)- 932(ND)2020 which was dismissed by this Tribunal (NCLT, New Delhi Bench-II) vide order dated 15.11.2021. It is pertinent to refer paras of the aforesaid judgement which is reproduced as under:

*"12. That the Corporate Debtor has also placed on record the letters dated 23.04.2018 written by M/s. BTM Exports Pvt. Ltd. to the Operational Creditor, showing outstanding dues of Operational Creditor towards M/s. BTM Exports Pvt. Ltd. Here it is observed that the business relationship amongst the Operational Creditor,*



*the Corporate Debtor and M/s. BTM Exports Pvt. Ltd. is not clear from the records placed before us.*

*14. That all these communications (letter dated 23.04.2018, 04.10.2018 and 24.10.2018) relied upon by the Corporate Debtor pertain to the period prior to the issuance of demand notice dated 11.12.2019, which indicate dispute towards the quantum of debt due and payable by the Corporate Debtor. Further, the voluminous records and the multiple communications between the parties raise a plausible contention, which require further investigation warranting cross examination, adducing of further evidence, which is not permissible under the summary jurisdiction of this Adjudicating Authority under IBC 2016.*

*15. At this juncture, it is worthwhile to refer to the Judgement of Hon'ble Supreme Court in the matter of Mobilox Innovations Private Limited Versus Kirusa Software Private Limited, Civil Appeal No. 9405 of 2017 dated 21.09.2017 : "40 It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding*



*relating to a dispute is pending between the parties. 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. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

*16. In view of the above, the Petition is dismissed.”*

- iv.** We are also in concord with the judgement of this Tribunal (Court No. VI) in Case No. (IB)-933/(ND)/2020 vide order dated 14.09.2023 in the matter of M/s. Drive India Enterprise Solutions Limited vs. M/s. BTM Exports Limited, which are as follows:

*“5. We are also in consonance with the judgement of NCLT, (New Delhi, Bench II). Initially the Operational Creditor has filed voluminous petition with more than 2000 pages, subsequently, the petitioner filed IA 1227/ND/2022 to include 28 pages on the record, resulting in a reduction of the alleged debt to Rs. 3,22,84,414/-.*



6. *Further serious allegations of fraud and forgery were made in the pleadings which this Tribunal cannot adjudicate since the Adjudicating Authority is not expected to ascertain the veracity of documents produced.*

7. *In the light of the above said facts and after giving careful consideration to the entire matter and hearing the arguments of the learned counsel for the Operational Creditor as well as the reply filed by the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority dismisses this application filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016. However, the claim under any other law, if permissible, can be pursued by the Petitioner and the parties are at liberty to approach appropriate forum and may explore other legal remedies available as per law.”*

- v. We have heard the Ld. Counsels for both parties and also perused the documents available on record.
- vi. The fulcrum of the case revolves around the High Sea Sale Agreements ("HSS Agreement") entered into between the parties. The Applicant has alleged that there is a violation of the terms and conditions by the Corporate Debtor of the said HSS Agreement. It has come to our notice that in a similar case arising out of a similar High Sea Sale Agreements, Bench-II as well as Bench-VI of this Adjudicating Authority have dismissed Section 9 Applications as has been observed in Para 1(iii) and Para 1(iv) (supra). We, therefore, are of the considered view that the present application filed under Section 9 is covered by the

said orders passed by Bench-II and Bench-VI and therefore, **dismissed.**



2. **IA-5934/2022**

- i. The present Application has been filed by M/s. BGM Telecommunications Private Limited/Respondent under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for placing on record additional documents.
- ii. The present Application has been filed by the Corporate Debtor to place on record the additional documents filed are taken on record. Accordingly, the **IA-5934/2022** stands **dismissed.**

3. **IA-5725/2021**

- i. The present Application has been filed by M/s. BGM Telecommunications Private Limited/Respondent under Section 65 read with Section 76 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, for punishing the Operational Creditor for Fraudulent and Malicious Initiation of proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Deliberate Non-Disclosure of Pre-Existing Dispute between the Operational Creditor and the Corporate Debtor.
- ii. In view of the order passed in **(IB)-998(ND)/2020**, we do not deem it appropriate to entertain this application. Accordingly, the **IA-5725/2021** stands **dismissed** and **disposed of.**

4. **IA-4139/2021**

- i. The present Application has been filed by M/s. BGM Telecommunications Private Limited/Respondent under Rule 11 of the National Company Law Tribunal Rules, 2016 for the dismissal of the Captioned Petition for Misjoinder and Non-



Joinder of Proper and Necessary Parties and/or for the Impleadment of Necessary and Proper Parties.

- ii.** In view of the order passed in **(IB)-998(ND)/2020**, we do not deem it appropriate to entertain this application. Accordingly, the **IA-4139/2021** stands **dismissed** and **disposed of**.

**5. IA-1550/2021**

- i.** The present Application has been filed by M/s. Drive India Enterprise Solutions Limited/Operational Creditor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking to restrain the managing director/directors of Corporate Debtor from dealing, selling, transferring, alienating, disposing off or parting with any assets of the Corporate Debtor or dealing with the business of the Corporate Debtor during the pendency of the captioned Petition before this Adjudicating Authority.
- ii.** In view of the order passed in **(IB)-998(ND)/2020**, we do not deem it appropriate to entertain this application. Accordingly, the **IA-1550/2021** stands **dismissed** and **disposed of**.

**Sd/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**