

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

CP (IB) No.1075/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

Bathla Teletech Private Limited

...Operational Creditor

v/s.

Perfect Mobile and Communications Private Limited

[CIN: U51909MH2007PTC174426]

...Corporate Debtor

Order Delivered on: 07.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Manoj Mishra, Advocate

For the Respondent:

Ms.Arati Suryavanshi, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Bathla Teletech Private Limited**, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Perfect Mobile and Communications Private Limited** (“the Corporate Debtor”), [CIN: U51909MH2007PTC174426].

2. The Corporate Debtor is a company incorporated on 24/09/2007 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Gala No.16, Ratna Jyoti Industrial Premises CHS Irla Gauthan, Irla Lane, Vile Parle (West) Mumbai, Mumbai City, Maharashtra-400056. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority claiming the Corporate Debtor failed to make payment of a total sum of Rs.18,54,800/- (Rupees Eighty Lakh Fifty-Four Thousand Eight Hundred only). The date of default is 23.05.2019.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that the Operational Creditor has supplied 199 pieces of Telephone Sets to the Corporate Debtor vide purchase order dated 04.04.2019. The Purchase Order is placed at pg. no 32 of the Petition. For this purpose, the Operational Creditor has issued various invoices which are placed at page 33-222 of the Petition.

Sr. No	Telephone Sets	Amount
1	32 pieces	9,820.54/- per unit @ 12%interest on basic price
2	167 pieces	8,034.32/- per unit@ 12%interest on basic price
Total		18,54,800 /-

- b) The arrangement was done to deliver entire equipments during the month of April,2019
- c) The Last date of invoice is 24.04.2019. The date of default as per the mode of payment in the last invoice is 23.05.2019.
- d) However, the Operational Creditor instead of supplying all the materials did not receive any payment from the Corporate Debtor.
- e) The Operational Creditor had served a Demand Notice in Form 3 dated 07.02.2020 to the Corporate Debtor, which is at pg.no 227-229 of the Petition,

in terms of section 8 of the IBC. The said Demand Notice was returned specifying the reason left from the place dated 8.02.2020. The track record for the return of the document is given at Pg. No 230 Annexure -7 of the petition.

- f) The Operational Creditor submits that, after making further searches at MCA website, the notice was served on Managing Director of the Corporate Debtor as per the address mentioned in MCA data on 14.02.2020. The said Demand Notice was delivered on 17.02.2020. The track record of documents is given at Pg. No 234 Annexure-9 of the petition.
 - g) The Operational Creditor submits that, no reply of the Demand Notice received from corporate debtor till date. Neither have they disputed anything on the quality or on any other aspects.
 - h) The Operational Creditor submits that, Mr. Mukesh Kumar Jain, an insolvency professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01236/2018-2019/11944 has been proposed as the IRP by Bathla Teletech Private Limited in connection with the proposed corporate insolvency resolution process of the Perfect Mobiles & Communications Private Limited (Corporate Debtor).
5. The Corporate Debtor has submitted its reply as follows:
- a) The Corporate Debtor submits that, they have purchased 199 pieces of Telephone sets for cellular network amounting Rupees 18,54,800/-, pursuant to the same there is no denial of fact that the supply was complete on 11.04.2019 to 24.04.2019 and the terms of payment were 30 days.
 - b) The Corporate Debtor submits that, the operational creditor issued form 3 on 14.02.2020 which was delivered on 17.02.2020, after which the corporate debtor was to clear the dues. But due to the slowdown in business, it was difficult to make payment at that time.

- c) The Corporate Debtor submits that, in the view of COVID-19 there is a difficulty in making payment to the operational creditor. The Corporate Debtor is making commitment to make payment of sum of Rs 18,54,800/-at the earliest. The dues will be settled within a period of one year from the date of this notice.
- d) The Corporate Debtor submits that, Operational Creditor had sent a notice under CPC as well as under IBC, 2016. Issuing notice under CPC, bars Operational Creditor to initiate any proceedings under IBC, 2016
- e) The Corporate Debtor submits that, the Operational Creditor is not entitled to Initiate CIRP against the Corporate Debtor as it had already initiated legal process under CPC.

Findings:

1. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
2. The Last date of invoice is 24.04.2019 and the date of filing of CP is well within the Limitation. This Bench has jurisdiction to deal with this Company Petition. The date of default as per the mode of payment in the last invoice is 23.05.2019.
3. The Operational Creditor has also submitted the Statement of Accounts of Operational Creditor viz-a-viz Corporate Debtor which is placed at pg. no. 235-395 of the Petition.
4. Invoices have been placed on record at pp.33-226 of the Petition. The total debt due and payable to the Operational Creditor is 18,54,800/- (Rupees Eighty Lakh Fifty-Four Thousand Eight Hundred only).
5. It is also noticed from the petition that, the Corporate Debtor also admitted the amount of 18,54,800/- (Rupees Eighty Lakh Fifty-Four Thousand Eight Hundred only) in para No 2 of its reply.
6. The contentions made by the Corporate Debtor that, the Operational Creditor had sent a Legal Notice under Civil Procedure Code stating that he

has no right to proceed in IBC. In our considered view, the issue of notice under CPC by the Operational Creditor is not barred under the IBC.

- f) It is observed by the Bench that the Corporate Debtor has admitted its liability of Rs.18,54,800/-. 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.
- g) The Operational Creditor has proposed Mr. Mukesh Kumar Jain, an insolvency professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01236/2018-2019/11944 has been proposed as the IRP by Bathla Teletech Private Limited in connection with the proposed corporate insolvency resolution process of the Perfect Mobiles & Communications Private Limited (Corporate Debtor).
- h) It is, accordingly, hereby ordered as follows:

7. The petition bearing CP(IB) 1075/MB-IV/2020 filed by **Bathla Teletech Private Limited**, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Perfect Mobile and Communications Private Limited** (“the Corporate Debtor”), [CIN: U51909MH2007PTC174426] is admitted.

- (a) 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.
- (b) 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;
- (c) 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.
- (d) 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.
- (e) Mr. Mukesh Kumar Jain, registration No. IBBI/IPA-001/IP-P01236/2018-2019/11944; 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.

- (f) 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.
- (g) 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).
- (h) 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.
- (i) 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/-
Kishore Vemulapalli
Member (Judicial)
07.01.2022

Sd/-
Rajesh Sharma
Member (Technical)