

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.573/Chd/Hry/2019

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

Mallesham Jetti

having its registered office at
14-198/6, Street No.11, Raja Srinivas,
Siddi Vinayaka Temple,
Near Mirjabguda, Malkagiri Rangareddi,
Telangana - 50047

...Petitioner/Operational Creditor

Versus

Ebusinessware Private Limited

having its registered office at
SCO-43, Old Judicial Complex,
Sector-15, Part-II, Gurgaon,
Haryana - 122001

...Respondent/Corporate Debtor

Judgement delivered on: 18.05.2020

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Ms. Jyoti Bakshi, Advocate

For the Respondent : Ms. Shikha Sharma Arora, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**') by Mallesham Jetti (**Operational Creditor**), for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of Ebusinessware (India) Private Limited (**Corporate Debtor**). The registered address of the operational creditor is 14-198/6, Street No.11, Raja Srinivas, Siddi Vinayaka Temple, Near Near Mirjabguda, Malkagiri Rangareddi, Telangana – 50047. There is an affidavit in support of the contents of the application which is from pages 28 and 29 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. Ebusinessware (India) Private Ltd. (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹25,00,000/- and paid up share capital of ₹10,90,000/-. The CIN of the respondent-corporate debtor is U72900HR1999PTC035346 and its registered office is situated in Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at page 43 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor is engaged in the business of consulting in respect of Accounts and Finance. The Corporate Debtor has hired the services of the operational creditor by retaining him as an independent Contractor to perform consultancy services for corporate debtor, on the terms set forth vide Agreement dated 01.01.2017. The Operational Creditor has been providing his services to the corporate debtor since the aforesaid Agreement came into effect on 01.01.2017, however, it is stated that the corporate debtor has failed in settling/paying the Accounting and Financial Service Fee of the operational creditor. It is stated that the principal amount of ₹5,70,000/- as the outstanding

unpaid debt is due against the invoices raised for 6 consecutive months from January 2017 to June 2017. As per Part IV of Form 5, the total amount claimed to be in default is ₹8,16,150/- (inclusive of ₹2,46,150/- as interest @18% till August 2019).

4. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Form No.3 dated 21.08.2019 is stated to be served upon the Corporate Debtor by speed post (Annexure II of the petition). The demand notice was accompanied by computation of default in tabular form and the copy of invoices raised by operational creditor against the services rendered to the corporate debtor. Copies of invoices are attached at pages 48 to 53 of the petition. The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹8,16,150/- (principal amount of ₹5,70,000/- and interest @18% thereon of ₹2,46,150/- till August 2019) within 10 days from the receipt of the notice.

6. It is deposed by the petitioner that the Operational Creditor has neither received any payment qua the aforesaid outstanding amount from the Corporate Debtor nor have been served with any notice of dispute of the unpaid operational debt. The affidavit is appended with the petition from pages 57 to 58.

7. The operational creditor has filed an affidavit vide Dairy No. 6149 Dated 05.11.2019, in which it has submitted that operational creditor has served a demand notice dated 06.08.2019 to the corporate debtor which was returned on 14.08.2019 with remark "Left the Company". The returned envelop

of the said demand notice and office copy of the notice dated is attached as Annexure- VI and Annexure- VII of the affidavit. Thereafter, operational creditor has again served the demand notice dated 21.08.2019 which is duly received by the corporate debtor. The copy of Demand Notice with acknowledgement of receipt by the corporate debtor is attached as Annexure – II of the petition.

8. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 21.08.2019 nor made any outstanding payment and hence this petition.

9. In Part III of Form 5, the operational creditor has proposed Mr. Jugraj Singh Bedi, bearing Registration No. IBBI/IPA-001/IP-P00731/2017-18/11208 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 is placed at Annexure IV (Page 60 & 61), in which he has stated that he is currently serving as an Interim Resolution Professional in one another proceedings. It is also stated that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional with the Insolvency and Bankruptcy Board of India or with the Institute of Insolvency Professionals of ICSI.

10. Notice of this petition was issued to the Corporate Debtor on 04.12.2019 to show cause as to why this petition be not admitted.

11. On the last date of hearing, the learned counsel on behalf of the respondent submitted that the Corporate Debtor is not in a position to clear the debt to the petitioner and also of other creditors.

12. We have heard the learned counsel for the corporate debtor and operational creditor and have also perused the records.

13. The first issue for consideration is whether the demand notice in Form No.3 dated 21.08.2019 was properly served. The demand notice dated 21.08.2019 was sent at the address as per the master data at Page No.43 of the petition in which the registered office is shown as SCO-43, Old Judicial Complex, Sector-15, Gurgaon, Haryana. The delivery receipt along with copy of duly acknowledged notice is found to be attached at Annexure-II (Colly) of the petition.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has neither filed any reply to the petition nor has disputed the liability towards the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor. It is also observed that on the last date of hearing, learned counsel for the respondent has stated that Corporate Debtor is not in a position to clear the debt.

15. The provisions of Section 9(5)(i) of the Code are as follows:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

- (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

16. The Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017**, held as under :-

“51. 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)(ii)(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.”

17. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is an total unpaid operational debt (in default) of ₹8,16,150/- (principal amount of ₹5,70,000/- and interest @18% thereon of ₹2,46,150/- till August 2019 respective due date of invoices). Copy of invoices raised by the operational creditor are filed with the petition and same is found at page No.48 to 53. Copy of Agreement between petitioner and respondent is at Page No.54 to 56 of the

petition. True copy of Ledger Account maintained by Operational Creditor is at Annexure-III (Page No.59 of the petition). Demand notice in Form 3 was also sent on 06.08.2019 and 21.08.2019 stating that amount due from corporate debtor is ₹8,16,150 (including principle amount of ₹5,70,000/- + interest @ 18% thereon of ₹2,46,150/-). As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 26.09.2019 (at pages 57 to 58 of the petition) has been placed by the operational creditor stating that demand notice issued on 21.08.2019 by speed post. We have held above that the demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

18. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

19. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor M/s Ebusinessware (India) Private Limited and direct moratorium and appointment of Interim Resolution Professional as below.

20. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

21. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

22. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

23. The Law Research Associate of this Tribunal has checked the credentials of Mr. Jugraj Singh Bedi and there is nothing adverse against him. In view of the above, we appoint Mr. Jugraj Singh Bedi, Registration No. IBBI/IPA-001/IP-P00731/2017-18/11208, R/o JSBA House 1250, GF, Mukherjee Nagar, Delhi - 110009, Mobile No.9810272652, E-mail: jb@jsba.in, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Jugraj Singh Bedi shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors

and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

May 18, 2020
Anchal