

NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KERALA

IBA/16/KOB/2020
(Under Section 9 of IBC 2016)

Order delivered on: 22.04.2020

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Veera Brahma Rao Arekapudi (Technical)

In the matter of:

Applicant/Operational Creditor

Collegedunia Web Private Limited,
Plot No.418-419, Phase IV,
Udyog Vihar,
Gurugram – 122 015, Haryana

Vs.

Corporate Debtor

Luvia Networks Pvt Ltd.,
1504, 3/1043, A98, 5th Floor, Cafit Sqare,,
Hilite Business Park, Hilite City,
Pottammal Palazhi Rd, Poovangal,
Kozhikode, Kerala – 673 014

Appearance:

For applicant/Operational Creditor	... Shri Jayant S., Advocate	
For Corporate Debtor	... Nil	...

1. This application has been filed by **COLLEGEDUNIA WEB PRIVATE LIMITED** (hereinafter referred as 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the 'I & B Code') for initiating

Insolvency Resolution Process against **LUVIA NETWORKS PRIVATE LIMITED** (hereinafter referred as 'Corporate Debtor'). The Operational Creditor is a Digital and Mobile Performance marketing company delivering ROI to its clients on mobile and desktop all over the world.

2. The Corporate Debtor is a private limited company, which was incorporated on 31.01.2014 and continues its existence with CIN No. U72100KL2014PTC036046 and has its registered office at 1504, 3/1043, A98, 5th Floor, Cafit Square, Hilite Business Park, Hilite City Pottammal Palazhi Road, Poovangal, Kozhikode- 673 014, which is in the State of Kerala and therefore, the matter falls within the territorial jurisdiction of this Tribunal.
3. The Operational Creditor filed this application to realize the trade dues arising out of its usual course of business on account of the purchase order placed by the Corporate Debtor through email. Invoices are issued by the Operational Creditor for the pending payment on the activity conducted by them for the period of October, December 2018 and January 2019. As on 13.11.2019, the Corporate Debtor is liable to pay a sum of ₹ 8,11,327/- (Rupees Eight Lakhs Eleven Thousand three hundred and twenty-seven Only) from 18.04.2019 along with the interest at the rate of 24% per annum. The amount claimed with interest is ₹ 9,50,550/- as on 04.02.2020. The date of default mentioned is 30.04.2019.
4. The invoices raised by the Operational Debtor, which are due are CD/DL/18-19/2443 dated 29.01.2019 amounting to ₹ 38,822, CD/DL/18-19/2557 dated 08.02.2019 amounts to ₹ 10,231, 314/19-20/H0135 dated 29.04.2019 amounting

to ₹5,711, 314/19-20/H0134 dated 29.04.2019 amounting to ₹ 29,205 and 314/19-20/H0154 dated 30.04.2019 to the tune of ₹ 7,80,169. Total amount of invoice outstanding was ₹ 8,11,327/- plus interest at the rate of 24 % p.a from the due date till actual payment/ or realisation.

5. The applicant stated that they have issued a demand notice under Section 8 of the I & B Code on 04.09.2019. Even after the receipt of notice, the Corporate Debtor has neither paid dues nor issued any notice of dispute within 10 days from the date of receipt of the notice. Therefore, the Operational Creditor filed this application and pleaded for initiating Corporate Insolvency Resolution Process, declaring Moratorium and appointing an Interim Insolvency Resolution Professional under Section 9 of the Code.

6. The copy of the application was also sent by the Operational Creditor to the Corporate Debtor on 14.02.2020 and proof of delivery was also produced along with the application.

Findings:

7. We have gone through the pleadings on record and perused the submissions made by learned counsel for the Operational Creditor.

8. It is evident that the Corporate Debtor has failed to reply to the Demand Notice issued under Section 8 of the I & B Code and has not raised any dispute against the filing of the present Application. The application was listed on 24.02.2020,

04.03.2020 and 10.03.2020 and notice by the Registry was duly issued to the Corporate Debtor. Neither the counsel nor any representative of the Corporate Debtor appeared during the hearing even after receipt of two notices from the Registry, NCLT, Kochi. Therefore, the application is decided *ex parte*.

9. We find that the Application is complete and has been filed in the prescribed form. Copy of the Demand Notice in Form 3, dated 04.09.2019, Affidavit in compliance of section 9(3)(b) dated 16.01.2020 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed by the Operational Creditor in support of its claim.
10. The applicant, having provided services to the Corporate Debtor, for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I & B Code, 2016. The Corporate Debtor has neither raised any dispute in respect of the services rendered nor the amount payable to the Applicant.

ORDER

11. From the above findings, we find that the application made by the Operational Creditor is complete in all respects as required under Section 9 Sub-Section 5, Sub Clause (i) of I & B Code, 2016. 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 one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of

the application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

12. As a consequence, the **Application No. IBA/16/KOB/2020**, filed by **Collegedunia Web Private Limited** under Section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Corporate Debtor i.e. **Luvia Networks Private Limited** is admitted.

13. There shall be moratorium under Section 14 of the I & B Code, in regard to the following:

- 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 off 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 Securitisation 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.

14. It is further directed that the services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.

- a) The order of moratorium shall have effect from the date of this order till the 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.
- b) That the public pronouncement of the corporate Insolvency Resolution process shall be made immediately as specified under Section 13 of IBC.

15. The Operational Creditor has not proposed name of an Insolvency Resolution Professional. Therefore, **Mr. Mr. Francis Mathew, Registration No. IBBI/IPA-001/IP-P00995/2017-2018/11642, having address at 38/1614, Kannanthodath Lane, Edappally, Kochi, Ernakulam, Kerala ,682024, Email Id: fmathewca@gmail.com.**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor, from the Panel of Insolvency Professionals empanelled and recommended by IBBI. There is no disciplinary proceeding pending against the proposed Insolvency Resolution Professional in IBBI website on the date of this order. The IRP is directed to submit copy of AFA (Authorisation for Assignment) issued by Insolvency Professional Agency within two days from the date of receipt of this Order through email. The Registry is directed to advise the IRP of his appointment immediately. The IRP is directed to

take charge of the Corporate Debtor's management immediately and shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. **This order will come into force from the date the lock down is relaxed by the Government authorities and the IRP is advised to initiate necessary steps for CIRP from the date of relaxation only.**

16. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two lakh only) with the IRP to meet the expenses towards issue of public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
17. The Registry is directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately.
18. A copy of this Order be also sent to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry within seven days.

Dated the 22nd day of April, 2020

Sd/-

Veera Brahma Rao Arekapudi
Member (Technical)

Sd/-

Ashok Kumar Borah
Member (Judicial)

Tej/C