



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-687/(ND)/2021**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s. Uniworld Telecom Limited**

Registered Office at: A1/24, Azad Apartment,  
Aurobindo Marg, New Delhi-110016

...Applicant/Operational Creditor

**Versus**

**M/s. Asia Telecom Private Limited**

Registered Office at: 1517/6, Devika Towers,  
Nehru Place, New Delhi 110019

...Respondent/Corporate Debtor

**Coram:**

**SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)**  
**SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)**

IB-687/ND/2021

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**Counsel for Applicant** : Ms. Radhika Rai

**ORDER**

**Per- RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Date: 01.07.2022**

1. This is an application filed by the Applicant M/s. Uniworld Telecom Limited seeking to initiate corporate insolvency resolution process (“CIRP”) under Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent M/s. Asia Telecom Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 1,63,50,000/- (Rupees One Crore Sixty Three Lakhs Fifty Thousand Rupees), including 18% interest. The details of the transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:
- i. That the Corporate Debtor is a company incorporated in the year 1996 and as per MCA records the Corporate Debtor is an Active Company. The Corporate Debtor is engaged in the

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business of manufacture of electronic valves and tubes and other electronic components.

- ii. That the Corporate Debtor never denied or disputed the invoices which were due and payable by them to the Operational Creditor.
- iii. That as per the arrangement between the Operational Creditor and Asia Telecom Private Limited as Corporate Debtor, the Operational Creditor had supplied goods to the Corporate Debtor within the stipulated time and consequently raised the invoices.
- iv. That the Operational Creditor had raised invoices for a sum of Rs. 2,95,00,545 (Rupees Two Crores, Ninety-Five Lakh, Five Hundred Forty-Five) and received payments of Rs. 1,93,65,000 (Rs. One Crores, Ninety-Three Lakhs and Sixty-Five Thousand). Hence, an amount of Rs.1,01,35,545 (Rupees One Crore, One Lakh Thirty-Five Thousand, Five Hundred and Forty-Five) was pending at the end of the year 2010.
- v. That the Corporate Debtor kept on promising the Operational Creditor to clear the outstanding dues as and when possible.



However, the Corporate Debtor failed to pay the outstanding dues.

- vi. That vide letter dated 27.04.2017, the Operational Creditor demanded the pending dues of Rs. 1,01,35,545 (Rupees One Crore, one Lakh Thirty-Five Thousand, Five Hundred and Forty-Five) along with 18% interest per annum and also warned to take legal action against the Corporate Debtor.
- vii. That vide Letter dated 07.05.2017, the Corporate Debtor accepted the debt and stated that the due are pending due to some financial constraints and the same will be cleared soon.
- viii. That again in the year 2018, the Operational Creditor vide letter dated 30.03.2018 demanded the pending dues.
- ix. However, vide letter dated 14.04.2018 the Corporate Debtor assured that the Corporate Debtor will opt for Voluntary Liquidation and the debt of the Operational Creditor will be cleared by the Liquidator since the Corporate Debtor in not doing any business.
- x. That the Corporate Debtor kept on making one or other excuse for non-payment of outstanding amount and in the year 2020

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the Corporate Debtor again made an excuse of nationwide lockdown and widespread pandemic.

- xi. That finally the Operational Creditor decided to take legal action against the Corporate Debtor and sent a letter dated 19.11.2020 to release the outstanding payment of Rs. 1,01,35,545 (Rupees One Crore, One lakh Thirty-Five Thousand, Five Hundred and Forty-Five only) along with 18% interest.
- xii. That the Corporate Debtor vide letter dated 24.11.2020 acknowledged the due to nationwide lockdown and widespread pandemic, the Corporate Debtor is unable to return the outstanding payment and proceed with the Voluntary Liquidation and further requested for a meeting at their office on 01.12.2020 at 12:00 P.M. to discuss the matter.
- xiii. That the representatives of the Operational Creditor reached the office of the Corporate Debtor however, to the surprise of the Operational Creditor, none of the directors of the Corporate Debtor attended the meeting and the meeting was again scheduled for 27.01.2021.

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- xiv. That thereafter, the Corporate Debtor and Operational Creditor finally entered into Memorandum of Understanding (MOU)/Settlement Agreement dated 27.01.2021 whereby, the Corporate Debtor and the Operational Creditor agreed to settle the pending dues of Rs. 2,8987658.70 (Rupees Two Crore Eighty-Nine Lakh Eighty-Seven Thousand Six Hundred Fifty-Eight and Seventy) including Principal amount of Rs. 1,01,35,545/- and Interest Rs. 1,8852113.70/- for Rs. 1,50,00,000/- (Rupees One Crore Fifty lakhs) and decided amongst to make payment of Rs. 30,00,000/- (Rupees Thirty Lakhs) on 27<sup>th</sup> day of each month for 5 consecutive months from the date of execution of MOU cum Settlement Agreement. Vide MOU, The Corporate Debtor had put forward that they will clear the payment of dues within 6 months from the date of MOU.
- xv. That the Corporate Debtor defaulted in payment of the very first instalment dated 27.02.2021 and failed to clear dues within 6 months from the date of MOU.
- xvi. The debt fell due on 27.02.2021, when the Corporate Debtor defaulted in payment of the very first instalment dated



27.02.2021 and failed to clear dues within 6 months from the date of MOU and the same is still outstanding. Whereas, the interest component starts from 27.02.2021 from the date of default.

- xvii. That the Corporate Debtor has recorded the pending dues of the Operational Creditor in every financial statement of the Corporate Debtor.
- xviii. That in the aforesaid circumstances the Operational Creditor finding no other options was constrained to serve a demand notice under the Insolvency and Bankruptcy Code, 2016 on 31.08.2021 and the same was also served through hand on 05.10.2021 duly received by Director of the Corporate Debtor.
2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was finally set ex-parte by this Adjudicating Authority vide order dated 14.03.2022.

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3. The Counsel for the Operational Creditor has filed written submissions on behalf of the Operational Creditor stating as follows:

- i. That the Corporate Debtor has always acknowledged its liability and made entries in the balance sheets of the Corporate Debtor from the FY. 2010 till 2018 (Last filing as per records of the MCA) and pursuant to the judgment of the Hon'ble Supreme Court dated 15.04.2021 in the matter of *Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr. In Civil Appeal No.3228 of 2020*, the entries in balance sheets can amount to acknowledgement for the purpose of extending limitation under Section 18 of the Limitation Act. Hence, the debt is well within the Limitation Period.
- ii. That the above stated judgment of the Hon'ble Supreme Court also set aside the majority decision of the National Company Law Appellate Tribunal (NCLAT) in the matter of *V. Padmakumar v. Stressed Assets Stabilisation Fund* wherein the majority opinion of the five-member bench was that entries in Balance Sheets would not amount to an



acknowledgment of debt to extend limitation under Section 18 of the Limitation Act.

- iii. That on 27.01.2021, the Operational Creditor and the Corporate Debtor had mutually entered into legally binding Settlement Agreement to settle the pending dues of Rs. 2,89,87,658.70 /- (Rupees Two Crore Eighty-Nine Lakh Eighty-Seven Thousand Six Hundred Fifty-Eight and Seventy) for Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs) within 6 months in 5 installments.
- iv. That pursuant to clause (c) of the said Settlement Agreement, the Corporate Debtor had agreed to pay the settlement amount in 5 equal instalments on every 27th day of every month for the next 5 months through bank transfer/NEFT/RTGS and further as per the terms of the clause (e) of the Settlement Agreement the Corporate Debtor agreed to settle the amount within 6 months of the date of the MOU on or before 27.07.2021. However, the Corporate Debtor failed to refund the dues pursuant to the terms of the Settlement Agreement dated 27.01.2021.



- v. That the Operational Creditor issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 for Principal Amount Rs. 1,50,00,000/- and interest Rs. 13,50,000/- on 31.08.2021 through post and 05.10.2021 through hand.
- vi. That the Reply to the demand notice was finally received by the Operational Creditor on 20.11.2021 (dated 15.11.2021), wherein, the Corporate Debtor admitted the amount of debt stating that, "This Letter is in response to your demand notice (Form 3) dated 31.08.2021 where you requested me to pay Rs. 1,63,50,000/- due after entering into Agreement. It is requested to not file any case before NCLT on the basis of section 8 notice and I am hereby assuring you to pay the dues within 6 months from today." However, the Corporate Debtor never approached the Operational Creditor for payment of dues till date.

4. In compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 26.11.2021 stating that no notice of any pre-



existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt.

5. We have heard the Ld. Counsel for the Operational Creditor and perused the averments made in the application as well as the documents enclosed with the application.
6. The Applicant has relied on the judgment of Hon'ble Supreme Court dated 15.04.2021 in the matter of *Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr. In Civil Appeal No.3228 of 2020*, to establish that the debt is well within the Limitation Period. We agree with this submission of the Applicant that the debt is within the limitation period. Reliance is placed on various judgments of Supreme Court such as *Laxmi Surana vs Union Bank of India Civil Appeal No. 2734 of 2020* and *Sesh Nath Singh and Anr. vs Baidyabati Sheoraphuli Cooperative Bank Ltd. Civil Appeal No. 9198 Of 2019*, where Section 18 of the Limitation Act, 1963 was applied to IBC proceedings. Section 18 of the Limitation Act, 1963 is reproduced as under:

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*18. Effect of acknowledgment in writing.—*

*(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

The Corporate Debtor has time and again acknowledged the debt due to the Operational Creditor, thus further renewing the limitation period under Section 18 of the Limitation Act, 1963. The Corporate Debtor had acknowledged the debt vide its letters dated 07.05.2017; 14.04.2018; 24.11.2020; 15.11.2021 and finally vide the MoU dated 27.01.2021.

7. The MoU dated 21.01.2021 on the basis of which the present Section 9 Application has been filed was in furtherance of the original arrangement between the parties to supply goods. It cannot be said that since the cause of action arose on default of payment of installment as per the MoU, no operational debt exists. Reliance in this regard is placed on "*M/s. Brand Realty Services Ltd. Versus M/s. Sir John Bakeries India Pvt. Ltd*



*Company Appeal (AT) (Insolvency) No. 958 of 2020* wherein, the Hon'ble NCLAT held that:

*“Coming to the reasons given by the Adjudicating Authority for rejecting the Section 9 Application as noticed above. The only reason given by the Adjudicating Authority is that no operational debt has been proved by the Appellant as quoted above in Paragraph 14. The Adjudicating Authority observed that “default of instalment of settlement agreement” does not come within the definition of Operational Debt. The present is the case which cannot be said to be case of default of any instalment of agreement, present is the case where Appellant claims certain payments to be made to the Appellant by the Corporate Debtor by virtue of Agreement dated 28th November, 2014. The said Agreement has been projected as Annexure A-5(Colly). The subsequent Agreement dated 15th June, 2018 has also been relied on by the Appellant with regard to which Respondent has raised objection regarding execution. Be that as it may, a perusal of the Agreement dated 28th November, 2014 indicates that the said Agreement entitled the Appellant to receive certain payment from the Corporate Debtor. The present cannot be said to be case*



*of default in payment of instalment. The Agreement was not a kind of Settlement Agreement rather the Agreement gave rights and obligations to the parties hence the very basis of rejecting the Application by the Adjudicating Authority is erroneous. We thus are of the view that the Impugned Order deserved to be set aside on this ground alone.”*

8. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and accepted the said default. Therefore, in the absence of any pre-existence of dispute, this tribunal admits this application and initiates CIRP on the Corporate Debtor with immediate effect:

I. The name of the interim resolution professional (“IRP”) proposed by the Applicant, Mr. Abhishek Anand, (Mobile No. - 9899000168), Reg. No: IBBI/IPA-002/IPN00038/2016-



2017/10077 is hereby confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench. Mr. Abhishek Anand has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 06.11.2021.

- II. Section 16(3)(b) of the Code mandate that the Resolution Professional proposed by the Operational Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the



Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Abhishek Anand has submitted the declaration in Form 2 dated 06.11.2021.

III. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

- IV. The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- V. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VI. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- VII. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.



9. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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