IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – V

Company Petition (IB) No. 87/ND/2020

<u>In the matter of:</u>
Section9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016

AND
<u>In the matter of :</u>

SWIFTMAIL COMMUNICATIONS LIMITED,
4E, Century Plaza,
560- 562 Mount Road,
Teynampet, Chennai - 400018

...Operational Creditor

VERSUS

IRIISNET COMMUNICATION PRIVATE LIMITED
S-12, SECTOR 8,
JASOLA, NEW DELHI, DL 110076

...Corporate Debtor

<u>ORDER DELIVERED ON: 24.02.2022</u>

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Sanjeev Panda & Sumit Shukla, Advs.

<u>ORDER</u>

<u>AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL</u>

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. ***"SWIFTMAIL COMMUNICATIONS LIMITED"*** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company ***"IRIISNET COMMUNICATION PRIVATE LIMITED".***

2. We have heard the Ld. Counsel appearing for the applicant/operational creditor. None appeared on behalf respondent/corporate debtor. On perusal of record, we notice that the respondent was proceeded ex-parte vide order dated 10.12.2021.

3. The Ld. Counsel appearing for the applicant in the course of his arguments submitted that proceeding is fixed for ex-parte hearing against the respondent. He further submitted that earlier he sent a demand notice on the registered Email ID of the corporate debtor and subsequently, he sent the demand notice on the emails of Suspended Board of Directors of the respondent and filed the documents by filling additional affidavit on 18.03.2020. He further contended that even the copy of the application was also sent on the Email ID of the Suspended Board of Directors but no one appeared on behalf of respondent.

4. Considering the above facts, at this juncture, we would like to refer to part-IV of the application and the same is reproduced below: -

PART – IV

PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	INR 622,081.00 (Rs Six Lakh Twenty Two Thousand Eighty One only).
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND	**INR 9,87,432.00 (Rs Nine Lakh Eighty Seven Thousand Four Hundred Thity Two only).** Including interest @18% PA from the due date. Statement of account as maintained in the books of the operational creditor evidencing the outstanding is enclosed herewith.

	DATES OF DEFAULT IN TABULAR FORM)	

5. On perusal of part-IV of the application, we noticed that the applicant has claimed Rs.6,22,081/- as principal amount apart from that he also claimed interest @ 18% per annum. We further noticed that the date of filing of this application is 23.12.2019 which is prior to the notification by which the minimum threshold is increased from Rupees one lakh to Rupees one crore. Therefore, in terms of Section 4 of IBC, the present application is maintainable.

6. We further observe, though the demand notice was delivered and even the copy of this application was also delivered, but none appeared on behalf of respondent. Since the default is more than of Rupees one lakh, therefore, we are of the considered view that in terms of Section 9 (5) (i) the applicant/operational creditor has succeeded to establish this fact that the application is complete, the operational debt has not been paid, the demand notice has duly delivered and no notice of dispute has been raised by the corporate debtor and there is no disciplinary proceedings pending against the corporate debtor.

7. **Accordingly, we hereby ADMIT the petition**. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

> *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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.

Further:

(2) 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.

(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 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."

8. Since the operational creditor by filing additional affidavit has proposed the name of **Ms. Hemi Gupta** , Insolvency Professional having **IBBI Regn No: IBBI/IPA-002/IP-N-00147/2017-2018/10383** and **Email:**

hemigupta@rediffmail.com **(Mobile: +91-9359911588)** duly empanelled with the IBBI as the IRP. Accordingly, she is appointed as IRP. She is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

9. The Operational Creditor is directed to deposit a sum of Rupees fifty thousand to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

10. Copies of the order be sent to both the parties as well as to the IRP.

Sd/-

Hemant Kumar Sarangi
(Member Technical)

Sd/- .2.2022

Abni Ranjan Kumar Sinha
(Member Judicial)