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

CP (IB) No. 514/Chd/Chd/2019
Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:
Galtech Infosolutions Private Limited
Through its Director Kishore Kishnan
No. 50, Ground Floor, 9th A Main Road
1st Stage, Indiranagar, Bangalore,
Karnataka-560038 …Petitioner-Operational Creditor

Vs.

Tera Tradelinks Private Limited
Through its Director Sundeep Bedi
Plot No. 390, Industrial Area, Phase-II
Chandigarh-160003
CIN No: U51909CH2010PTC032058 …Respondent-Corporate Debtor

Judgment delivered on: 27.03.2023

Coram: **Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)**
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Petitioner- Operational Creditor : Mr. Yashpal Gupta, Advocate

For the Respondent-Corporate Debtor : Ex-parte vide order dated 22.02.2023

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Galtech Infosolutions Private Limited** through its Director Mr. Kishore Kishnan (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Tera Tradelinks Private Limited** (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Tera Tradelinks Private Limited, is a Company incorporated on 26.02.2010 under the provisions of the Companies Act, 1956 with CIN No. U51909CH2010PTC032058 with its registered office at Plot No. 390, Industrial Area, Phase-II, Chandigarh-160003. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A-3.

3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor is engaged in the business of purchasing and selling engineering hardware products and related activities. The corporate debtor approached the operational creditor for the supply of Hitachi Multimedia projectors for which operational creditor had given its quotation. The corporate debtor issued a purchase order with reference no. TTPL/GIPL/220318 dated 22.03.2018 for the total amount under invoice of Rs. 46,25,920/- (Rupees Forty Six Lakhs Twenty Five Thousand Nine Hundred Twenty Only) out of which Rs. 7 lakhs were paid on 27.03.2018, Rs. 3,82,000/- was paid on 18.05.2018 and Rs. 11,81,306/- was paid on 14.06.2018 into the bank account of Operational Creditor. Thereafter, Corporate Debtor stopped making the payment and Operational Creditor adjusted the projector worth Rs. 3,64,800/-. The total amount received plus adjusted is Rs. 26,28,106/- and the remaining balance is Rs. 19,97,814/- (Rupees Nineteen Lakh Ninety Seven Lakhs Eight Hundred and Fourteen Only) plus 18% interest for the period of delay in making payment to the Operational Creditor.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 19,97,814/- (Rupees Nineteen Lakhs Ninety Seven Thousand Eight Hundred and Fourteen Only) plus 18% interest for a period of delay in making payment to the Operational Creditor. The default occurred on 23.04.2018 i.e. invoice was raised on 23.03.2018 and the payment fell due after 30 days i.e. 23.04.2018. Copy of purchase order (Annexure A4), invoice (Annexure A5), ledger Account maintained by Operational Creditor (Annexure A6), working computation (Annexure A7), email correspondences exchanged between the parties (Annexure A8), email admitting debt (Annexure A9), Cheque (Annexure A10), Bank Account Statement (Annexure A12), Whatsapp conversation with one of the directors (Annexure A14) are attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 23.08.2019 and the same has been delivered to the corporate debtor vide registered post as the postal receipts and tracking report is attached as Annexure A13 of the petition. The corporate debtor had not replied to the demand notice till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No. 6599 dated 25.11.2019. The corporate debtor has filed a reply vide diary No.1986 dated 13.03.2020, wherein it is stated that the present application is filed as a counter to a civil suit filed by the respondent/ corporate debtor before the court of Civil Judge, Senior Division, Chandigarh on 07.09.2019 related to the dispute about supply and payment (Annexure R-1) in which Mr. Sundeep Bedi issued a cheque

bearing no. 009961 of Rs. 39,25,920/- to the applicant on 06.07.2018 and handed over the same on 10.07.2018. The cheque was returned to the applicant, Mr. Kishore Krishnan, Managing Director of the applicant company to Sundeep Bedi and falsely informed, Haryana State Electronic Development Cooperate Limited (HARTRON) by email on 09.08.2019 that Corporate Debor has been blacklisted by M/s Hitachi from representing and selling Hitachi projectors in India (Annexure R-2). The applicant was the sole distributor of Hitachi for providing after-sale service and in case of default, Haryana State Electronic Development Cooperate Limited (HARTRON) was to forfeit the 20% performance bank guarantee amount due to which Corporate Debtor suffered heavy financial loss. The form-4 sent by Operational Creditor does not contain an invoice and the notice was not received by Corporate Debtor since the premises and email were only accessible to Mr. Sundeep Bedi with whom the management dispute was going on. It is alleged that the application contains false and misleading details of transactions. As per the agreed terms, 80% of the payment was to be made by Haryana State Electronic Development Cooperate Limited on delivery and installation and the remaining 20% was to be paid against the submission of a performance bank guarantee. The purchase order Gailtech India Private Limited (petitioner) provided a warranty of two years however, the applicant refused to provide aftersale service support, thereby Haryana State Electronic Development Cooperate Limited stopped releasing 20% amount qua the amount claimed by the applicant. There was a pre-existing dispute between the parties. There was no condition stipulated on the invoice by the applicant for charging 18% interest on the delayed period. For the purchase order TTPL/GIPL/220318, no product was supplied. There is no contractual relationship between the parties. The bank account statement attached is not for the period commencing from the date of default. Vide order dated 22.02.2023 of this Adjudicating Authority, it was noticed that there was no representation on behalf of the respondent- corporate debtor, so the corporate debtor was proceeded ex-parte.

7. The rejoinder was filed vide Diary No.00658/1 dated 02.02.2021, wherein it is stated that the civil suit filed by the corporate debtor is misconceived and is filed to dispute the debt due towards the petitioner. The petitioner under Sections 241 and 242 of the Companies Act filed by one of the members of the respondent company against the respondent company is due to an internal dispute between members of the company. The Corporate Debtor is admitting in the Civil Suit as well as through various emails/cheques that they owe a large sum to the operational creditor. The Corporate Debtor issued a cheque and the director of their own company instructed the bank for blocking their account which is an internal dispute or is in connivance with each other to run away from the existing admitted liability. The aftersale service is a revenue business but the question of after-service does not arise since the payment of the original invoices was not paid by the Corporate Debtor. The demand notice was sent on 23.08.2019 inclusive of all Annexures. In the reply submitted by Corporate Debtor, it is stated that the plaintiff company placed an order with defendant no. 1 for the supply of 130 pieces of the projector. The invoices, purchase order, ledger account and email placed on record show that there is an amount due and an admission of liability.

8. The short written submissions have been filed by the petitioner vide Diary No.00658/3 dated 13.09.2022 and by the respondent corporate debtor vide diary No.00658/2 dated 16.08.2022.

9. We have heard the learned counsel for the petitioner and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 23.08.2019 was properly served. The demand notice has been delivered to the corporate debtor vide registered post as the postal receipts and tracking report are attached as Annexure A13 of the petition. Therefore, a demand notice was duly served. However, the corporate debtor has not replied to the demand notice till date.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by learned counsel for the petitioner that no notice has been given by the Corporate Debtor relating to a dispute of the unpaid operational debt. In addition, thereto, Corporate Debtor has also not made any payment of the unpaid Operational Debt to the Operational Creditor up till the filing of the present insolvency petition.

The corporate debtor vide its reply stated that the present application is filed as a counter to a civil suit filed by the respondent/ corporate debtor before a court of Civil Judge, Senior Division, Chandigarh on 07.09.2019 related to the dispute about supply and payment. However, it is seen from the records that the civil suit is filed with the limited prayer to direct the petitioners to return cheque No. 009961 dated 06.07.2018 and the same is stated to be filed by the directors of the corporate debtor in connivance with each other. Further, the Corporate Debtor has admitted in the Civil Suit as well as through various emails dated 15.02.2019 and 28.01.2019 that the balance amount is outstanding and has to be paid by the corporate debtor. Moreso, a civil suit has been filed after the service of the demand notice dated 23.08.2019. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

Furthermore, it is stated by the corporate debtor that there was no condition stipulated on the invoice by the applicant for charging 18% interest on a delayed period. However, even if the interest component is not taken into consideration, then also there is a principal amount of Rs. 19,97,814/- (Rupees Nineteen Lakhs Ninety Seven Thousand Eight Hundred and Fourteen Only) which amounts to the debt and the default, is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor and the case pertains to the year 2019. Therefore, the contention of the corporate debtor regarding the interest component is of no rescue to the corporate debtor.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 23.08.2019 in Form 3 attached as (Annexure A/13) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default 23.04.2018 i.e. invoice was raised on 23.03.2018 and the payment fell due after 30 days i.e. 23.04.2018.. This application was filed vide Diary No. 4865 on 17.09.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 19,97,814/- (Rupees NinteenLakhs Ninety Seven Thousand Eight Hundred and Fourteen Only) plus 18% interest for a period of delay in making payment to the Operational Creditor still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of purchase order (Annexure A4), invoice (Annexure A5), ledger Account maintained by Operational Creditor (Annexure A6), working computation (Annexure A7), email correspondences exchanged between the parties (Annexure A8), email admitting debt (Annexure A9), Cheque (Annexure A10), Bank Account Statement (Annexure A12), Whatsapp conversation with one of the directors (Annexure A14) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in

all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. 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 CIR Process in the case of the Corporate Debtor, **Tera Tradelinks Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, Ms. Taruna Goel, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Ms. Taruna Goel and there is nothing adverse against her. In view of the above, we appoint Ms. Taruna Goel, Registration No. IBBI/IPA-002/IP-N00314/2017-2018/10902,E-mail:tarunagoelcs@gmail.com, Mobile No. +91-9915592699, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Ms. Taruna Goel 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 the 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 Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

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

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

17. 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or

suspended or interrupted during the 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.

19. 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.

20. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

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

22. This petition is accordingly admitted.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

March 27, 2023
SM/TB