

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/1195/2019** filed under Section 9 read with Sub Rule (1) of Rule 6 and other applicable Provisions of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of ***M/s. ASP Computers Private Limited***

**M/S. INGRAM MICRO INDIA PRIVATE LIMITED**

5<sup>th</sup> Floor, Block B  
Godrej IT Park,  
02, Godrej Business District  
Pirojshanagar, Vikhroli (W)  
Mumbai – 400 079

*... Operational Creditor*

-Vs-

**M/S. ASP COMPUTERS PRIVATE LIMITED**

F – 7, 1<sup>st</sup> Floor, K.A.J. Plaza,  
No. – 7, Narasingapuram Street,  
Mount Road, Chennai – 600 002

*... Corporate Debtor*

Order Pronounced on **05.05.2020**

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Sagar Wagle, Advocate  
Ramesh, Advocate  
For M/s. Ramalingam &  
Associates*

*For Corporate Debtor : P. Neethi Kumar, Advocate*

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## **ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant viz., **M/s. Ingram Micro India Private Limited** (hereinafter referred to as "*Operational Creditor*") against **M/s. ASP Computers Private Limited** (hereinafter referred to as "*Corporate Debtor*"). The Operational Creditor seeks to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U72100TN2009PTC073271 which was incorporated on 20.10.2009 and that its Authorized share capital and paid up capital is Rs.1,00,00,000.00 and Rs.93,00,000.00 respectively.



The Registered Office of the Corporate Debtor as per the Application is stated to be situated at F-7, 1<sup>st</sup> Floor, K.A.J. Plaza, No.7, Narasingapuram Street, Mount Road, Chennai – 600 002.

3. Part-III of the Application shows that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the same. From Part-IV of the Application, it is seen that a sum of Rs.42,19,222/- along with interest at the rate of 24% p.a. amounting to Rs.19,15,503/- cumulatively aggregating to Rs.61,34,725/- is being claimed as total debt which is due and payable by the Corporate Debtor to the Operational Creditor.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is a leading distributor of IT Hardware and software products including all telecommunication equipment, office automation and also provides training, warehouse and other allied service. It is submitted that the Corporate Debtor has approached the Operational Creditor for procurement of certain products and based on the same, the Operational Creditor provided the goods in relation to the same, from time to time.



5. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has accepted the goods provided and supplied by the Operational Creditor and there has been no demur whatsoever in relation to the goods provided and supplied by the Operational Creditor. Further, the Corporate Debtor has agreed to pay an amount of Rs.35 Lakhs in November 2018 in partial discharge of the overall dues and in pursuance of the discussion between the parties. Also, the Corporate Debtor has acted upon the said understanding by transferring an amount of Rs.2,00,000/- on 12.11.2018.

6. The Learned Counsel for the Operational Creditor submitted that since the payments were not forthcoming from the Corporate Debtor, the Operational Creditor deposited cheque bearing No.700055 dated 10.01.2019 for an amount of Rs.48,69,222/- drawn on South Indian Bank Limited issued by the Corporate Debtor. However, the said cheque was returned unpaid with the endorsement "insufficient funds".

7. The Learned Counsel for the Operational Creditor submitted that even after the dishonour of the cheque, the Corporate Debtor has made the following payments;



<b>Date</b>	<b>Amount</b>
22.01.2019	Rs.2,00,000/-
30.01.2019	Rs.2,00,000/-
15.02.2019	Rs.1,50,000/-
12.07.2019	Rs.1,00,000/-

Thus, it was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has admitted its default and there is no dispute whatsoever in relation to the amounts payable to the Operational Creditor.

8. The Learned Counsel for the Operational Creditor further submitted that he has sent the Demand Notice in Form – 3 as mandated under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 25.07.2019 on behalf of the Operational Creditor and despite lapse of more than 10 days from the service of the notice, no payment has been made by the Corporate Debtor nor has the Corporate Debtor brought to the notice of the Operational Creditor any dispute in relation to the amounts claimed by the Operational Creditor.

9. The Corporate Debtor has filed its reply and submitted that the Operational Creditor has suppressed many facts before this Tribunal. It was submitted that the Operational Creditor has made

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an offer in May 2011 and assured various benefits including the trips to the United Kingdom and United States of America, if the Corporate Debtor buys Microsoft products from the Operational Creditor and based on such assurance, the Corporate Debtor purchased lot of products from the Operational Creditor. Thereafter, the Operational Creditor had offered 5 tickets for the United Kingdom Trip and 4 tickets for the United States of America trips and in total, 9 tickets worth about Rs.27 Lakhs inclusive of travel, food and accommodation and other expenses and it is stated that the Operational Creditor has received the costs of these tickets from Microsoft.

10. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor has failed to issue 9 tickets to the Corporate Debtor even after repeated mails sent to the Operational Creditor, hence the Corporate Debtor issued a notice to the Operational Creditor on 05.09.2018 to issue 9 tickets worth about Rs.27 Lakhs or deduct the amount from the amount due to the Operational Creditor; however, the Operational Creditor had not issued any reply to the same. Thus, it was stated that the Operational Creditor has indulged in unfair trade practice. It was also submitted that the Operational Creditor is responsible to pay for 9 Foreign Tickets worth about Rs.27 Lakhs which the

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Operational Creditor dishonestly withheld from the Corporate Debtor, eventhough the Operational Creditor received the said sum from the Microsoft.

11. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor has filed a Criminal Complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Magistrate Court, Bombay and the same goes on to show that there is a dispute between the parties and in relation to the same referred to Section 8(2)(a) of the IBC, 2016. The Learned Counsel for the Corporate Debtor also referred to the Judgment of the Hon'ble Supreme Court in the matter of **Mobilox Innovations Private Limited -Vs- Kirusa Software Private Limited** (MANU/SC/1196/2017) in order to substantiate that there exists dispute between the parties.

12. The Learned Counsel for the Corporate Debtor has stated in his counter that the amount due and payable to the Operational Creditor is Rs.43,81,987/- and after deducting the 9 tickets amount worth of Rs.27 Lakhs, the balance payable is Rs.16,81,987/- which amount, the Corporate Debtor is always ready to pay to the Operational Creditor.

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13. In reply to the contentions and submissions made by the Corporate Debtor, the Learned Counsel for the Operational Creditor has filed rejoinder and submitted that the transactions which transpired between the parties in relation to the booking of tickets happened in May 2011 and thereafter there has been not even a murmur in so far as the said issue is concerned. Further, it was submitted that since the Corporate Debtor is unable to discharge the amounts due to the Operational Creditor, the Corporate Debtor appears to have raised the said issue now.

14. The Learned Counsel for the Operational Creditor contended that, even assuming without admitting that the Corporate Debtor was entitled to the purported costs of the tickets as claimed, it per-se would not relieve the Corporate Debtor of its obligation to pay for the goods. The Learned Counsel for the Operational Creditor referred to the e-mail dated 02.11.2018 wherein the understanding between the parties was that the Corporate Debtor was required to pay the amounts due to the Operational Creditor irrespective of whether the Corporate Debtor was entitled to the benefit of the alleged scheme or otherwise.

15. The Learned Counsel for the Operational Creditor further contended that the Schemes annexed by the Corporate Debtor

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would demonstrate that the Operational Creditor holds no responsibility towards rejection of visas and that no alternative would be provided if the visas stood rejected. It is pertinent to note here that that the visa of the Corporate Debtor was rejected twice for the trip to UK. Hence, the representative of the Corporate Debtor voluntarily cancelled the other trip to which they claim they were entitled and the same is apparent from the emails sent by the Corporate Debtor. Thus, it was contended that the Corporate Debtor, having defaulted on its payments, has now attempted to raise this issue as an afterthought only in order to stall the insolvency proceedings.

16. Heard the Counsel for both the parties and perused the records including the documents placed on file. The preliminary issue raised by the Corporate Debtor that filing of Section 138 of the Negotiable Instruments Act, 1881 by the Operational Creditor before the Magistrate Court, Bombay, would amount to pre-existing dispute is no longer *res integra* since the said issue was put to quietus by the Hon'ble NCLAT in the matter of **Sudi Sachdev -Vs- APPL Industries Ltd.** in Company Appeal (AT) (Insolvency) No. 623 of 2018, wherein at para 6, it was held that the pendency of the case under Section 138 of the Negotiable Instruments Act, 1881, even if accepted as recovery

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proceedings, it cannot be held to be a dispute pending before a court of law.

17. The other contention raised by the Learned Counsel for the Corporate Debtor is that a sum of Rs.27 Lakhs has to be paid by the Operational Creditor to the Corporate Debtor for the costs of 9 tickets or the Operational Creditor has to give credit for the said sum of Rs.27 Lakhs to the Corporate Debtor. For proper adjudication of the said issue, it is pertinent to refer to the terms and conditions of the benefits of the Scheme, which is annexed at page 27 of the typed set of papers filed along with the counter by the Corporate Debtor. More particularly clause I, states as follows;

*I. Ingram Micro (Operational Creditor) will not be responsible for any Visa Rejection, no alternate Benefit will be adjusted for not utilizing the tickets.*

The above clause clearly postulates the fact that the Operational Creditor would not be held responsible for the visa rejection and no alternate benefits will be adjusted for not utilizing the tickets. It is an undisputed fact that the visa for the Corporate Debtor for the trip to United Kingdom was rejected twice and as a result of which, the trip to United States of America, was voluntarily cancelled by the Corporate Debtor. Thus,

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the contention of the Corporate Debtor that a sum of Rs.27 Lakhs has to be given credit to the account of the Corporate Debtor is required to be brushed aside.

18. It may be seen that the Corporate Debtor has not preferred to give a detail reply pointing out the dispute, which were pre-existing, to the Demand Notice sent by the Operational Creditor. However, now contends that there exists a dispute between the parties. Even assuming for a moment that the said sum of Rs.27 Lakhs has to be given credit to the account of the Corporate Debtor, the Corporate Debtor in their own counter has admitted that still a sum of Rs.16,81,987/- is due and payable to the Operational Creditor. Thus, it may be seen that the debt and default on the part of the Corporate Debtor is proved and the defence raised by the Corporate Debtor are spurious, illusory and hypothetical.

19. The Operational Creditor has also filed Affidavit as mandated under Section 9(3)(b) of IBC, 2016 wherein they have stated that after the issuance of the Demand Notice, the Corporate Debtor has not issued any notice of dispute nor paid the due amount to the Operational Creditor.

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20. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years. The registered office of the Corporate Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor

21. Thus, this Tribunal is perforce to initiate CIRP in relation to the Corporate Debtor by admitting this Petition under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. CHANDRASEKHAR SAGUTOOR** with Registration Number **IBBI/IPA-001/IP-P00960/2017-2018/11581** (email id:- **sagutoor@gmail.com**) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a



consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- 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;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

22. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



- (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.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (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.

23. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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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.

24. The Operational Creditor is directed to pay a sum of ~~Rs.2,00,000/-~~ *(Rupees Two Lakhs Only)* to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is



figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Raymond*

Order pronounced by concord in terms of NCLT circular dated 14/04/2020 through video conferencing platform. Member (T) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 05/05/2020 for Chennai Bench - I.

  
**N. SRIRAMASUBRAMANIAN**  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
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