NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

2. C.P.(IB)-2837(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **18.01.2022**

NAME OF THE PARTIES: K K Infonet System

V/s

Netizen Engineering Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Operational Creditor, Mr. Ameya Mahajan and Counsel for the Corporate Debtor, Ms. Raghav Sharma are present through virtual hearing.

Order pronounced vide separate order. In the result, CP 2837/2019 is allowed.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 2837/IBC/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

K.K. INFONET SYSTEM
Row House, Plot No. 31, Sector No. 5, Ghansoi, Navi Mumbai- 400701

...**Operational Creditor**

Vs

NETIZEN ENGINEERING PRIVATE LIMITED
(CIN: U72900MH2000PTC127631)
Having registered office at: Manek Mahal, Flat No. 1-20, 6th Floor, 90-Veer Nariman Road, Churchgate, Mumbai- 400020

.......Corporate Debtor

Order delivered on: 18.01.2022

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Sarosh E. Bharucha, Advocate

For the Respondent: Mr. Ameya Mahajan, Advocate

Per: Shri H.V. Subba Rao, Member (Judicial)

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1. This Company petition is filed by *K.K. INFONET SYSTEM.* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against

Netizen Engineering Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an unresolved operational debt of Rs. 1,54,82,385.60/- payable to the Operational Creditor by the Corporate Debtor for various works carried on by the Operational Creditor from 11.06.2012 to 16.08.2016 and awarded by the Corporate Debtor.

2. Brief facts of the case as pleaded in the above Company Petition as well as in the demand notice are as follows:

   i. The Corporate Debtor approached the Operational Creditor for the aforesaid services in the year 2012 (hereinafter referred to as "said services"). The Corporate Debtor also registered the Operational Creditor as his authorized vendor and accordingly provided the Vendor Registration No. 513010.

   ii. As per the requirements raised by the Corporate Debtor from time to time the Operational Creditor provided the said services against various work orders and the same was accepted by the Corporate Debtor without any protest or demur.

   iii. The Operational Creditor provided the said services to the full satisfaction of the Corporate Debtor on earnest believe and understanding that payment in respect of said services shall be made by the Corporate Debtor company on respective due dates. The Corporate Debtor received the said services without any protest or demur.

   iv. That, against the supply of the said services the Operational Creditor duly raised 164 invoices, for an amount of Rs. 2,00,28,098.17/- along with 24 invoices for which work order yet to be issued as promised by the Corporate Debtor for an amount of Rs. 14,15,610.80/- aggregating to sum of Rs. 2,14,43,708.97/- which were duly acknowledged by the Corporate Debtor without any protest or demur ("hereinafter referred to as said invoices").

v. The said invoices were raised against the services provided by the Operational Creditor and which were duly acknowledged by the Corporate Debtor and the Corporate Debtor assured to clear all its outstanding amounts within due time, but the Corporate Debtor failed to make the payments against the invoices despite of their assurance except making the part payment as duly reflected in ledger accounts maintained in books of accounts of the Operational Creditor.

vi. In view of the books of accounts maintained by Operational Creditor in the ordinary course of business the total amount payable by the Corporate Debtor is Rs. 1,54,82,385.60/- which is still due and outstanding.

3. The Corporate Debtor filed affidavit in reply through its authorized representative Ms. Pallavi S. Mane opposing the admission of the above Company Petition on the following grounds:

   i. The present Company Petition is incomplete
   ii. The Operational Creditor is not entitled to monies claimed as they are barred by law of limitation
   iii. The present Company Petition is bad for misjoinder of cause of action

iv. The Operational Creditor has claimed interest contrary to provisions of the Work Orders

v. The Petition is an abuse of provisions of the Code.

4. It is pertinent to mention here that another Company Petition bearing CP No. 2507/2019 was filed by one M/s Herts Technologies Pvt. Ltd. against the present Corporate Debtor which was also reserved for orders along with the present Company Petition. The Corporate Debtor in both Company Petitions filed the affidavit in reply of the same deponent opposing both Company Petitions on the same grounds.

5. In the light of the above contention raised by the Corporate Debtor, the core issue that needs to be decided in the above Company Petition is:

Whether the Company Petition is within limitation?

6. In order to decide the above issue, it is important to mention here that the above Company Petition is filed on 25.07.2019 and the Operational Creditor carried on works from 11.06.2012 to 16.08.2016 and the Demand Notice was issued on 23.05.2019.

7. The following are the contentions of the Operational Creditor in explaining the plea of limitation raised by the Corporate Debtor. It is the contention of the Operational Creditor that the date of default in this case starts from the date of submission of last invoice bearing no. KKIS-17808 dated 29.07.2017. It is also the contention of the Operational Creditor that as per the banker's certificate of the Operational Creditor annexed at page nos. 58 to 60 various payments were made by the Corporate Debtor from time to time and the limitation for filing the above Company petition starts from the respective date of payments. The Operational Creditor further contends that the Corporate Debtor had addressed an email

dated 13.08.2016 acknowledging the liability of 83,44,756.20/- under a detailed excel sheet in respect of invoices covering from 10.08.2015 till 31.03.2016 which was annexed under 'Exhibit-A' from page nos. 15 to 17 to the affidavit in rejoinder to the reply filed by the Corporate Debtor dated 03.03.2020 and the above Company Petition being filed on 25.07.2019 is well within limitation from 13.08.2016.

8. The contention of the Corporate Debtor in their written submission is as follows:

   i. That the claim of the Operational Creditor covered under 164 invoices + certain additional work done (in respect of which no invoices have been raised). The present petition is filed on 24.07.2019 and any claim in respect of invoices raised prior to 24.07.2016 is therefore ex-facie time barred. Thus, the Corporate Debtor contends the claim in respect of invoices from serial nos. 1 to 147 in the particulars of claim annexed to the petition are time barred.

   ii. The invoices at serial numbers 148 to 164 of the Particulars of Claim amounts to Rs. 20,21,883/-. The claim under serial number 165 of the Particulars of claim for additional work done amounts to Rs. 14,15,610.80/. As mentioned above, no invoices have been raised in respect of the same. Without prejudice to its rights and contentions and with a view to amicably settle the matter, the Corporate Debtor offered to pay the amount of Rs. 34,37,493.80/- to the Operational Creditor and is still willing to do so. The Operational Creditor, however, rejected this offer.

   iii. It is Operational Creditor's case that the Corporate Debtor's email dated 10.10.2017 at page no. 486 of the petition amounted to an acknowledgement of liability by the Corporate Debtor. The Corporate Debtor in the said email does not in any way amount to an acknowledgement of liability under Section 18 of the Limitation Act, 1963. In fact, the body of the email is empty/blank and it simply attaches an excel sheet related to different companies.

iv. Without prejudice to its rights and contentions and with a view to amicably settle the matter, the Corporate Debtor offered to pay a further amount of Rs. 51,65,167/- based on the aforesaid email dated 10.10.2017 aggregating to Rs. 86,02,660.80/- to the Operational Creditor and is still willing to do so. This was on the basis that in the event that the email dated 10.10.2017 was treated as an acknowledgement of liability, the amount of Rs. 51,65,167/- therein pertained to the present matter. The Operational Creditor, however, rejected this offer as well.

v. The Operational Creditor also sought to argue that the invoices issued by the Operational Creditor were on a running account basis and therefore with every subsequent invoice or payment, a fresh limitation period would begin for all previously raised invoices. The Operational creditor at page 27 of the Petition has accordingly stated that the debt fell due on 29.07.2017, being the date on which the last invoice was raised by the Operational Creditor. This stand is erroneous and cannot be accepted for various reasons.

vi. Each invoice has been issued under a different work order. The period of limitation for each invoice would begin to run 30 days after the date of the invoice and end three years thereafter. The same is evident from the terms and conditions of the work orders issued to the Operational Creditor, most of which the Operational creditor has deliberately not annexed to the petition.

9. It is appropriate to mention here that the Corporate Debtor did not plead anything with regard to the settlement in their reply as mentioned in the above paras in the written submission. Since the fate of the Company Petition is depending on the pleas raised by the Corporate Debtor, let us examine the please of the Corporate Debtor. The perusal of the reply, written submissions and the material available on record makes it very clear that the Corporate Debtor is neither disputing the contractual relationship between the parties nor execution of works and submission of invoices by Operational Creditor to the Corporate Debtor for the completed works done by the Operational Creditor except non-submission of invoices for an amount of Rs. 14,15,610/- for the additional works done by the Operational Creditor under serial no. 165 of the particulars of the claim filed by the Operational Creditor. The Corporate Debtor is also not denying their email dated 13.08.2016 and the excel sheet annexed to the email addressed to the Operational Creditor. The excel sheet contains the details of 22 invoices with respective amounts and bill dates payable by the Corporate Debtor to the Operational Creditor.

10. All the invoices pertains to the financial year 2015-16. It is very clear from the email that even though the email did not specifically mention anything with regard to admission of liability, it can be inferred from the excel sheet attached to the email that the purpose of sending email by the Corporate Debtor is to inform the Operational Creditor about the

outstanding liability in respect of the invoices mentioned in the excel sheet. When such is the object and intention in sending the email it would certainly amount to acknowledgement of liability by the Corporate Debtor. To add this, the relevant dates of the invoices covered in the excel sheet are certainly within 3 years from the date of email and the present Company Petition is within 3 years from the date of email dated 13.08.2016. That is the reason why the Corporate Debtor even in their written submission expressed their ready and willing to accept the liability to an extent of **86,02,660.80/-** in the event the email is accepted as acknowledgment of liability. Therefore, viewing from any angle, this Bench has no hesitation in holding that the claims of the Operational Creditor in respect of the invoices covered under the excel sheet are within limitation. Thus, this Bench is of the considered opinion that the debt and default are clearly established in this case and the debt is within limitation and the amount of Operational Debt is beyond Rs. 1 lac which is beyond the threshold limit for admitting the company petition. When once these legal requirements are established, this Bench has no option except to admit the Company petition. Crystallisation and adjudication of the exact amount of the operational debt is beyond the scope of Section 9 petition.

11. In view of the above observations and findings, this Bench is of the considered opinion that the plea of limitation raised by the Corporate Debtor in this case has no legs to stand and is liable to be rejected. Since the present company Petition satisfies all the necessary requirements for admission, the Company Petition deserves to be admitted. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -2837(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Netizen Engineering Private Limited.

b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Jagdish Ratanlal Ahuja,** Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00401/2017-2018/11175 having registered email ID pcsjrahuja@gmail.com and mobile no. 9323144390 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
g. That the order of moratorium shall have effect from the date of pronouncement 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.
h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	Sd/-
CHANDRA BHAN SINGH	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**