

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.41/BB/2020

U/s. 9 of the IBC, 2016

R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Mos Logi Technologies Private Limited,

Registered Office at:
No.10, 5th C Cross,
16th Main Road, MHCS Colony,
BTM Layout
Bengaluru – 560 076.

... Petitioner/Operational Creditor

Versus

Black Pepper Technologies Private Limited,

Registered Office at:
Vintage Building, No. ½,
Left A Wing, 3rd Floor,
Kalyanamantapa Road,
Jakkasandra, Koramangala- 1st Block,
Bangalore- 560 034.

... Respondent/Corporate Debtor

Order delivered on: 31st January, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri R.C. Venkatesh

For the Respondent : None

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

The present petition is filed on 13.01.2020 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w.



Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Mos Logi Technologies Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Black Pepper Technologies Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 67,77,252/-. (Rupees Sixty Seven Lakhs, Seventy Seven Thousand Two Hundred and Fifty Two).

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is a company incorporated on 28.02.2007 under the Provisions of the Companies Act engaged in the business of providing Service in the areas of Physical Design, Analog/Mixed-Signal/RF Layout. The Corporate Debtor was incorporate in 12.11.2009 under the provisions of the Companies Act engaged in the business of providing Technical Services in Chip Design and Allied Areas.
4. The Operational Creditor and Corporate Debtor entered into an agreement on 28.05.2015 under which the Corporate Debtor has availed the services as Analog/Physical Design as per the agreement.
5. In consideration of the services rendered by the operational creditor the corporate agreed to (1) provide support, Assistance and advice in the form of experienced engineering resource in the areas of Analog/Physical Design (2) submit invoice on a monthly basis (3) All invoices to be payable no later than 30 days after the receipt of the valid invoice.

6. It is submitted that post execution of the Agreement, the operational creditor commenced providing services and supply of Technical know-how as per specific requirements and fulfilment of other requisite formalities. The execution of providing service as per the terms and conditions of the agreement was accepted.

7. Further, the payment for dues was cleared by the Corporate Debtor upto 30.09.2016. The total dues on invoices raised pending on the date



-sd/-

of application was Rs. 67,77,252/-. It is submitted that the Corporate Debtor had failed to pay its debts to the operational creditor.

8. This is the third round of litigation in respect of this Petition:

- I. In the first instance, vide order dated 30.08.2019 in C.P.(IB)No.274/BB/2019, this Adjudicating Authority had disposed of the Petition as withdrawn in view of the Joint Memo of Settlement dated 30.08.2019 arrived at between the two parties, and it was stipulated that the Petitioner will have right to file a fresh Company Petition in accordance with law, if the settlement fails.
- II. As the settlement arrived at vide the above mentioned Joint Settlement had not materialised, the Petitioner filed a fresh Company Petition bearing C.P.(IB)No.41/BB/2020 which was again disposed of by this Adjudicating Authority vide order dated 22.01.2021. In this order, it was directed the Respondent to settle the matter within a period of six months, and the Operational Creditor was given liberty to revive the Petition, if the debt was not cleared in the time given.
- III. Since the settlement again failed, the Operational Creditor filed I.A. No.159 of 2022 on 05.04.2022 seeking restoration of the Petition bearing C.P.(IB)No.41/BB/2020 in view of the liberty granted. Consequently, vide this Adjudicating Authority order dated 10.10.2022 in I.A. No.159 of 2022, this C.P.(IB)No.41/BB/2020 was restored to the file of this Adjudicating Authority and notices were issued to the Respondent/Corporate Debtor accordingly.

9. Notice in the present restored C.P. was issued on 10.10.2022. On 10.11.2022, when the matter was listed, nobody attended on behalf of the Respondent nor any objections has been filed by the Respondent and accordingly, further two weeks' time was granted to the Respondent to file their objections, if any. However, when the case was listed on 13.12.2022, there was no representation for the Respondent nor any reply/objections was filed. Accordingly, the matter was reserved for orders.



-Sd/-

10. Heard the learned Counsel for the Petitioner. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder.
11. The objections to the restoration of the Petition filed by the Respondent vide diary no.2504 dated 09.06.2022 has already been considered in the order dated 10.10.2022 allowing the restoration of the Petition. It was mentioned in the rejoinder dated 20.06.2022 to the objections that there was no dispute about the service provider agreement and since the Respondent had dishonoured the order of this Adjudicating Authority on two earlier occasions, hence, the proposals given by them requesting for time for payment of dues was not acceptable. It was further contended by the Petitioner that the Respondent is a chronic defaulter and also black listed by some other parties, etc.
12. It is observed that the amount of default mentioned in Form No.5 is Rs.67,77,252/-, and therefore the threshold requirement of Rs. 1 lakh at the time of filing Petition is fulfilled. Further, there is no issue raised regarding the limitation aspect and considering the disposal of C.P.(IB)No.274/BB/2019 on 30.08.2019, the fresh Company Petition bearing C.P.(IB)No.41/BB/2020 filed on 13.01.2020 was within limitation. The fact that the Corporate Debtor had agreed to settle the amount within the certain period of time on two earlier occasions, itself reveals there was no dispute in the matter.
13. Accordingly this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Belvedere Project of the Corporate Debtor. Therefore, the instant Company Petition bearing CP (IB) No. 41/BB/2020 is admitted against the Corporate Debtor and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order



- b. any court of law, tribunal, arbitration panel or other authority;
- c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- d. 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;
- e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- g. 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 financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- h. 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;



14. In Part-III of Form No.5, Mr. Addanki Haresh bearing Registration No. IBBI/IPA-001/IP-P01064/2017-18/11757 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos. 27 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Addanki Haresh and there

is nothing adverse against him. In view of the above, we appoint Mr. Addanki Haresh bearing Registration No. IBBI/IPA-001/IP-P-01064/2017-2018/11757, having registered address at No. 36/1, 2nd Floor Munivenkatappa Complex, Bellary Road, Ganganagar Bangalore-560 032, email- addanki.haresh@gmail.com, Phone No. 9886034643 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
16. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
17. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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MEMBER (TECHNICAL)

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MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

AB Manick
..08/02

DEPUTY/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench



CP (IB) No. 41/BB/2020