(1)

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

CP(IB)/297(CHE)/2021

(filed under Section 9 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 **NUCLEUS SATELLITE COMMUNICATIONS (MADRAS) PVT LIMITED**

POSCO INDIA PROCESSING CENTER PVT LTD
Plot No. RNS 9,12,13,14,
SIPCOT Industrial Growth Centre,
Oragadam, Vadakkupattu,
Kancheepuram -603 204

... Operational Creditor

Vs.

NUCLEUS SATELLITE COMMUNICATIONS (MADRAS) PVT LTD,
Door No.11, Ground Floor,
Indira Foundations, Krishnamma Road,
Nungambakkam ,
Chennai – 600 034.

... Corporate Debtor

Order Pronounced on ***14th October 2022***

CORAM

Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor : Mr.John Zachariah, Advocate
For Corporate Debtor : Mr.V.V.Sivakumar, Advocate

ORDER

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by one **POSCO INDIA PROCESSING CENTER PVT LTD** *(hereinafter referred to as 'Operational Creditor')* on 25.11.2021 under Section 9 of the Insolvency and

Bankruptcy Code, 2016 (I&B Code) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **NUCLEUS SATELLITE COMMUNICATIONS (MADRAS) PVT LTD** (hereinafter referred to as 'Corporate Debtor').The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company incorporated under the Provisions of Companies Act, 1956 on 03.04.2009 and the registered address of the Corporate Debtor as per the MCA website is situated at Unit No.511 B, 5th Floor, Tower A, Park Centra Building, Sector – 30, Gurgaon HR -122001 and the address other than registered office where all or any of account and papers are maintained at Plot No.RNS 9,12,13,14, SIPCOT Industrial Growth Centre, Vadakkupattu Village, Oragadam, Kancheepuram – 603 204.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 on 11.06.1997 with CIN:U74999TN1997PTC038400

registered office of the Corporate Debtor is situated at Door No.11, Ground Floor, Indira Foundation, Krishnamma Road, Nungambakkam, Chennai–600 034.

4. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.5,68,37,100.51/- together with interest at 18% per annum from 24.01.2020 until 01.11.2021 in full of the principal and interest amounts amounting to Rs.1,55,60,943.45/- as on 01.11.2021 which are due and payable by the Corporate Debtor.

6. Part-V of the application discloses the details of the documents filed along with the application in order to prove the operational debt and it contains

a) The Invoices raised by the Operational Creditor and the same is placed at Page Nos.25 to 171 of the application typeset.
b) The details of e-mails exchanged between the parties between 06.12.2019 and 22.03.2021 and the same is placed at Page Nos.172 to 220 of the application typeset.
c) Legal Notice issued to Nucleus Satellite Communications (Madras) Pvt Ltd dated 12.11.2020 for dishonour of cheque and the same is placed at Page Nos.221 to 224 of the application typeset.

d) Legal Notice issued to Nucleus Satellite Communications (Madras) Pvt Ltd dated 12.11.2020 for dishonour of cheque and the same is placed at Page Nos.225 to 228 of the application typeset.

e) Reply notice issued on behalf of Nucleus Satellite Communications (Madras) Pvt Ltd regarding the dishonour of the cheque and the same is placed at Page Nos.229 to 232 of the application typeset.

f) Legal Notice issued to Nucleus Satellite Communications (Madras) Pvt Ltd dated 01.12.2020 for dishonour of cheque and the same is placed at Page Nos.233 to 237 of the application typeset.

g) Legal Notice issued to Nucleus Satellite Communications (Madras) Pvt Ltd dated 02.12.2020 for dishonour of cheque and the same is placed at Page Nos.238 to 241 of the application typeset.

h) Reply notice dated 17.11.2021 received on behalf of Nucleus Satellite Communications (Madras) Pvt Ltd regarding the dishonour of the cheque and the same is placed at Page Nos.242 to 2244 of the application typeset.

FACTS OF THE CASE:

7. It was averred in the application that Operational Creditor Chennai plant had supplied 927 140 metric tonnes of steel coils and sheet for use of Corporate Debtor, at its factory at 465, Citrus Drive, Sricity, Moppurapalli Village, Varadiahpalem Mandal, Chittoor, for its business and has been used by Corporate Debtor, and the same was accepted by Corporate Debtor without any demur and used in their business. The amounts became due on various dates with the last payment having been received from M

Corporate Debtor on 01.09.2020 and Corporate Debtor has not paid any amount after the said date. Though, Corporate Debtor has agreed that there was a huge outstanding and that they would try to make the payment, having promised to make the payment from December 2019 onwards, but no substantial amount has been received.

8. It was submitted by the Learned Counsel for the Operational Creditor that since no payment was forthcoming from the Corporate Debtor, the Operational Creditor has issued a Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 01.11.2021, which was delivered to the Corporate Debtor on 09.11.2021. Further, the Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 stating that the Corporate Debtor after the receipt of the Demand Notice has failed to pay the unpaid 'operational debt' and gave a vague reply to the demand notice on 17.11.2021. Under such circumstances, the Operational Creditor has filed the present Application before this Tribunal on 25.11.2021 seeking initiation of CIRP as against the Corporate Debtor.

9. In relation to the Corporate Debtor, it may be seen from the record of proceedings that the Corporate Debtor has entered

appearance through its counsel on 04.02.2022 and they were directed to file reply on or before 10.03.2022 and the matter was posted on 10.03.2022. However, on 10.03.2022, the Learned Counsel for the Corporate Debtor had stated that his client is seriously interested in settling the dues and seeks time and the matter was posted to 11.04.2022. Even on 11.04.2022, the Corporate Debtor sought time to file reply and this Tribunal directed the Corporate Debtor to file counter on or before 05.05.2022 and directed to list this matter for final disposal on 27.05.2022 and it was recorded that no further adjournment shall be granted in this matter.

10. On 27.05.2022, the Learned Counsel for the Corporate Debtor again sought adjournment which is recorded in the daily order, as follows;

> The Petitioner is represented by the Ld. Counsel Mr. John Zachariah and the Respondent is represented by the Ld. Counsel Mr. V.V. Shivakumar through video conferencing mode.
>
> Ld. Counsel for the Respondent seeks time to file counter. Permission is granted to file the counter before the next date of hearing.
>
> At the request of the Ld. Counsel for the Respondent, list the matter on 21.06.2022 as a last chance for filing the counter and disposal. No further adjournment shall be granted.

11. Again on 21.06.2022, the following orders were passed;

> Ld. Counsel Mr. John Zachariah for the Petitioner is represented by the Ld. Counsel Mr. Vijay and the Ld. Counsel

> Mr. V.V Sivakumar is represented by the Ld. Counsel Mr. Ravi Rajagopalan through video conferencing mode.
>
> At the request of the Respondent, list this matter on 28.07.2022 as last chance for hearing and disposal.

12. When the matter was taken up for hearing on 28.07.2022, it was observed by this Tribunal as follows;

> The Petitioner is represented by the Ld. Counsel Mr. Vijay for Fox Mandal and the Respondent is represented by the Ld. Counsel Mr. V.V.Sivakumar through video conferencing mode.
>
> At request of the Ld. Counsel for Respondent, the matter stands adjourned to 02.09.2022 for further hearing.

13. On 02.09.2022, the Respondent had stated that settlement talks are underway and sought for an adjournment and the order dated 02.09.2022 is reproduced below;

> The Petitioner is represented by the Ld. Counsel Mr. John Zachariah of Fox Mandal & Associates and the Respondent is represented by the Ld. Counsel Mr. V.V. Sivakumar for the Ld, Counsel on record Ms. Apoorva through video conferencing mode.
>
> It is represented by the Ld. Counsel for the Respondent that some settlement talks are in progress. For this purpose, the Counsel seeks an adjournment in this matter.
>
> This Tribunal is giving one last and final opportunity to the Respondent for reporting settlement.
>
> At the request of the Counsel, the matter is adjourned to 13.09.2022 for reporting settlement.

14. Finally on 13.09.2022, learned Counsel for the Respondent Mr.V.V.Sivakumar had submitted before this Tribunal that the settlement was not fructified between the parties and admitted the

liability on the part of the Corporate Debtor and this Tribunal had passed the following order;

> The Petitioner is represented by the Ld. Counsel Mr. John Zachariah and the Respondent is represented by the Ld. Counsel Mr. V.V Sivakumar through video conferencing mode.
>
> Heard the submissions. Order Reserved.

FINDINGS OF THIS TRIBUNAL:

15. Heard the submissions of both the parties. It may be seen that the Corporate Debtor has sought for time and more time on the pretext that negotiation between the parties for settlement are going on, which dissuade the Corporate Debtor from filing any reply and during the hearing the Learned Counsel, Mr.V.V.Sivakumar appeared for the Corporate Debtor had admitted their liability of payment due to the Operational Creditor. Thus, the Operational Creditor has proved that there is an existence of 'Operational Debt' and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor

16. From the list of invoices filed which has been annexed in the application, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years and in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, amenable to its territorial jurisdiction, this Authority has no hesitation in admitting this

Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

17. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

18. 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

19. 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 mange 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

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

20. 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:

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.

21. 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 applicable for the period between July 2022 - December 2022 appoints ***Ms. Rongali Sridevi [Reg No.IBBI/IPA-003/IP-N000172/2018-2019/12105] (E-mail Id:***

srica_2003@yahoo.co.in) 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.

22. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

25. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. 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.

27. 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.

28. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

29. Accordingly, the present petition stands **admitted**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram