

**NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**SPECIAL BENCH (COURT-II)**



(IB)-244(ND)2021

**IN THE MATTER OF:**

**M/s Compuage Infocom Limited**  
**Though its Authorised Representative**  
**Mr. Gagan Kumar, Branch Accountant,**  
**F-90/4, Okhla Industrial Area,**  
**Phase-1, Delhi -110020**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. Presto Info Solutions Private Limited**  
**A-32, Mohan Co-Operative**  
**Industrial Estate, Mathura Road,**  
**New Delhi-110044**

**...Respondent/Corporate Debtor**

**Section: 9 of the IBC, 2016**

**Order Delivered on: 06.04.2022**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Amit Sharma  
**For the Respondent** : Adv. Dhruv Kapur, Adv. Vijayender Kumar

## ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Compuage Infocom Ltd. through its Authorised Representative Mr. Gagan Kumar, (for brevity '**Applicant/ Operational Creditor**'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Presto Info Solutions Private Limited (for brevity '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Presto Info Solutions Private Limited is a Company incorporated on 11.01.2000 with CIN U74899DL2000PTC103200 under the provisions of the erstwhile Companies Act, 1956, having its registered Office at A-32, Mohan Co-Operative Industrial Estate, Mathura Road, New Delhi-110044.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.5,00,00,000/- and Paid-up Share Capital is Rs.1,00,00,000/- as per the Master Data of the Corporate Debtor.

4. That the detailed particulars of the Operational Debt as provided by the applicant in the Part IV of the Application are reproduced overleaf:

**Part-IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1.	<b>Total Amount of Debt, Details of Transactions on Account of Which Debt Fell Due and The Date from which such Debt fell due</b>	<b>Principal Amount of Debt:</b> Rs. 2,60,23,070/- (Excluding Interest) Sale of Computer Peripheral (Hardware's & Software's) Debt due from dated: 23.02.2019  Debt is due since 23.02.2019 & Invoices were not fully paid till date.
2.	<b>Amount Claimed to Be in Default and the Date on Which the Default Occurred</b>	<b>Principal Amount of Debt:</b> Rs. 2,60,23,070/- <b>Interest Amount:</b> Rs. 7,74,69,001/- (Interest calculation is attached as Annexure 5) <b>Total Outstanding Including Interest:</b> Rs. 10,34,92,071/- till dated 30.04.2021. Pendent-Lite and Future Interest till the date of full and final payment @ 24% Per Annum. Default started from 23.02.2019 and is continuing till date.

5. From perusal of the Part IV of the application, it is observed that the Applicant has sold Computer (Hardware & Software) Peripherals/products to the Corporate Debtor. That the total Principal Amount claimed by the Applicant amounts to Rs.2,60,23,070/-. Further, the date of default relied on by the Applicant is 23.02.2019.

6. That the Applicant has annexed the copy of the purchase order, invoices and ledger account in order to demonstrate the existence of Operational Debt and default committed by the Corporate Debtor.

7. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 06.04.2021 under Section 8 of IBC at the registered office of the Corporate Debtor. It has been added that the Demand Notice was served to the Corporate Debtor via speed post on 07.04.2021. The Tracking Report is placed on record. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC stating that no notice of dispute has been received by it.

8. That on issuance of notice, the Corporate Debtor has filed its reply and has opposed the application. During the course of final hearing held on 30.03.2022 also, the Ld. Counsel representing the Corporate Debtor has vehemently opposed against admission of the application.

9. It is submitted by the Corporate Debtor that the Applicant had earlier also filed an application under Section 9 bearing No. (IB)-961(ND)2020 against the Corporate Debtor herein, which was withdrawn by the Applicant on 01.12.2020. The Corporate Debtor has contended that no liberty was granted to the Applicant to file the application again.

10. That the Ld. Counsel for the Corporate Debtor has added that on filing of earlier application (IB)-961(ND)2020, the parties had executed one settlement agreement dated 22.10.2020. It is further submitted by the Corporate Debtor that it had paid an amount of Rs. 12 Crore out of the total dues of Rs.16.535 Crore in terms of the Settlement Agreement. The scanned copy of the payment schedule, as referred to by the Corporate Debtor, is reproduced below:

2. That without any demur second party undertakes to make the payment as per the Payment Schedule mentioned below: -

Sr. No.	Latest Date of the Installment	Amt of installment (in Rs.)	Mode of Payment RTGS
1	23.10.2020	3,00,00,000	RTGS
2	30.11.2020	3,00,00,000	RTGS
3	31.12.2020	3,00,00,000	RTGS
4	31.01.2021	3,00,00,000	RTGS
5	28.02.2021	2,60,23,070	RTGS
6	31.03.2021	1,93,32,542	RTGS
	<b>Total</b>	<b>16,53,55,612</b>	

3. That the second party will make payment through RTGS and if the second party delay the payment of any installment as mentioned in the para no.2, then the first party is liable to charge an interest of the delayed period @8% on that particular installment.

11. That the Ld. Counsel appearing for the Corporate Debtor stated during the final hearing that the Corporate Debtor could not make payment of the installments reflecting at serial no. 5 and 6 of the aforesaid payment schedule.

12. That it was argued by the Corporate Debtor that no CIR process can be initiated for the aforesaid default since the same had happened during the period when Section 10A was in force and whereby no application can ever be filed for initiation of CIR process against the Corporate Debtor.

13. That the Corporate Debtor further placed relied upon Clause 10 of the Settlement Agreement dated 22.10.2020, which bars the Applicant from taking any action against the Corporate Debtor.

14. It was contended by the Corporate Debtor that there has been a pre-existing dispute between the parties as regards to the amount of interest. It is further stated that as per the settlement agreement dated 22.10.2020, the Applicant could have claimed only 8% interest, whereas the Applicant has now claimed 24% interest in terms of the invoices. It was added that the Corporate Debtor has claimed the interest pertaining to the Section 10A period, which is not permissible.

15. It was further argued by the Ld. Counsel for the Corporate Debtor that vide Settlement Agreement dated 22.10.2020, the parties have novated the contract in terms of Section 62 of the Indian Contract Act and as a consequence, the Applicant cannot claim interest as mentioned in the

invoices. It is added that the date of default should also be considered in terms of the settlement agreement, which falls under the Section 10A period.

16. That the Applicant has filed its rejoinder denying the allegations of the Corporate Debtor. During the course of hearing, as regards to the earlier Application bearing (IB)-961(ND)2020, the Ld. Counsel for the Operational Creditor submitted that the Applicant has not sought revival of the earlier Application. Rather, he has filed the present application as a fresh one. Further, the earlier application was not adjudicated on merits and was withdrawn on the ground of settlement. It was further added by the Applicant that it has not claimed the amount, which has already been paid by the Corporate Debtor after the withdrawal of (IB)-961(ND)2020.

17. After perusing the application, reply and rejoinder placed on record and hearing submissions of both the parties and, this Bench observes that although during the course of hearing, Ld. Counsel for the Corporate Debtor has taken a plea that the present application is barred by Section 10A of IBC, 2016. However, in its reply dated 14.02.2022, the Corporate Debtor has not pleaded the same. However, in the interest of justice, it is necessary to examine the maintainability of the present Application in terms of Section 10A of IBC, 2016.

18. That in order to examine the issue of maintainability of the present Application, it is necessary to visit Section 10A of IBC, 2016, which is reproduced overleaf :

**“10A. Suspension of initiation of corporate insolvency resolution process.**

*Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

**Explanation.** - *For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]”*

19. That from perusal of the contents of Section 10A of IBC 2016, it is observed that the provision bars the filing of an Application in a situation, where the ‘default’ has occurred during the period from 25.03.2020 to 24.03.2021.

20. Here, we refer to the definition of term ‘default’, which is defined under Section 3(12) of IBC, 2016. The same is reproduced below, for the sake of convenience :

*“3. Definitions. –*

*.....*

*(12) “default” means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;”*

21. That in the instant case, on perusal of the Part IV of the Application, it is observed that 'the date of default' relied upon by the Applicant is 23.02.2019.

22. We also consider it necessary to refer to the averment made by the applicant at Sl. 8 of the Part V of the Application, which deals with the Documents relied upon by Operational Creditor to prove existence of the Operational Debt. The same is reproduced below :

<b>Part-V</b>	
<b>PARTICULARS OF OPERATIONAL DEBT</b>	
1.	Particulars of Security Held, If Any, The Date of Its Creation, Its Estimated Value – NIL
2.	Details of Reservation / Retention of Title Arrangements (If Any) In Respect of Goods to Which the Operational Debt Refers – NIL
3.	Particulars of An Order of a Court, Tribunal or Arbitral Panel Adjudicating on The Default – NIL
4.	Record of Default with The Information Utility, If Any (Attach A Copy of Such Record) – NIL
5.	Details of Succession Certificate, Or Probate of a Will, Or Letter of Administration, Or Court Decree (As May Be Applicable), Under the Indian Succession Act, 1925 (10 Of 1925) – NA
6.	Provision of Law, Contract or Other Document Under Which Operational



<b>Debt Has Become Due – Contract Act and Sale of Goods Act</b>	
7.	A Statement of Bank Account Where Deposits Are Made or Credits Received Normally by The Operational Creditor in Respect of The Debt of The Corporate Debtor – No payment is received in respect of the above-mentioned claim of the operational Creditor. Ledger Accounts / Interest Calculation is attached as Annexure 5.
8.	List of other documents attached to this application in order to prove the existence of operational debt, the amount and date of default- True Copies of One Purchase Orders, Five Invoices, GST Returns of Operational Creditor, Ledger Account/ Interest Calculation of Debt of Corporate Debtor, Demand Notice Dated 06-04-2021 with Postal Receipts and Delivery Reports, Company Master Data of Corporate Debtor.

23. From perusal of the above, it is observed that in order to prove existence of the Operational Debt, the Applicant has relied upon purchase order, **invoices** and ledger account annexed by the Operational Creditor with the application and not on the Settlement Deed.

24. Per Contra, the Corporate Debtor has stated that the default has occurred on 28.02.2021 in terms of the Settlement Agreement dated 12.10.2020, when the Corporate Debtor did not make the payment of the 5<sup>th</sup> instalment. It was added by the Ld. Counsel appearing for the Corporate Debtor that by virtue of Section 62 of the Indian Contract Act 1872, the date of default has shifted to a period, which falls within Section 10A period, when the IBC proceedings were suspended and can never be initiated.

25. That in order to test the contention raised by the Corporate Debtor, it is necessary to visit the contents of Section 62 of the Indian Contract Act 1872:

*“62. Effect of novation, rescission, and alteration of contract—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.”*

*Illustrations*

*(a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted. (a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.”*

*(b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's), estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old. (b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's), estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old."*

*(c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into. (c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into."*

26. That from perusal of the Clause 3 of the Settlement Agreement, it is observed that the parties have mainly altered the interest rate. Further, from perusal of the illustrations given under Section 62 of Indian Contract Act, it can be inferred that the case of the Corporate Debtor does not fall under any of the illustrations stipulated under Section 62 of Indian Contract Act, 1972.

27. In the context of the change in the 'interest rate', it is worthwhile referring to the **Judgment of Hon'ble High Court of Delhi in the matter of R.S Amarnath Mehra & Co. Vs Union of India & Ors. 51 (1993) DLT 455, 1993 (27) DRJ 1 dated 25.08.1993**, wherein the following is held :

*"(20) It is well settled law by the Apex Court that in order to avail the remedy under 'quantum merit', the original contract must have been discharged by the defendant and in such a way as to entitle the plaintiff to regard himself as discharged from any further*

performance and he must have elected to do so. This remedy by way of quantum meruit is re stimulatory i.e.it is a recompense for the value of the work done by the plaintiff in order to restore him to the position which he would have been in if the contract had never been entered into, as so observed by the Apex Court in *Puran Lal Sah v. The State of U.P.* The Apex Court has so opined in *Bombay Housing Board v. M/s. Karbhase Naik & Co.* that except the rates settled by an agreement, the contractor was under no obligation to carry out the additional or altered work. On failure to cancel the order for additional or altered work on receipt of the notice specifying the rates would not result in agreement as to the rates to be charged or in substitution of a new agreement in place of old. We are thus of the view that in the absence of positive act on the part of the parties to an agreement to execute a fresh contract by executing an instrument in writing as envisaged by Clause 32 of the Proforma Agreement referred to herein above, the appellant was not bound to carry out the work on the basis of fresh terms and quotations. It is thus clear from the judgment of the Apex Court in *Ramji Dayawala & Sons (Pvt.) Ltd. v. Invest Import*, which is in the following terms: "Where the contract is in a number of parts it is essential to the validity of the contract that the contracting party should either have assented to or taken to have assented to the same thing in the same sense or as it is sometimes put, there should be consensus ad idem. "In *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram and others*, the Apex Court has so opined. "When a contract consists of a number of terms and conditions, each condition does not form a separate contract but is an item in the one contract of which it is apart. The consideration for each condition in a case like this is the consideration for the contract taken as a whole. It is not split up into several considerations apportioned between each term separately. The above view was also confirmed by the Apex Court in *State of Punjab & Others v. M/s. Om Prakash Baldev Krishan,*".

(21) *We are of the confirmed view that there is a nothing to suggest that the parties intended to substitute a fresh contract.*

(22) ***When a contract consists of a number of terms and conditions, each condition does not form a separate contract to which it operates. Calling of fresh quotations and fresh rates at lower price would not amount to a new contract.***

(23) *Thus under the circumstances we cannot infer that a fresh contract had come into existence on invitation of fresh quotations as contended by the learned counsel for the appellant.*

(24) *Thus in our opinion, the learned Single Judge was right in his observations that when the **plaintiff/appellant submitted new rates and those were accepted, the terms and conditions of the original contract continued to be enforced and that the plaintiff's contention that a fresh contract was entered into is unsound. We accordingly confirm the findings of the learned Single Judge and dismiss the appeal. But in the circumstances of the case leave the parties to bear their own costs.***

(Emphasis Supplied)

28. In our considered view, in terms of the unpaid invoices, the Debt first became due and payable on 23.02.2019. That in respect of the same debt, which was due and payable, in the present case, one settlement agreement was executed between the parties on 22.10.2020. Although the said settlement agreement may have relevance for extending the period of limitation, it does not result in shifting the date of default from 23.02.2019 to any other new date.

29. Hence, we find no force in the contention of the Corporate Debtor that the date of default has shifted due to the Settlement Agreement.

30. Since the date of default i.e., 23.02.2019 is outside the period of suspension as stipulated under Section 10A of IBC, 2016, we are of the view that the present Application is not barred under Section 10A of IBC, 2016.

31. That the Corporate Debtor has further contended that in terms of Clause 10 of the Agreement, the Applicant is barred from invoking legal proceedings including under IBC. The contents of the Clause 10 of the Agreement are reproduced below :

**9. That the first party agrees that it shall file an application to registrar NCLT to withdraw its petition pending before NCLT-Principal Bench Delhi, under Insolvency and Bankruptcy code 2016 and the first party shall provide the proof of such withdrawal within the two weeks of receipt of 1<sup>st</sup> payment from Second Party. The first party is at liberty to file a fresh petition in NCLT, in the case of default in payment by the second party as agreed in this settlement deed.**

**10. That first party also agrees that during the period of continuation of agreed payment schedule, and subject to Second Party making regular payments on due dates thereof not seek any remedy, file any fresh application or invoke legal proceedings under any other law/ Act including but not limited to Insolvency and bankruptcy code 2016 for the recovery of remaining amounts from Second Party.**

Per contra, the Ld. Counsel for the Applicant argued that Clause 9 of the said agreement permits him to file a fresh case in case of default. That in our considered view, the provision stipulated under Clause 10 is not only contrary to the Clause 9 of the very Agreement but is also contrary to the provision of the Code. That the statutory right of a party cannot be taken away by executing any agreement between the parties. Hence, the clause 10 of the Settlement Agreement, which is an 'instrument' is inconsistent with the provisions contained in Section 9 of IBC 2016, which permits an operational creditor to file an application on occurrence of default. Further,

by virtue of Section 238, provisions of IBC 2016 shall have over-riding effect over other laws and any instrument including an agreement and clause thereunder.

32. Further, as regards to the alleged dispute in respect of the 'interest amount', we are of the view that since the Principal Amount due and payable is well above the minimum threshold of Rs. 1 Crore, which is undisputed, this Adjudicating Authority is not required to indulge itself in the exercise of quantifying the debt.

33. That further, the Ld. Counsel for the Corporate Debtor has admitted the default during the course of hearing. The Corporate Debtor has failed to give cogent reasons that as to why the CIRP shall not be initiated against it.

34. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

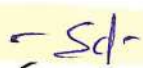
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (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 Securitisation 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 Corporate Debtor.”

35. Since no IRP has been proposed by the Operational Creditor, this Bench appoints Mr. Aditya Kumar having IBBI Registration No. IBBI/IPA-001/IP-P00338/2017-18/10609 (Email : [aditya@ashwaniassociates.in](mailto:aditya@ashwaniassociates.in)) as the IRP of the Corporate Debtor from the panel of IPs recommended by IBBI to this Adjudicating Authority.

36. The Operational Creditor is directed to deposit Rs. 2 Lakhs only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

37. A copy of this Order shall immediately be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

  
**(L. N. GUPTA)**  
**MEMBER (T)**

  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**