

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 07.02.2020

PRIORITY CAUSE LIST – 1

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 381/BB/2019	For admission	Sec 9 of I&B code 2016	Mr Arun Kumar.K	Gowrish. V, Advocate	M/s Bob Tech Solutions Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

SARVOTHAM P
PCS
9916710757

ADVOCATE FOR RESPONDENT/s:

GURUPRASAD. M. N.
9731013886
Gumpresad@ng.

SECURED CREDITOR:

Cooperation Bank - HARSHITA FOR VBR
9480165807
Harshita

ORDER

Heard Shri Sarvotham.P, learned PCS for the Petitioner and Shri Guruprasad M.N, learned Counsel for the Respondent and Ms. Harshita, learned Counsel for the Secured Creditor, Corporation Bank.

C.P. (IB)No.381/BB/2019 is admitted by separate order. Post the case for the report of the IRP on **11.03.2020**.


MEMBER (T)


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.381/BB/2019
U/s. 9 of the IBC, 2016
R/w Rule 6 of the I&B (AAA) Rules, 2016

In the matter of:

Arun Kumar. K
22, Jeena Mandir Road,
J. P. Nagar, 7th Phase,
Bengaluru – 560 078

- Petitioner/Operational Creditor

Versus

M/s. Bob Tech Solutions Private Limited
II & III, 3rd Floor, No.13,
100 Foot Ring Road,
J.P.Nagar, 6th Phase,
Above Federal Bank, Opp. Shell,
Bengaluru – 560 078

- Respondent/Corporate Debtor

Date of Order: 7th February, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Sarvotham .P
For the Respondent : Shri Guruprasad M.N
For the Secured Creditor : Ms. Harshita, Corporation Bank

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.381/BB/2019 is filed by Arun Kumar. K
(Petitioner/Operational Creditor) U/s. 9 of IBC, 2016, R/w Rule 6

of I&B (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Bob Tech Solutions Private Limited (Respondent/Corporate Debtor) on the ground that it has committed default for an amount of Rs.10,06,127/- (Rupees Ten Lakhs Six Thousand One Hundred and Twenty Seven only) towards Salary due from January, 2018 to August, 2019.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, as follows:

- (1) Arun Kumar. K (herein after referred to as Petitioner/ Operational Creditor) was appointed as Manager-Human Resources on 17.01.2014 for an annual Cost to Company (CTC) of Rs.7,25,000/- (Rupees Seven Lakhs Twenty Five Thousand only).
- (2) M/s. Bob Tech Solutions Private Limited (Respondent/ Corporate Debtor) is a Private Limited Company was incorporated on 26.09.2007 bearing CIN: U72900KA2007 PTC043966 under the Companies Act, 1956. Its Nominal Share Capital of Rs.5,00,00,000 (Rupees Five Crores only) and the Paid-up Share Capital of Rs.2,94,05,570/- (Rupees Two Crores Ninety Four Lakhs Five Thousand Five Hundred and Seventy only). Its main object of the Company is carrying on the business of IT Enabled services, Staffing Solutions & Product Support.
- (3) Due to exceptional performance and delivery of targets within the prescribed deadlines, the Corporate Debtor, vide its 'Appraisal and Promotion Letter' dated 25.05.2017 promoted Operational Creditor to Head-Human Resources &

Operations and hiked the annual CTC to 107% to Rs.15,00,000/- (Rupees Fifteen Lakhs). And Salaries were duly paid for the period between May to December, 2017. However, salaries starting from the month of January, 2018 are not paid to the Operational Creditor by the Corporate Debtor. The Respondent failed to respond to several mail reminders dated 09.03.2018, 19.07.2018, 03.12.2018, 27.03.2019, 10.05.2019, 23.07.2019 and 10.09.2019. Therefore, the Petitioner Creditor issued statutory Demand Notice in Form 3 to the Corporate Debtor on 04th October, 2019, by inter-alia demanding to pay an outstanding amount of Rs.10,06,127/-. However, no reply was received from the Corporate Debtor and thus there is no existing dispute on the outstanding salaries payable. In the circumstances, the Corporate Debtor is clearly unable to discharge its legally admitted operational debt, and therefore, it would be just and equitable to commence CIRP against the Corporate Debtor.

3. The Respondent has filed Statement of Objections dated 02.01.2020, by inter-alia stating as follows:

- (1) The Respondent/Corporate Debtor was incorporated on 26th September, 2007 to carry on the business of IT Enabled services, Staffing Solutions & Product Support. And it supplies human resources to Wipro and HCL Technologies and also provides HR solutions and IT support services which are presently on-going projects. However, due to global economic slowdown and various other micro and macro-economic factors including high attrition prevailing



in the IT sector, the Company could not complete the targeted projects and therefore, incurred tremendous losses during the financial years 2017-18 & 2018-19, it suffered from losses and reduction in cash flows for the operational requirements and as a result, was unable to service the overdraft of the Bank, unable to clear vendor dues and most importantly could not pay employee dues and salaries. Even though the Company operating but is presently unable to pay its liabilities which is approximately Rs.1,29,09,572/- as on 31.12.2019.

- (2) The profit and loss statement for the last 3 years are as under:

Sl. No.	Profit before Tax	Profit after Tax
2016-17	44,55,021	(23,96,321)
2017-18	(4,45,00,000)	(4,28,18,106)
2018-19	(17,74,90,746)	(17,74,90,746)

It is noted that the Company has negative net-worth and tangible net worth is eroded. It has availed an overdraft facility from Corporation Bank, Madivala Branch to the tune of Rs.3,50,00,000/- (Rupees Three Crores Fifty Crores Fifty Lakhs). The Company was unable to service the financial facility and therefore the Bank has issued a Re-Call Notice dated 03.11.2019. It had availed a loan of Rs.15,00,000 (Rupees Fifteen Lakhs only) from M/s. Umesh Electro Marketix, for business purpose and was unable to repay an amount of Rs.2,25,000 and it has also sent a Legal Notice dated 01.12.2018 on behalf of the M/s. Umesh Electro Marketix. Again, the Company had availed loan from Sriram



City Union Finance Limited for Rs.25,00,000/- and failed to pay the EMI of Rs.3,29,277/- and sent legal notice dated 13.04.2018.

- (3) It is stated that the Company had availed security and house-keeping services from Menmentor Facilities Private Limited. However, the Company was unable to repay dues of Rs.3,30,616/-. Further, the Company had availed HR Services from Pearson India Education Services Private Limited from time to time. However, dues to the extent of Rs.1,18,000/- remains outstanding and a legal notice sent in this regard also. Apart from the above, the Company has also defaulted in payments to Edelweiss Retail Finance Limited, HDFC Bank Limited and Religare Finvest Limited.
- (4) Therefore, the Respondent not only admitted the present liabilities and also submitted the Net-worth Certificate dated 02.01.2020, issued from M/s. MRNM & Co., Chartered Accountants, by inter-alia stating that the Company has negative net worth of Rs.-13,44,20,034/- as at 30.11.2019 based on books produced and other details produced, which reads as under:

Particulars	Amount in INR
Trade Receivables	45,52,391
Cash and Bank Balances	1,69,211
Other Current Assets	1,48,48,695
	1,95,70,297
Less: Loans	6,94,91,379
Less: Current Liabilities	4,80,88,599
Less: Bank Over Draft	3,64,10,353
Net-worth as on 30.11.2019	-13,44,20,034



4. Heard Shri Sarvotham .P, learned PCS for the Petitioner, and Shri Guruprasad.M.N, learned Counsel for the Respondent, and Ms. Harshita, learned Counsel for the Secured Creditor. We have carefully perused the pleadings of both the parties and the extant provisions of the Code and Rules made thereunder.
5. The case was listed for admission on various dates viz., 21.11.2019, 06.12.2019, 02.01.2020, 10.01.2020, 16.01.2020, 28.01.2020 and on 07.02.2020. And it was adjourned on these dates, at the request of the parties, in order to serve notice and also to file statement of objections etc.
6. Shri Sarvotham P, learned PCS for the Petitioner, while reiterating the various averments made in the instant Company Petition, as briefly stated supra, has further submitted that the instant Company Petition is filed in accordance with law and there is an admitted debt and default and the same is not in dispute. They have also filed proof that Corporate Debtor is insolvent, as it is not able to pay its debt apart from other liabilities and the Respondent/Corporate Debtor also admitted its liabilities. And a qualified Resolution Professional namely Shri Surender Devasani, bearing Registration No. IBBI/IPA-001/IP-P00775/2017-2018/11348 is proposed to appoint him as Interim Resolution Professional, who has filed Written Communication dated 23.10.2019, in a prescribed forum. Therefore, he has urged the Adjudicating Authority to admit the instant Company Petition by initiating CIRP as prayed for.
7. Shri Guruprasad.M.N, learned Counsel for the Respondent, while reiterating the averments made in the Reply, as briefly stated



supra, has further submitted that there is no possibilities of paying debt as raised in the Company Petition and Company has negative net-worth of Rs.-13,44,20,034/- as at 30.11.2019, as per the Chartered Accountant Certificate dated 02.01.2020. Therefore, he has no objection to initiate Corporate Insolvency Resolution Process (CIRP) against them.

8. In spite of receipt of the notice ordered the Secured Creditor/Corporation Bank has not filed any reply till now by submitting details of its dues.
9. As detailed supra, the debt and default in question is admittedly not in dispute. Moreover, the Corporate Debtor is prima facie insolvent Company and has negative net-worth of Rs.-13,44,20,034/- as at 30.11.2019 and the instant Company Petition is filed in accordance with law. And qualified Resolution Professional namely Shri Surender Devasani, bearing Registration No. IBBI/IPA-001/IP-P00775/ 2017-2018/11348, registered with the Indian Institute of Insolvency Professionals of ICAI (IIPI) bearing IP Registration No. IBBI/IPA-001/IP-P00775/2017-2018/11348, is suggested, who has filed his Written Consent in Form-2 dated 23.10.2019, by inter-alia affirming that he is eligible to be appointed as the Interim Resolution Professional in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of ICAI (IIPI); he is currently serving as an Interim Resolution Professional/Resolution Professional/Liquidator in NIL proceedings. Therefore, we are of the considered opinion that, it is a fit case to admit to initiate



CIRP against the Corporate Debtor by appointing IRP, imposing moratorium etc.

10. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, the following orders are passed:

- (1) C.P.(IB)No.381/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Bob Tech Solutions Private Limited, Corporate Debtor;
- (2) Shri Surender Devasani, bearing IP Regn. No. IBBI/IPA-001/IP-P00775/2017-2018/11348, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- (3) The following moratorium is declared prohibiting all of the following, namely:
 - 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;
 - e) 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;
 - f) 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 as also not applicable to surety.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
 - h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Adjudicating Authority from time to time.
- (4) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in



carrying out his functions as such, under the Code and Rules made by IBBI.

- (5) IRP is further directed to strictly adhere time schedule as mentioned under the Code. And he is directed to file progress reports from time to time to the Adjudicating Authority.
- (6) Post the case for submission of report of the IRP on **11.03.2020.**

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi