

**INTHE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1429/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

IQ EQ Management (Netherlands) B. V

...Operational Creditor

v/s.

Topsgrup Electronics System Limited
[CIN: U32109MH1995PLC093075]

...Corporate Debtor

Order Delivered on: 28.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Shyam Kapadia, Advocate.

For the Respondent: None.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by IQ EQ Management (Netherlands) Limited, (through its Authorised representative Mr. Anand Bhugra, ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Topsgrup Electronics System Limited ("Corporate Debtor"), [CIN: U32109MH1995PLC093075].

2. The Corporate Debtor is a company incorporated on 26.09.1995 under the Companies Act, 1956, as a public company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 5, Royal Palms Golf & Country Club, Aarey Milk Colony, Goregaon (E) Mumbai, Maharashtra-400065. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority claiming that the Corporate Debtor failed to make payment of a total sum of Rs.2,02,87,272/- (Rupees two crores two lakhs eighty-seven thousand two hundred seventy-two). The date of default is 24.10.2017.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is a leading Investment Management Company based in Netherlands. IQ EQ management (Netherlands) B.V. is current name of ANT Management (Netherlands) B.V. The Operational Creditor entered into a Management Agreement and Indemnity Agreement with Topstrup Holding B. V (Corporate Debtor) dated 1.03.2009 are placed at Pg. No.292-309 as Annexure II-1 & II-2 of the petition.
 - b) Mr. R. Nanda, Mr. R.C. Nanda (Founders of the Corporate Debtor) and the Corporate Debtor, Topstrup Electronic Systems Limited are the Principals under the Indemnity Agreement dated 1st March 2009 and as per the Indemnity agreement, were directly or indirectly, legally and beneficially entitled to the entire issued share capital of Topstrup Holding B.V. under the Indemnity Agreement, Mr. R. Nanda, Mr. R.C. Nanda (Founders of the Corporate Debtor), and the Corporate Debtor, Topstrups

electronic systems limited while indemnifying the Operational Creditor as their managing director against all claims, suits, damages, etc., had undertaken to maintain an account with a bank in the Netherlands, with positive balance of at least €5,000 at all times so as to enable the Operational Creditor as their managing director to pay the expenses incurred by Topsgroup Holding B.V. including the fees of the Operational Creditor as its managing director. It was further agreed that in the event the said balance was not maintained by the Topsgroup Holding B.V., the Principals” i.e. Mr. R. Nanda, Mr. R.C. Nanda, and Corporate Debtor, Topsgroup Electronic systems Limited. Under the Indemnity Agreement dated 1st March 2009 which was to be replenished at the first request of the Managing director/operational Creditor.

- c) As per said indemnity agreement dated 1st March 2009, it was also agreed that the Principals shall at all times guarantee payment by the Topsgroup Holding B.V. of fees including VAT, disbursement and office expenses of the Operational Creditor as their Managing Director and the said agreement shall not be relieved from their obligations towards the Applicant/Operational Creditor without obtaining written consent from the Applicant/Operational Creditor. No such written consent has been obtained by the Principals.
- d) The Operational Creditor provided various services to the Corporate Debtor as set out in the agreements and the applicant raised various invoices on the Corporate Debtor on Quarterly Basis a per the Agreement. All the invoices were raised by the applicant were due and payable for the services rendered by the Operational Creditor within 30 days from the date on which each of the

invoices were issued. All the invoices dated 31.12.2014 to 25.09.2017 are placed at Pg. No.272-291 as Annexure I-4 of the petition.

- e) Once the invoices were issued to the Topsgруп Holding, B.V. by the Operational Creditor, so that the Topsgруп Holding B.V./Corporate Debtor would transfer monies in favour of the Operational Creditor from its account bearing number NL69ABNA0243444486 maintained with the Dutch ABN AMRO Bank.
- f) As no payment was received against the pending invoices and the payments were unpaid for a period of more than 2 years, the applicant contacted one Mr. Amar Panghal, Director Finance, of the Corporate Debtor and requested him to look into the pending invoices issued by the Applicant/Operational Creditor.
- g) Pursuant to several communications the Applicant/Operational Creditor with a view to amicably settle the dispute offered to settle for an amount of €100,000/- in lieu of the Principal amount of €156,106/- due and payable by the Corporate Debtor. The said Mr. Panghal vide his email of 3rd August 2017 offered a one-time settlement of €50,000/-. The Applicant/Operational Creditor rejected the said offer on the same day and instead offered a revised amount of €75,000/- for settlement of the dispute.
- h) In and around October 2017, the bank account maintained by Topsgруп Holding B.V. with the Dutch ABN AMRO Bank (required to be maintained as per clause 5 of the Indemnity Agreement dated 1st March 2009) was closed due to non-cooperation from Topsgруп Holding B.V. and on the instructions of

the Managing Director of Topsgrup Holding B.V., the balance amount €2,515 in the said bank account of Topsgrup Holding B.V. was transferred in favour of the Applicant/Operational Creditor being the Managing Director of Topsgrup Holding B.V. before closing of the said account. The Applicant/Operational Creditor adjusted the said amount of €2,515 against the invoice dated 31st December 2014 of €12,367.47. Even though the subsequent invoices since 31st December 2014 remain unpaid by the Topsgrup Holding B.V., the Applicant continued to provide services to the Corporate Debtor until 29.09.2017 when the Applicant/Operational Creditor resigned as the Managing Director of the Topsgrup Holding B.V.

- i) Thereafter the representative of the Applicant/Operational Creditor met with Mr. Jeetendra Daryani the Chief Financial Officer of the Corporate Debtor on 28th September 2018 in Mumbai. At the said meeting the Applicant was assured by the Corporate Debtor that the Corporate Debtor was in the process of obtaining funds and the invoices would be cleared within the first quarter of 2019.
- j) The Corporate Debtor did not make any payments until the first quarter of 2019 and thereafter Mr. Jeetendra Daryani (Chief Financial Officer) resigned from the services of the Corporate Debtor and Mr. Amar Panghal (Director Finance) became unresponsive to the calls and emails of the Applicant.
- k) The Applicant was thus constrained to issue a Demand Notice dated 8th March 2019 to the Corporate Debtor along with Mr. R. Nanda and Mr. R.C Nanda the shareholders and signatories to the Indemnity Agreement calling upon them to clear the admitted and undisputed contractual dues of the Operational Creditor under the

Agreements along with interest at the rate of 18% per annum from the due date of the invoices within fourteen (14) days from the date of receipt of the notice by them. The notice was duly served on the Corporate Debtor, however, no response from the Corporate Debtor has been received by the Applicant/Operational Creditor till date.

- l) That even after repeated reminders, the Corporate Debtor has failed to make the requisite payment, and thereafter, the Operational Creditor was constrained to issue the Demand Notice dated 22nd May 2019 under section 8 of the Insolvency and Bankruptcy code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding payment in respect of unpaid operational debt from the Corporate Debtor. The Demand Notice dated 22nd May 2019 was duly served on the Corporate Debtor. However, no response was received from the Corporate Debtor to the said Demand Notice dated 22nd May 2019.

- m) Thereafter, it came to the notice of the Operational Creditor that in the Demand Notice dated 22nd May 2019 issued by the Operational Creditor to the Corporate Debtor, inadvertently Principal amount was mentioned as €158,622 i.e. the total invoiced amount, and the amount of €2,515 adjusted by the Operational Creditor against the invoice dated 31st December 2014 was not deducted from the Principal amount. Thereafter, the Operational Creditor addressed a letter dated 18th November 2019 providing clarification in respect of the Demand Notice dated 22nd May 2019 and informed the Corporate Debtor that after deduction of the amount of €2,514 from the total invoiced amount of €158,622, the Principal amount

would be €156,106.23 instead of €158,622. Further, in the same letter, the Operational Creditor also provided a revised interest calculation sheet providing particulars of interest calculation at the interest rate of 18% per annum from the date of the respective invoices till 10th November 2019.

- n) On 2nd January 2020, the Corporate Debtor replied to the Demand Notice dated 22nd May 2019 stating that the demand notice is not in the prescribed form and is defective, null and void and is not binding denying liability to pay the debt amount. Further raising objection in respect of the said letter dated 18th November 2019 not being a Demand Notice as it is not in the prescribed format as per the Insolvency and bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- o) Thereafter, Applicant/Operational Creditor to do away with this technical objection was constrained to issue a Second Statutory Notice dated 31st January 2020 under section 8 of the Insolvency and Bankruptcy code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding payment in respect of unpaid operational debt from the Corporate Debtor.
- p) The Demand Notice dated 31st January 2020 was duly served on the Corporate Debtor on 4th February 2020. However, till date, no response from the Corporate Debtor has been received.
- q) The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.

r) None present on behalf of Corporate Debtor even after giving several opportunities the matter stands to be heard *ex-parte* on merits.

5. Written Submissions on behalf of Operational Creditor:

a) The Operational Creditor has submitted Written Submissions on 24.12.2021. It is stated that invoices have never been disputed by the Corporate Debtor. On the contrary, the invoices were accepted and payments till October 2014, were cleared by the Corporate Debtor. With respect to the November 2014 dues, the applicant has adjusted certain sums that were held with the applicant. However, Corporate Debtor failed to make the requisite payments to the applicant towards fees from December 2014. However, in good faith and relying upon the assurances of the Corporate Debtor, the applicant continued to render services. However, it became clear that Corporate Debtor was only misleading the applicant and that it was not in a position to pay its dues. Accordingly, the applicant resigned as the Managing Director of the Topsgroup Holding B.V on 29.09.2017.

b) The Operational Creditor places reliance on the following judgements in support of the submissions:

- i. Hussankadri vs Edelwise Asset Reconstruction Co. Ltd & Anr. passed by NCLAT in CA(AT) Insolvency No.1073 of 2019.
- ii. Ashish Kumar vs Vinod Kumar Pukhraj Ambavat & Anr. passed by NCLAT in CA(AT) Insolvency No.1411 of 2019.
- iii. Laxmi Pat Suvarna vs. Union Bank of India; 2021 SCC online SC 267.

- iv. Dena Bank (now Bank of Baroda) vs C. Shivakumar Reddy & Anr; (2021 SCC Online SC 543).

Findings:

6. The matter has been listed from time to time on board. Ample opportunities were given to the Corporate Debtor to file its reply. Despite substituted service by way of publication of notice through newspaper the Corporate Debtor remained absent. The matter was heard on merits and is Reserved for Orders vide its order dated 24.12.2021.
7. Heard the counsel appearing for the Operational Creditor. The counsel appearing for the Operational Creditor invited the attention of this Tribunal to the relevant documents filed in proof of debt and default in support of above company petition. He also invited the attention of this Tribunal to the relevant clauses dealing with the petition and the Events of Default and Notice of Default etc. for resolution of a total debt.
8. The Operational Creditor successfully proved the existence of the debt and default payable is also within limitation. Thus, the present Company Petition satisfies all the necessary requirements for admission.
9. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.
10. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following order.

ORDER

- (a) The Petition bearing CP(IB) 1429/MB-IV/2020 filed by IQ EQ Management (Netherlands) Limited, (through its Authorised representative Mr. Anand Bhugra, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Topsgroup Electronics System Limited (“Corporate Debtor”), [CIN: U32109MH1995PLC093075] is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -

- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Sanjay Shrivastava, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01528/2018-19/12425, E-mail: casanjayshrivastava@gmail.com, is hereby appointed as Interim Resolution Professional in connection with the proposed corporate insolvency resolution process of Topsgroup Electronic Systems Limited.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week

from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh 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 (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Kishore Vemulapalli
Member (Judicial)

28.01.2022

Sd/-

Rajesh Sharma
Member (Technical)