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**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 28.05.2019

PRESENT: 1. Hon'ble Member (J) Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T) Dr Ashok Kumar Mishra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 111/BB/2018	For further hearing	Sec 10 of I&B code 2016	M/s Balodis Technologies Pvt Ltd	Rafeulla Shariff advocate		Pawan Kumar Mittal Advocate (VK not filed)

ADVOCATE FOR PETITIONER/s:

RAFEULLA SHARIFF, PCS For petitioners
7259 700201

Rafeulla Shariff

ADVOCATE FOR RESPONDENT/s:

PAWAN KUMAR MITTAL
Advocate
9873938816
For Ecom Express Private Ltd.

PTO

ORDER

Heard Shri Rafeulla Shariff, learned PCS for the Petitioner and Shri Pawan Kumar Mittal, learned Counsel representing for Ecom Express Private Limited.

C.P.(IB)No.111/BB/2018 is admitted by separate order.

Post the case for submission of the IRP report on **28.06.2019.**



MEMBER(T)

Puja



MEMBER(J)

Verified



Court Officer

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

C.P.(IB)No.111/BB/2018
U/s 10 of the IBC, 2016
R/w Rule 7 of I&B(AAA) Rules, 2016

In the matter of:

M/s.Balodis Technologies Private Limited
J.K. Ashwathlakshmi Heritage,
No.77, 4th Block,
80Ft Main Road, Koramangala,
Bangalore – 560 034. - Petitioner/Corporate Applicant

Versus

1. M/s.Ecom Express Private Limited
Regd. Off: No.14/12/2,
Old Delhi-Gurgaon Road,Samalka,
New Delhi – 110 037.& 3 others - Respondents/Operational Creditors

Date of Order : 28thMay, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner/
Corporate Applicant : Shri RafeullaShariff

For the Respondent/
Operational Creditor : Shri Pawan Kumar Mittal

ORDER

Per : Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.111/BB/2018is filed by M/s.Balodis Technologies Private Limited('Petitioner/Corporate Applicant') under Section 10of the IBC, 2016 read with Rule 7 of the Insolvency and Bankruptcy (AAA) Rules,



2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Balodis Technologies Private Limited. The total amount of debt and default committed as per the Corporate Applicant is Rs.57,74,243/- (Rupees Fifty Seven Lakhs Seventy Four Thousand Two Hundred and Forty Three Only).

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) M/s.Balodis Technologies Private Limited ('Petitioner/Corporate Applicant') is a Private Limited Company incorporated on 06.08.2015 under the provisions of Companies Act bearing CIN No.: U74900KA2015PTC082070 and having its registered office at No.777, J.K.Ashwath Laxmi Heritage, 4th Block, 80 Feet Road, Koramangala, Bangalore-560034. The Nominal Share Capital of the Company is Rs.8,37,038/- (Rupees Eight Lakhs Thirty-Seven Thousand and Thirty-Eight Only) and Paid-up Share Capital of the Company is Rs.7,78,599/- (Rupees Seven Lakhs Seventy-Eight Thousand Five Hundred Ninety-Nine Only).The main objects of the Company in brief are to carry on the business of development of mobile based software application and website to enable placement of orders for shipment of consignments, etc.

(2) It is stated that the Company was founded by Nexus Venture Partners. It was the first round of funding for the Company. The concept of business was extremely new and to grow the customer base, substantial moneys were spent out of the Venture fund investment. The initial months could not muster the required business and the cash burn continued.

(3) As in most start up entities, which are funded, the entity can survive only with additional funding from the Venture investors. Unfortunately, in case of M/s.Balodis Technologies Private Limited,

there was no additional funding which was forthcoming. The Company had to face situation of resignation of most employees as the fund raising did not happen. Consequent to this, the Board met and concluded that there is no possibility of raising money. That apart, the cash burn continued, and there was no visibility of generating internal cash accruals.

(4) In view of the foregoing, the Company is not in a position to run as a going concern entity. It has debts to pay, and thus filed the present Petition.

3. M/s.Ecom Express Private Limited, Operational Creditor, has filed a reply dated 17.09.2018, by inter alia contending as follows:

(1) It is stated that M/s.Ecom Express Private Limited is a Company registered under the Companies Act and has been providing Courier services to the Corporate Applicant. Before availing the services, the Corporate Applicant entered into an Agreement dated 26.12.2015 with M/s.Ecom Express Private Limited undertaking to pay the charges including statutory taxes/octroi etc. to M/s.Ecom Express Private Limited on the receipt of bill/invoice. However, Corporate Applicant failed to make the payment of the due amount to M/s.Ecom Express Private Limited. As per its own admission, the Corporate Applicant is liable to pay Rs.12,50,000/- as on 31.03.2018. However, perusal of the account statement reflected that a sum of Rs.20,00,000/- has been debited to its account with narration "being amount written off". It is stated that M/s.Ecom Express Private Limited has not consented for writing off any amount. The Corporate Applicant of its own has shown the amount of Rs. 20,00,000/- as written off without obtaining any consent or concurrence from M/s.Ecom Express Private Limited. If the amount of Rs.20,00,000/- which has been illegally shown as written off is



added to the balance payable to M/s.Ecom Express Private Limited, it comes out to be Rs.32,50,000/-(Rupees Thirty Two Lakhs and Fifty Thousand Only). The account statement annexed with the application is disputed since it does not reflect true and correct status.

- (2) It is stated that it is respectfully stated that as per account statement for the transactions of the Company with M/s.Ecom Express Private Limited, a sum of Rs.24,84,123/- was due and payable as on 31.03.2018.It is also stated that M/s.Ecom Express served a notice dated 12.04.2018 calling upon the Company and its Directors to pay the due amount (including interest).As on 31.08.2018, the Company is liable to pay a sum of Rs.25,80,353/- (including interest @9.70% per annum).
- (3) It is stated that in case, the present application is admitted, then M/s.Ecom Express Private Limited shall be greatly prejudice since there is no proposal/arrangement in the application to pay the debt owed by the Corporate Applicant towards M/s.Ecom Express Private Limited. It is further stated that as per account statement/balance sheet as on 31.03.2018, filed by the Company, a sum of Rs.54,68,753/- has been shown as trade receivable and the note reads "*unsecured considered to be good*". Thus, meaning thereby that the same is recoverable. However, in the entire application, there is no whisper as to the measures taken by the Company to recover the same.
- (4) It is stated that the present Petition is gross abuse of process of law and has been filed by the Corporate Applicant (hereinafter referred as "the Company") for mala fide purpose and to evade its liability of payment of dues to M/s.Ecom Express Private Limited and other Creditors of the Company.

- (5) It is stated that the Corporate Applicant has not approached the Hon'ble Tribunal with clean hands and has suppressed material facts. There is no whisper in the entire application, as to reason for non-performing of the Company. The Directors and Key Managerial Persons of the Company, carried out the business of the Company without due care and in utmost disregard to prudential business practice and by manipulating the accounts of the Company are portraying the bad financial health of the Company to file the present petition. It is stated that the Company is being run by its two Directors as if it was a proprietorship business and both of them are the person(s) in-charge of and responsible for the conduct of day to day business and affairs of the Company. The proceedings have been initiated fraudulently and with malicious intentions and purpose.
- (6) It is also stated that the perusal of the Balance Sheet and the Schedule 1 of the application would reveal that an amount of Rs.41,44,775/- is due and payable by the Company to various Government departments, out of which, a sum of Rs.35,81,295/- is payable to Income Tax department on account of TDS deducted from various persons. Thus, jeopardizing the financial health of the persons on whose account the tax was deducted. It is stated that non-payment of TDS amount is punishable offence under Income Tax Act as well as an offence under Section 406 IPC, and the Company and its Key Managerial Persons including its Directors are liable to be punished for the same. Similarly, for other statutory dues, they all are liable to be punished under relevant laws.
- (7) It is further stated that the Key Managerial Persons of the Company including its Directors have operated the business of the Company in fraudulent manner causing loss to its various creditors including

M/s.Ecom Express Private Limited and the affairs of the Company require examination by Serious Fraud Investigation Office to unearth conspiracy and illegal acts of the Company and its Directors and other Key Managerial Persons.

4. Heard Shri Rafeulla Shariff, learned PCS for the Petitioner and Shri Pawan Kumar Mittal, learned Counsel for the Respondent. We have carefully perused the pleading of both the parties and extant provisions of the Code.
5. Shri Rafeulla Shariff, learned PCS for the Petitioner, has further submitted that the debt and default in question is not in dispute and the Petition is filed in accordance with law and a qualified Insolvency Professional namely Ms.Srilakshmi Purushotham is named as Interim Resolution Professional (IRP) with Registration No.IBBI/IPA-001/IP-P00951/2017-18/11571, who has also filed written Consent in Form-2 dated 26.04.2018, is eligible to be appointed as IRP.
6. It is not in dispute that the Company is unable to pay its debt and apart from the admitted debt of Rs.57,74,243/-, the Respondent is also claiming more amount and opposing to admit the case. The claim of the Respondent can be looked into by the IRP to be appointed in this instant case, and decide the same basing on the evidence produced by the Respondent. The Instant Petition is filed in accordance with law by establishing debt and default, and suitable IRP namely, Ms.Sri lakshmi Purushotham with Registration No.IBBI/IPA-001/IP-P00951/2017-18/11571, is suggested, who has also filed Written Communication dated 26.04.2018. Therefore, we are of prima facie view that it is a fit case to admit and appoint said Insolvency Professional as IRP.



7. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s 10(4)(a) of the Code, C.P. (IB)No.111/BB/2018 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Balodis Technologies Private Limited with following consequential directions;

- (1) We hereby appointed **Ms.Srilakshmi Purushotham with Registration No.IBBI/IPA-001/IP-P00951/201718/11571** is hereby appointed as Interim Resolution Professional in respect of the Corporate Applicant to carry on the functions as per provisions of Code and various rules issued by IBBI from time to time.
- (2) 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 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 Corporate Debtor;



- e. the supply of essential goods and 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;
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all the extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- (4) The Board of Directors and all the staff of the Corporate Applicant are hereby directed to extend full co-operation to the IRP in order to carry out her statutory duties as IRP.
- (5) M/s.Ecom Express Private Limited is permitted to make its claim before the IRP along with supportive documents, thereafter, IRP is directed to consider its claim and give suitable reply within 2(two) weeks from the date of receipt of the claim.
- (6) The IRP is further directed to take expeditious steps so as to complete the process of CIRP within stipulated time.
- (7) Post the case for report of the IRP on **28th June, 2019.**


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL