

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH V

(IB)1717 (ND)/2019

In the matter of:

M/s Park Network Pvt. Ltd.  
406/56, Eros Apartment,  
Building 56, Nehru Place, New Delhi-110019

... *Operational Creditor*

VERSUS

M/s. PP Telecell Marketing Pvt. Ltd.  
CIN:U64202DL2002PTC117795  
12/401, Sunder Vihar, Outer Ring Road,  
Paschim Vihar, New Delhi-110087

Also at:  
I-12, DSIDC Industrial Complex,  
Rohtak Road Nangloi,  
Delhi-110041

...*Corporate Debtor*

ORDER DELIVERED ON: 27.05.2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)  
Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)



**For the Applicant/ Operational Creditor:** Adv. Tushar Thareja, Adv.  
S. Dhingra

**For the Respondent/ Corporate Debtor:** Adv. Gajendra Kumar

**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL**

1. The Applicant/Operational Creditor has filed the present application against the Respondent/Corporate Debtor under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 6 of the IBC, 2016 to initiate corporate insolvency resolution process in respect of Corporate Debtor, P.P. Telecell Marketing Pvt. Ltd. (hereinafter referred to as "Corporate Debtor") having CIN No. U64202DL2002PTC117795 is in the business of trading and was the authorized distributor of M/s Syntech (HK) Technology Limited manufacturer of mobile phone with the brand Gionee.
2. M/s Park Network Pvt. Ltd. (hereinafter referred to as "Operational Creditor"), having CIN No. U74899DL1995PTC065654 was appointed as sub-distributor on the terms and conditions as per agreement dated 15.04.2015.
3. Brief facts leading to filing of the instant application are as under:
  - i. The Applicant started buying mobile handsets and mobile accessories from the Corporate Debtor for sale.
  - ii. Various transactions were made between the Applicant and the Corporate Debtor during April, 2015 till August, 2018.
  - iii. As per the ledger account maintained by the Corporate Debtor of the Applicant there is an admitted due amount to the Applicant of



Rs 20,02,872/- which was intimated to the Applicant via e-mail dated 05.01.2019.

- iv. In view of default in repayment of the operational debt, the Applicant issued a demand notice in Form 4, as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('I&B Rules') R/w Section 8 of the Insolvency and Bankruptcy Code, 2016 ('IBC') dated 02.05.2019 thereby demanding an operational debt of Rs. Rs 20,02,872/-, with additional interest @ 8%p.a. from the date of default in payment of each invoice from the Corporate Debtor.
  - v. A reply to the demand notice in Form 4, as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("I & B Rules") R/w Section 8 of the Insolvency and Bankruptcy Code, 2016 ('IBC') dated 02.05.2019 was received on 24.05.2019 raising a fictitious story regarding a dispute, whereas factually the demand amount is admitted by the CD vide email dated 05.01.2019 and the ledger accounts prepared by it.
4. On receipt of summons, respondent appeared and filed reply. The facts of the reply are as follows:-
- i. Respondent/Corporate Debtor is a Pvt. Ltd. company under the name & style of PP Telecell Marketing Pvt. Ltd. who is in the business of trading and was the authorized distributor of M/s Syntech (HK) Technology Limited manufacturer of mobile phone with the brand Gionee and as per the agreement dated 15.04.2015, the applicant/ operational creditor was appointed as sub-distributor on the terms and conditions as per agreement dated 15.04.2015 and as per clause 5 of the Agreement, it has been clearly mentioned the distributor



obligation to sub-distributor wherein clause "G" of the Agreement states as under: -

G. *The company/distributor will introduce schemes from time to time to boost sales of the products.*

*and Clause "J" of the Agreement says*

J. *The distributor shall not be responsible for any claim whatsoever whether as per company policy or other written commitment by leveled not lower than a branch manager, if such claims are not lodged with the distributor with 15 days of the claim.*

*and Clause 16 of the Agreement also states Arbitration:*

C. *In case, any dispute cannot be settled amicably within a period of 30 days, then such disputes shall be finally settled by an Arbitration Penal composed of 3 Arbitrators.*

*In the present matter, as there is an arbitration clause hence, as per the Agreement and Section 8 of the Arbitration and Conciliation Act, 1996. The matter has to be referred to the penal of arbitrators and this Hon'ble Tribunal has no jurisdiction to entertain the same.*

*And clause 19 of the Agreement states that neither distributor nor sub- distributor shall be liable to the other or to sub-distributors customers, for any special indirect of consequential damages including but not limited to loss of profit, loss of business opportunities or loss of business investment.*



ii. As a matter of fact, the operational creditor was appointed as sub-distributor of M/s Syntech (HK) Technology Limited by the corporate debtor and accordingly, the corporate debtor was passing all the benefits floated by M/s Syntech (HK) Technology Limited under the schemes floated by M/s Syntech (HK) Technology Limited from time to time and as per the statement of operational creditor annexed with the present petition, the operational creditor is claiming the amount of the schemes which were floated by M/s Syntech (HK) Technology Limited from time to time. However, the claim of the operational creditor is based on statement of account/ledger account for Rs.20,02,872/- and the corporate creditor has not attached any statement of account/ledger account confirming to their claim of Rs.20,02,872/- by the corporate debtor as the corporate debtor never confirmed any claim of the corporate creditor.

5. The Operational Creditor was appointed as sub-distributor of M/s Syntech (HK) Technology Limited by the Corporate Debtor and accordingly, the corporate debtor was passing all the benefits floated by M/s Syntech (HK) Technology Limited under the schemes from time to time and as per the statement of operational creditor annexed with the present petition, the operational creditor is claiming the amount of the schemes which were floated by M/s Syntech (HK) Technology Limited from time to time. However, the claim of the operational creditor is based on statement of account/ledger account for Rs.20,02,872/- and the operational creditor has not attached any statement of account/ledger account confirming to their claim of Rs.20,02,872/- by the corporate debtor as the corporate debtor never confirmed any claim of the operational creditor. As per books of account maintained by the respondent/corporate debtor, the ledger balance of the operational creditor is Nil and the respondent has shared this statement of ledger





accordingly, the corporate debtor also reversed all their past claim for Rs.6,53,102/- in its books and shared updated statement of account on 12.02.2019, which was never responded by the operational creditor.

8. The Operational Creditor filed the rejoinder to the reply filed by the Corporate Debtor. The facts of the rejoinder are that vide e-mail dated 07.01.2019, the Corporate Debtor has admitted the debt/liability of Rs. 20,02,872/- and also attached the ledger account of the applicant as prepared by the Corporate Debtor and in reply to the notice under Section 8 of IBC, the Corporate Debtor annexed the bifurcation of the outstanding amount of Rs. 20,02,872/- and also admitted the liability of the said amount. Further as per Clause 14 B of the agreement, the Operational Creditor terminated the agreement on 23.07.2018 and the same was accepted by the Corporate Debtor on 25.07.2018 and the account of Operational Creditor was settled and Corporate Debtor admitted its liability of Rs. 20,02,872/-. Therefore, the Corporate Debtor cannot be allowed to blow hot and cold in the same breath by disputing the same.
9. We have heard Ld. Counsel for the Operational Creditor as well as Corporate Debtor and perused the averments made in the application, reply, rejoinder and the documents enclosed with the application and we find that Ld. Counsel for the Operational Creditor in course of his arguments submitted that the Corporate Debtor, vide its e-mail dated 07.01.2019, after preparing the ledger account of the applicant, admitted the debt/liability of Rs. 20,02,872/- and in reply to the Demand Notice, he has also enclosed the ledger account, therefore, the Corporate Debtor cannot be permitted to take defence that it is not the Corporate Debtor who is liable to pay the amount rather it was M/s Syntech (HK) Technology Limited who is liable to pay the amount. On the other hand, Ld. Counsel for the Corporate Debtor in course of his arguments submitted that the Operational Creditor has not



disclosed the mail dated 12.02.2019 by which it was communicated that the balance of the Operational Creditor is nil and he placed the old statement of account sent to them and on the ground, he claimed that there is no debt due to the Operational Creditor.

10. In light of the submissions raised on behalf of the parties, we have gone through the averments made in the application, reply, rejoinder as well as written submissions filed by both the parties and on careful consideration of the same, we find that the Operational Creditor has claimed Rs. 20,02,872/- and in support of that the Operational Creditor has placed reliance upon the mail dated 07.01.2019 sent by the Corporate Debtor in which the bifurcation of the amount is shown which is due and payable and as per the statement of account, the total amount payable by the Corporate Debtor is Rs. 20,02,872/- which the applicant claimed as principal amount in the application.

11. At this juncture, we would like to refer the arguments advanced on behalf of the Corporate Debtor. In course of his arguments, Ld. Counsel for the Corporate Debtor submitted that the above said amount is settled on Rs. 10,28,425/- and which is payable by the Corporate Debtor Ms. Gionee, one of the distributors but no such document is produced before us to show that the above said amount has been paid by the Corporate Debtor. It is also not the case of the Corporate Debtor that the amount has been paid by the Corporate Debtor or by M/s Gionee to the Operational Creditor and therefore by sending demand notice as required under Section 8 (1), the Operational Creditor demanded the outstanding due of Rs. 20,02,872/- and that demand notice was duly delivered which was also admitted by the Corporate Debtor in its reply to the demand notice which he sent on 02.05.2019 and which was received on 12.05.2019. Since, it is not disputed by the Operational Creditor that the reply to the demand notice has not been received by him within statutory period as required under Section 8 (2) of IBC i.e. within 10 days of the receipt of the demand notice, the Corporate Debtor is



required to raise the existence of dispute or show the documents regarding the payment of amount, therefore, we accept that the reply to the demand notice was sent within the time but from the perusal of the reply to the demand notice, we find that M/s. Gionee agrees to pay the sum of Rs. 20,02,872/- against all claims for which the Corporate Debtor was agreed and ready to give 105 units of A-1 light but except that there is no other ground taken by the Corporate Debtor. Now, we shall consider this aspect that whether the ground which was taken by the Corporate Debtor comes under the pre-existing dispute or not. Therefore, at this juncture, we would like to refer the definition of dispute and the same is quoted below:-

***"dispute" includes a suit or arbitration proceedings relating to—***  
***(a) the existence of the amount of debt;***  
***(b) the quality of goods or service; or***  
***(c) the breach of a representation or warranty;***

12. From the perusal of the definition of dispute, we find that the "dispute" includes a suit or arbitration proceedings relating to— (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty. When we shall consider the ground taken by the Corporate Debtor in the light of the aforesaid definition then we find that the ground taken by the Corporate Debtor does not come under any of the clause of the definition of dispute and therefore, we are unable to accept the contention of the Ld. Counsel for the Corporate Debtor that vide e-mail dated 07.01.2019, since the amount was finally settled therefore M/s. Gionee undertook to pay the amount and therefore the Corporate Debtor is not liable to pay the amount rather we are of the view that in view of Section 8 (2), the Corporate Debtor is required to raise the existence of dispute or show the document regarding the payment of unpaid operational debt. When we shall read the mail dated 07.01.2019, then we find that on the basis of that mail, it cannot be said that there is existence of pre existing dispute or



amount has been paid rather it was the admission on the part of the Corporate Debtor that the total outstanding amount is Rs. 20,02,872/- and the Operational Creditor is entitled to get the same but that has not been paid to the Operational Creditor.

13. At this juncture, we would like to refer Section 9 (5) (1) of IBC and the same is quoted below:

*(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no 3[payment] of the unpaid operational debt;*

*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.*

14. In the light of the provision of Section 9 (5) (1), when we shall consider the case in hand then we find that the application of the Operational Creditor is complete, the amount claimed by the Operational Creditor is not paid, notice for payment was delivered to the Corporate Debtor to pay the outstanding amount and in the reply filed by the Corporate Debtor, we find that there was no pre-existing dispute and the amount claim by the Operational Creditor is more than Rs. One Lakh which is the minimum threshold as required under Section 4 of the I B Code for initiating a proceeding under the I B Code, therefore, under such circumstances, we have no option but to admit the application of the Operational Creditor. Accordingly, we hereby admit the application. A



moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(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 debt or 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.*

Further:

(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.*

(3) *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.*

(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.*



15. Since, name of IRP is not proposed, hence we appoint, Mr. Ajay Goyal, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00382/2017-2018/10639 email- ajaygoyalca75@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
16. Operational Creditor is directed to deposit the fee of Rs. 1,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
17. Registry is directed to communicate the order with the IRP as well both the parties.

Sd/-

(K.K. VOHRA)  
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)