

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

**CP(IB)No.2839/NCLT/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of

**Nityo Infotech Services Private Limited**

...Operational Creditor/ Applicant

v/s

**Melstar Information Technologies  
Limited**

...Corporate Debtor/Respondent

**Order Dated 1<sup>st</sup> October 2019**

**Coram:** Hon'ble Member (Judicial) : Mr V.P. Singh  
Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Petitioner** : Adv. Amita Rastogi, Adv. Ankita Singhania;  
**For the Corporate Debtor:** Adv. Rohit Pandey;

*Per: Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an application being CP 2839(IB)/MB/2018 filed by **Nityo Infotech Services Private Limited**, the Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Melstar Information Technologies Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The application is filed claiming a total default of ₹4,20,67,444.31/- (Rupees Four Crore Twenty Lakh Sixty Seven Thousand Four Hundred and Forty Four and Paise Thirty One only) as on the date of filing of this application. This application is filed by Mr Vishal Gandhi, the Legal Representative of the Operational Creditor, duly authorised by Board Resolution dated 08.05.2018. Subsequently, the Applicant vide Board Resolution dated 24.12.2018 has authorised Mr. Subodh Hegde, the Director of the Applicant with effect from 08.05.2018 in respect of filing of the proceedings under insolvency law. Copy of the Board Resolution dated 24.12.2018 is annexed to the Application.
3. The Applicant has provided services and raised bills to the Corporate Debtor from 01.01.2015 to 31.01.2017 pursuant to

Sub-Contractor Master Services Agreements dated 01.01.2015 and 15.01.2016. Copies of the Agreements dated 01.01.2015 and 15.01.2016 are annexed to the Application. As per the terms of the Agreements, the Corporate Debtor was required to make payments for the services within a period of 10 days from the receipt of the payments from IBM India Private Limited (End Client) of the Corporate Debtor. Copies of invoices are annexed to the Application.

4. It is submitted by the Applicant that the Corporate Debtor failed to repay the due amount to the Applicant. The end client of the Corporate Debtor, IBM, intervened urging the Corporate Debtor to make payments to the Applicant. In this regard, in the meeting dated 11.08.2016, the Corporate Debtor agreed to pay a sum of ₹50,00,000/- (Rupees Fifty Lakh Only) by 18.08.2016, ₹1,00,00,000/- (Rupees One Crore only) by 07.09.2016, ₹50,00,000/- (Rupees Fifty Lakhs Only) by 15.09.2016 and further agreed to make payments for subsequent bills for the services provided by the Petitioner in accordance with the terms of the Agreement dated 15.01.2016. Copy of the Minutes of the Meeting dated 11.08.2016 is annexed to the Application.
5. The Corporate Debtor failed to repay the amounts to the Applicant as per the agreed terms. The Corporate Debtor made a payment of ₹40,00,000/- (Rupees Forty Lakh only) on 28.11.2016 as part payment towards the total amount outstanding.
6. The Corporate Debtor has further acknowledged the debt and its liability to repay an outstanding sum of ₹2,87,82,493.58/- (Rupees Two Crore Eighty Seven Lakh Eighty Two Thousand Four Hundred and Ninety Three and Paise Fifty Eight Only) vide the Balance Confirmation Letter dated 16.05.2017. Copy of the Balance Confirmation Letter is annexed to the Application.
7. The Corporate Debtor has been reported as Defaulter to the National E-Governance Services Limited (NeSL). Copy of the NeSL Report dated 22.06.2018 is annexed to the Application.

8. The Applicant hand delivered the Statutory Demand Notice under section 8 of the I & B Code, 2016 dated 24.05.2018 to the Corporate Debtor. The receipt of which is acknowledged by the Corporate Debtor on the same day with the company seal and signature of the person who received the Demand Notice and the same is annexed to the Application.
9. The Applicant has filed its Affidavit in compliance with section 9(3)(b) of the I & B code stating that the Corporate Debtor did not give any notice to the Applicant disputing the unpaid operational debt within 10 days from the receipt of the demand notice. However, after a period of 34 days from the receipt of demand notice, the Corporate Debtor issued a Reply dated 27.06.2018 denying the averments in the Demand Notice stating that the Applicant has, in contravention to the non-compete clause, provided services directly to Corporate Debtor's Client from November 2016, i.e during the subsistence of the Agreement dated 15.01.2016 which is for a period of one year.
10. The Corporate Debtor in its Affidavit in Reply dated 26.02.2019 pointed out that the Application has been filed by the legal counsel of the company and not by the director of the Company. However the said defect in the Application has been duly rectified by the Board Resolution dated 24.12.2018 and the affidavit dated 13.02.2019 of the Director, and authorised representative of the Applicant. The Corporate Debtor has failed to point out any dispute with regard to the services provided by the Applicant or any dispute regarding the invoices.
11. The Corporate Debtor has also pointed out that the Agreement dated 15.01.2016 contains arbitration clause and the Applicant ought to invoke arbitration. However, it is well established that the arbitration clause is no bar to institute proceedings under the Insolvency and Bankruptcy Code, 2016
12. We have heard the parties and perused the records.
13. On perusal of the Demand Notice dated 24.05.2018, the Demand Notice has been issued in respect of the dues that accrued on services rendered to the Corporate Debtor from 01.01.2015 till November 2016. On perusal of the Agreement dated

15.01.2016, It is seen that the Corporate Debtor has not honoured its commitment to make payments within a period of 10 days from the date of receipt of the amounts from its End Client. Thereafter, the Applicant provided services to the End Client of the Corporate Debtor from November 2016.

14. It is observed that the Corporate Debtor has received services from the Applicant to its satisfaction and not made payments to the Applicant. Further, it is imperative to mention that the Corporate Debtor has not raised any dispute with regard to the quality of services rendered prior to the receipt of the Demand Notice. There is no pre-existing Dispute, the contentions raised by the Corporate Debtor in its Reply appear to be an afterthought to the Demand Notice.
15. It is seen that the Application has been filed on proper Form -5 with the required documents being annexed to the Application. Further, the Affidavit in compliance of section 9(3)(b) of the Code is annexed to the Application. It has been established that the Corporate Debtor is due and liable to pay a sum more than ₹1,00,000/- (Rupees One Lakh Only) to the Applicant as acknowledged by the Corporate Debtor in the Balance Confirmation Letter dated 16.05.2017 and the NeSL Report dated 22.06.2018 which clearly shows the Corporate Debtor as Defaulter. The application is complete.
16. The Applicant has not proposed registered insolvency resolution professional to act as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code.

### **ORDER**

This Application filed under Section 9 of I&B Code, 2016, presented by **Nityo Infotech Services Private Limited**, Operational Creditor / Applicant against **Melstar Information Technologies Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

- VI. That this Bench at this moment appoints **Mr.Neehal Mahamulal Pathan**, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01561/2019-20/12406] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
17. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated registrar is to be submitted today**

**Sd/-**  
**RAJESH SHARMA**  
Member (Technical)

**Sd/-**  
**V.P. SINGH**  
Member (Judicial)

1<sup>st</sup> October 2019