

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH –II, CHENNAI**

IBA/480/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication
Authority) Rules, 2016)*

In the matter of **Lookman Electroplast Industries Ltd.**

Ingram Micro India Private Limited,
Fifth Floor, Empire Plaza, Building A,
LBS Marg, Vikhroli (West),
Mumbai – 400 083

... Operational Creditor

-Vs-

Lookman Electroplast Industries Ltd,
Old No.8 & 9, New No.15, 2nd Street Extension,
3rd Main Road, CIT Nagar,
Nandanam,
Chennai – 600 035

... Corporate Debtor

Order Pronounced on 24th December 2021

CORAM:

**JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor: Mr.Kedar Wagle, Advocate

For Corporate Debtor : Mr.V.S.Jayakumar, Advocate

ORDER

**Per: JUSTICE (RETD) S.RAMATHILAGAM, MEMBER
(JUDICIAL)**

Under Adjudication is IBA/480/2020 that has been filed by
Ingram Micro India Private Limited (hereinafter referred to as
'Operational Creditor') under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Lookman Electroplast Industries Ltd.** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Operational Creditor from which, it is evident that the Operational Creditor is **Ingram Micro India Private Limited**. As per Part II of the application, the Corporate Debtor is a Limited Company with Corporate Identification Number U30007TN1992PLC22758 and the registered office of the Corporate Debtor as per the Application is stated to be at Old No.8 & 9, New No.15, 2nd Street Extension, 3rd Main Road, CIT Nagar, Nandanam, Chennai – 600 035. As per Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. Part IV of the application signifies the amount of debt to the tune of Rs.6,29,18,357.78/- and interest thereon at the agreed rate of 24% per annum amounting to Rs.1,34,97,138.40 calculated up to 31.03.2020 from the due dates of invoices and Cheque bounce charges as per agreement amounting to Rs.2,950.79 all

totalling to Rs.7,64,18,446.97/-(Rupees Seven Crore Sixty Four Lakhs Eighteen Thousand Four Hundred Forty-Six and Ninety-Seven paise only) as the outstanding dues that is payable by the Corporate Debtor. It is averred in the application that, the last default occurred on 09.09.2019. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default.

4. It was averred by the Ld. Counsel for the Operational Creditor that, the Operational Creditor is a distributor of IT Hardware and Software products and the Corporate Debtor engaged in a business of providing Software and Hardware for surveillance and other equipment.

5. It was further averred that the Corporate Debtor approached the Operational Creditor for procurement of products, provided and supplied by the Operational Creditor. Pursuant to the above request, the Operational Creditor supplied goods and raised invoices against the supplies.

6. Thereafter, the Operational Creditor requested the Corporate Debtor to clear the outstanding dues; in response, the Corporate Debtor vide e-mail dated 16.10.2019 sought 2 months time to make the payments. Further, vide e-mail dated 31.08.2019, the

Corporate Debtor had acknowledged Rs.7.19 Crore due towards the Operational Creditor.

7. After the expiry of the 2 month time, the Operational Creditor had deposited 5 cheques given by the Corporate Debtor, which were reportedly dishonoured and returned for the reason of "funds insufficient". Therefore, on 20.12.2019, the Operational Creditor caused Legal Notice under Sec.138 of Negotiation of Instruments Act to the Corporate Debtor. Subsequently, on 23.12.2019 the Operational Creditor sent Demand Notice in Form-3 to the Corporate Debtor.

8. It was submitted that from 09.01.2021 to 31.05.2021, the Corporate Debtor made only Rs.1,20,00,000/- towards the due amount after the above payment was made, the Operational Creditor claims Rs.6,29,18,357.78/- as outstanding debt and the interest thereon at the rate of 24% per annum amounting to Rs.1,34,97,138.40/- as on 31.05.2021 from the due dates of the invoices and cheque bounce charges amounting to Rs.2,950.79/- all totalling Rs.7,64,18,446.97/- as an outstanding due.

9. The Learned Counsel for the Corporate Debtor in the counter submitted that the Corporate Debtor issued 7 purchase orders worth Rs.8,68,54,335.99/- to the Operational Creditor. It was further submitted that the Corporate Debtor is in the belief that the

Operational Creditor had supplied all items mentioned in the purchase orders and assured to make all payments as per the purchase orders. Later the Corporate Debtor's project team at Agra found that the supply made by the Operational Creditor is incomplete and they were unable to complete the project.

10. It was further submitted that the Operational Creditor had supplied only hardware but not provided the login credentials, which is an integral part of the hardware and part of the purchase order. Despite several requests, the Operational Creditor has not provided the License credentials for commissioning video conferencing units (Cisco). By virtue of the unavailability of license credentials the Corporate Debtor was unable to complete the project and get the payment out of it, from their client / customer.

11. It was further submitted that the Corporate Debtor had paid money to the Operational Creditor in regular intervals, as on date the Corporate Debtor had paid Rs.4,98,16,477.65/- out of the total purchase value Rs.8,68,54,335.99/-.

12. It was further submitted that the Operational Creditor purposefully had not supplied the material as per purchase order and its claim and supplies are disputed. Further, argued that there are disputed questions of facts in this case which can be

adjudicated only by a Civil Court by testifying evidence, not by this Tribunal.

13. It was further submitted that the Corporate Debtor is a profitable company with profit after tax of Rs.2,59,61,650/- and has accumulated reserves of Rs.35,84,88,287/-. If CIRP is initiated, it will cause irreparable loss to the Corporate Debtor.

14. In response to the above submissions the Learned Counsel for the Operational creditor in his Rejoinder submitted that the due date of the claim, the date of default and dishonour of the cheques of the Corporate Debtor occurred before 25.03.2020. Therefore, Sec.10A of IBC, 2016 cannot be applied in the present case.

15. It was further submitted that there is no document produced by the Corporate Debtor regarding the short supply of equipment. Even after the service of Demand Notice, the Corporate Debtor had not raised any dispute regarding the short supply of equipment or any pending dispute between the Operational Creditor and the Corporate Debtor. Moreover, the Corporate Debtor assured to clear the outstanding payments in September 2020 after filing of this Application.

16. Heard the submissions and perused all the records placed before us. The issue raised by the Learned Counsel for the Corporate

Debtor is that there is a dispute on the short supply of goods delivered by the Operational Creditor. It is seen from the e-mail communication dated 17.10.2020 filed in the typed set of documents filed by the Corporate Debtor, regarding the dispute of short supply was sent only after filing of this application. In **Mobilox Innovations Pvt. Ltd. v. Kirusa Software (P) Limited** case the Hon'ble Apex Court held that

"Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing - i.e. it must exist before the receipt of the demand notice or invoice, as the case may be..."

Further, it is seen that in the e-mail communication dated 04.09.2020 from the above said typed set, the Corporate Debtor assured to make payments to the Operational Creditor. The email communication is extracted below

"We sincerely regret for the delay in outstanding payments which are overdue for long period. The scenario has arisen due to many factors beyond the control of Lookman including this COVID pandemic. We really appreciate the support extended by Ingram Micro. We sincerely trying various other sources to settle the overdue amount.

In continuation to the discussion with our directors regarding the payment of Outstanding of Rs.5.78 Cr. we hereby confirm the payment schedule as under based on the situations and forecasts:

On or before 15th Sep – Rs.1.5Cr.

On or before 15th Oct – Rs.1.5Cr.

On or before 15th Nov – Rs.1.5Cr.

On or before 15th Dec – Rs.1.28Cr.

If required, the relevant security cheques for the same will be issued.”

It is clear from the above communication that the Corporate Debtor has acknowledged his default and there is no pre-existing dispute regarding short supply until 04.09.2020.

17. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

18. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the

Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July 2021 - December 2021 at S.No.20 appoints **Ms.Asha Rathod** with Registration Number **[IBBI/IPA-001/IP-P02017/2020-2021/13108]** (**e-mail id:- asharathod86@gmail.com**) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including the 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for

the use or continuation of the license or a similar grant or right during moratorium period;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(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 the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

Sec. 14 (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.

22. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-** (Rupees One Lakh Only) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. Based on the above terms, the Application stands **Admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI is also furnished with a copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar D