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

CP/1(CHE)/2021

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

In the matter of **Fanatic Systems Private Limited**

Redington (India) Limited

'Centre Point', Plot No.11 (SP)
Thiru Vi. Ka. Industrial Estate,
Guindy, Chennai – 600 032
*Rep. by Mr. S. Hariprasad,
Senior Manager – Legal*

... Operational Creditor

-Vs-

Fanatic Systems Private Limited

A3, Mars Foundations,
7/4, Rangarajapuram 1st Street,
Saidapet, Chennai – 600 015

... Corporate Debtor

Order Pronounced on 8th March 2022

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : Prena Khatri, Advocate
For AK Mylsamy & Associates LLP*

For Corporate Debtor : Ex-parte

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

CP(IB)/1(CHE)/2021 is filed by one **M/s. Redington India
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 **Fanatic Systems Private Limited** (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 moratorium and appoint Interim Resolution Professional.

2. Part – I of the Application discloses the details of the Applicant from which it is evident that the Operational Creditor is a Limited Company. From Part – II of the application it is seen that the Corporate Debtor is a Limited Company incorporated on 27.07.2015 with CIN: U74999TN2015PTC101559 and the registered office of the Corporate Debtor as per the Application is stated to be situated at A3 Mars Foundations, 7/4 Rangarajapuram 1st Street, Saidapet, Chennai – 600 015.

3. From Part – III of the Application it is seen that the Applicant has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the same. From Part – IV of the Application, it is seen that the Operational Creditor has claimed a total amount of Rs.8,02,39,787/- including interest at the rate of 24% p.a.



4. The Learned Counsel for the Operational Creditor submitted that they supplied IT, Non - IT and Telecom products to the Corporate Debtor and later upon the request of the Corporate Debtor, the Operational Creditor has granted credit facility to the Corporate Debtor. Also it was submitted that for the same, unconditional and irrevocable Letter of Personal Guarantee Agreement dated 06.06.2017 was executed in favour of Operational Creditor by Mr. S. Selvanayagam in the capacity as the Director of the CD.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had supplied products / goods, in various consignments to the Corporate Debtor and thereafter, the following invoices in respect of such supplies were raised;

S. No.	DATE	INVOICE NOS.	INVOICE VALUE (₹)	OUTSTANDING AMOUNT AGAINST EACH INVOICE (₹)
1	28.04.2016	T085147	1,22,13,075	28,63,221
2	17.05.2016	T085898	99,01,500	99,01,500
3	18.05.2016	T085934	1,06,05,000	1,06,05,000
4	18.05.2016	T085937	13,78,650	13,78,650
5	18.05.2016	T085938	84,840	84,840
6	20.05.2016	T086065	24,91,125	24,91,125
7	23.05.2016	T086110	1,18,80,750	1,16,89,125
Total outstanding Amount with interest				3,90,13,461

6. It was submitted that in pursuance of the same, the Corporate Debtor has issued the following cheques / RTGS / NEFT towards the outstanding debt:

S. No.	DATE	CHEQUE NO. & DRAWN ON	AMOUNT IN (₹)
1	22.06.2017	Cheque No. 77	50,000
2	28.09.2017	Cheque No. 50200011040280	1,00,000
3	04.10.2017	UC TRF	10,83,861
4	30.12.2017	Cheque No. 1362602422	50,000
5	30.06.2018	Cheque No. 818115031394	25,000
TOTAL			13,08,861

7. The Learned Counsel for the Operational Creditor submitted that in addition to the above, the Corporate Debtor had acknowledged its debt of Rs.3,90,38,461/- as on 31.03.2018 under an Audit Confirmation Letter dated 17.04.2018 and also the copy of the said confirmation of balance by the Corporate Debtor is annexed with the typed set filed along with the Application. The present Application is filed before this Tribunal on 16.12.2020.

8. The Learned Counsel for the Operational Creditor submitted that the last payment made by the Corporate Debtor to the Applicant was a sum of Rs.25,000/- on 30.06.2018. It was submitted that the aforesaid amount was adjusted against the total outstanding debt payable towards each invoice on Revolving Credit Basis.

9. The Learned Counsel for the Operational Creditor further submitted that, in order to discharge the outstanding debt, the Corporate Debtor issued a cheque No. 000031 dated 25.08.2018 drawn on HDFC Bank for a sum of Rs.3,90,13,461/-, signed by one of the Directors of the Corporate Debtor. It was submitted that the

aforesaid cheque was presented for clearance by the Operational Creditor on 27.08.2018 and the same was returned with an endorsement 'funds insufficient' vide Cheque Advice / Memo dated 29.08.2018. In this regard, it was also submitted that a criminal complaint (STC No. 838 of 2018) was filed by the Operational Creditor on 29.10.2018 before the Judicial Magistrate No. IV, Tiruchirappalli.

10. The Learned Counsel for the Operational Creditor submitted that the default in the present matter has occurred well prior to 25.03.2020 and therefore, the Operational Creditor is entitled to maintain the present Application before this Tribunal. It was submitted that the Corporate Debtor, having accepted the supplies made by the Operational Creditor, the Corporate Debtor had failed to make payments towards the aforesaid invoices inspite of several oral and written request and reminders from the Operational Creditor.

11. The Learned Counsel for the Operational Creditor submitted that they issued a Demand Notice to the Corporate Debtor as stipulated under Section 8 of IBC, 2016 on 17.02.2020, however the same was returned with an endorsement 'Left'. Thereafter, another Demand Notice dated 19.11.2020 was issued to the Corporate Debtor by e-mail and Speed Post, which was also returned with an

endorsement 'unclaimed'. Further, it was submitted that the Operational Creditor has sent Demand Notice to the Key Managerial Personnel of the Corporate Debtor vide email dated 17.02.2020 and 19.11.2020 pursuant to Rule 5(2)(b) of the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016. However, it was submitted that the Corporate Debtor has not sent any response to the said Demand Notice.

12. The Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 stating that after the issuance of Demand Notice, the Corporate Debtor has neither paid the 'operational debt' nor bought to the notice of the Corporate Debtor the dispute if any prior to the issuance of the Demand Notice. Under the said circumstances, the Learned Counsel for the Operational Creditor prayed for initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

13. In relation to the Corporate Debtor, it is seen that notice was ordered by this Tribunal and also the Operational Creditor has taken several attempts to serve the notice to the Corporate Debtor, and the same was captured in the record of proceedings dated 30.09.2021;



"The Petitioner is represented by the Ld. Counsel Ms. Prerna Khatri of M/s. A.K.Mylsamy & Associates through video conferencing mode.

It is stated by the Ld. Counsel for the Petitioner that the notice was taken to the Respondent as per the Order of this Tribunal. It is also stated that in compliance with the directions issued by this Tribunal, an Affidavit of Service was filed on 09.03.2021 vide SR. No. 1330 and Affidavit of Compliances were filed on 24.03.2021 vide SR.No.1620 and again on 23.04.2021 vide SR.No.2253 in the Registry.

Various attempts were made by the Petitioner to serve the notice to the Respondent, however, notice(s) issued to the last known three addresses of the Respondent viz., the registered office and branch offices, the same were returned with an endorsement 'unclaimed', 'left' and 'no such office', respectively. Hence, the Petitioner is permitted to take fresh notice by way of speed post to the last known three addresses of the Respondent and file an Affidavit of Service along with an acknowledgement card.

The Petitioner is also permitted to take substituted service of notice to the Respondent by way of paper publication in vernacular newspaper "Makkal Kural" and another newspaper in English "Indian Express" on or before 15.10.2021, to this effect file an Affidavit before the next date of hearing.

List this matter on **09.11.2021** for Affidavit of Service and appearance of the Respondent."

14. Thereafter, it is seen that the Operational Creditor has effected publication in the newspaper viz. Makkal Kural and Indian Express on 04.12.2021 and also filed proof of the same before this Tribunal and hence the Corporate Debtor was set *ex-parte* by order of this Tribunal on 14.12.2021.

15. In this regard it is relevant to refer to the decision of the Hon'ble NCLAT in the matter of **Shri Bijay Pratap Singh -Vs- Unimax International and another** in *Company Appeal (AT)*

(Insolvency) No. 1273 of 2019, wherein at para 37 it has held as follows;

"37. One of the essential features for consideration of an Application under Section 9 of I & B Code is service of notice. A mere perusal of the paragraph 11 of the Impugned Order passed by the Adjudicating Authority patently indicates that a perusal of the pleadings showed that the proper 'service' was effected on the registered office of the 2nd Respondent/ Corporate Debtor situated at D-410, Pocket 16, Sector VII, Rohini, New Delhi - 110085. Also, it was observed by the Adjudicating Authority that there was no change in the address of the 'Corporate Debtor' in the 'Ministry of Corporate Affairs Record' which also shows the same address. Even the Resolution passed by the 'Corporate Debtor' on 27.03.2019 had shown the same 'Registered Office' address. Therefore, the Adjudicating Authority had very rightly adverted to Section 27 of the General Clauses Act and Section 20 of the Companies Act, 2013 read with Rule 35 of the Companies (Incorporation) Rules, 2014 in and by which the 'service' is to be effected on the 'Registered Office' address and that process was carried out. Therefore, this Tribunal holds that it was 'Sufficient service' of the 'Demand Notice'. As such, the plea taken on behalf of the Appellant that there was no service effected upon the 'Corporate Debtor' is not acceded to by this Tribunal. The other plea taken that there was no service by hand or electronic mail service to the 'Corporate Debtor' relegates to the background and it pales into insignificance because of the fact that failure/omission to effect service by hand or electronic mail service is not fatal to the instant case."

16. Further, the Hon'ble NCLAT in the matter of **Ashok Agarwal -Vs- Amitex Polymers Private Limited** passed in *Company Appeal (AT) (Insolvency) No.608 of 2020* dated 5th February 2021, in para 35 has held as follows;

"35. In view of the fact that service of notice under section 8 of the 'The Insolvency and Bankruptcy Code 2016', Respondent/Company at its official e-mail ID as available in the web site portal is a valid service, it is held by this Tribunal to be

a valid and proper service upon the Respondent/Corporate Debtor, in the eye of law.

17. In the said circumstances as per the decision of the Hon'ble NCLAT, the service effected by the Operational Creditor has to be considered as to be 'Deemed service' and based on the notice delivered to the Directors of the Company as per the order of this Tribunal dated 30.09.2021, this Tribunal holds that the service of notice in relation to the Corporate Debtor is complete and since there was no representation on behalf of the Corporate Debtor, we are constrained to proceed in this matter in the absence of the Corporate Debtor.

18. In relation to the debt and default, it is seen that the Corporate Debtor already had acknowledged that a sum of Rs.3,90,38,461/- is outstanding due and payable by the Corporate Debtor as on 31.03.2018. Further, it is seen from the records that the Corporate Debtor has not raised any dispute in relation to the amount which is due and payable to the Operational Creditor. All these would go on to show that there is an 'operational debt' and the Corporate Debtor has committed 'default' in repayment of such 'operational debt'.

19. Further, examining this Application from the angle of limitation, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor that the invoices have been

raised during the period commencing from 28.04.2016 to 23.05.2016 and the last payment made by the Corporate Debtor to the Operational Creditor on 30.06.2018. The present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 16.12.2020 and as such it falls well within the period of limitation. Further, the default arising in the present Application is has happened much before the advent of Covid-19 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, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

20. 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 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;

21. 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 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 arrangement 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.

22. 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:

- (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.

23. 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 Jan 2022 – June 2022 appoints **Mr. Kabiladoss R** having registration number IBBI/IPA-001/IP-P02412/2021-2022/13662 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.

24. The IRP is directed to take charge of the Corporate Debtor’s management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. 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 IBC, 2016 and file his report within 30 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.

26. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

27. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-**(Rupees Two 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 to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



29. 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 be also furnished with 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.

30. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

31. Post this CP/IB/1/CHE/2021 for hearing on **25.04.2022**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond