



**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 299/Chd/Hry/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016**

**In the matter of:**

**Giesecke & Devrient MS India Private Limited**

Plot No.218, Block A,  
Okhla Industrial Area,  
Phase I, New Delhi-110020

And Corporate Office at

1107, Lodha Supremus, Senapati Bapat Road,  
Lower Parel (West), Mumbai-400013

...Petitioner-Operational Creditor

Vs.

**Lumata Digital India Private Limited**

having its registered office at  
Level 12, Building No.8  
Tower C DLF Cyber City,  
Phase II Gurgaon-122002  
CIN No. U74900HR2009FTC039730

...Respondent-Corporate Debtor

**Judgement delivered on: 14.02.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-  
Operational Creditor : 1). Mr.Pancham Surana, Advocate  
: 2). Mr. Sarvesh Jain, Advocate

For the Respondent-  
Corporate Debtor : Mr. Karan Malhotra, Advocate



**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Giesecke & Devrient MS India Private Limited (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Lumata Digital India Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, Lumata Digital India Private Limited, is a Company incorporated on 23.11.2009 under the provisions of Companies Act, 1956 with CIN No. U74900HR2009FTC039730 with its registered office at Level 12, Building No.8, Tower C DLF Cyber City, Phase II Gurgaon-122002 India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A-1.

3. The facts of the case, briefly, as stated in the petition are that an agreement for DSTK Service dated 30.03.2012 was executed between the corporate debtor and Smarttrust Infosolution Private Limited (hereinafter referred as '**SIPL**') for launching DSTK Services through various delivery channels for Uninor subscribers. SIPL later consolidated with operational creditor vide Deed of Novation dated 14.06.2017. The parties agreed to form a consortium to launch DSTK Services through various delivery channels. The corporate debtor was required to reimburse the Annual Maintenance charges incurred by Operational Creditor towards maintenance/operation and maintenance services provided by Operational Creditor and raised



invoices. The corporate debtor was to share revenue with Operational Creditor and Operational Creditor raised several invoices towards Revenue Share. The Operational Creditor made several requests for payment of Rs.1,05,79,443 (Rupees One Crore Five Lakhs Seventy Nine Thousand Four Hundred and Fourty three Only). Thereafter, the Corporate Debtor expressed admission of liability. However, the Corporate Debtor failed to make payments to Operational Creditor towards the AMC and Revenue Share.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,05,79,443/- (Rupees One Crore Five Lakhs Seventy-Nine Thousand Four Hundred and Fourty three Only). The default occurred on 09.12.2016 i.e when the letter dated 09.12.2016 was acknowledged by the corporate debtor and expressly admitted its liability to make payment of the amount. Copy of working competition of operational debt (Annexure A3), Agreement dated 23.03.2012 (Annexure A4), DSTK Agreement (Annexure A5), Invoice dated 03.08.2017 (Annexure A6), Acknowledgement towards payment of AMC for the financial year 2012-13, 2013-14 and 2014-15 (Annexure A7), Invoices (Annexure A8), Bank Account Statement (Annexure A12) are attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 15.02.2019 and the same has been delivered to the corporate debtor vide registered post, the postal receipts and tracking report are attached as Annexure A-10 of the petition. The corporate debtor gave a reply dated 24.02.2019 to demand notice wherein it is stated that no operational debt was due till date. In the various rounds of discussion, the respondent



was able to convince the petitioner regarding the interpretation of the relevant clause of the Principal Agreement and it was agreed that no amount was due, thereby petitioner would not raise any invoice with respect to the AMC Services for Financial Year 2016-17 and in future, beyond the amount provided in the principal agreement. The petitioner with malafide intent raised an invoice dated 03.08.2017 for the Financial Year 01.04.2016 to 31.03.2017. The amount claimed in the invoice was four times the amount raised in Principal Agreement.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide diary No.4319 dated 26.08.2019. The corporate debtor has filed a reply vide diary No.5546 dated 14.10.2019, wherein it is stated the petitioner was guilty of gross suppression of material information and furnishing false information. There was a pre-existing dispute between the parties qua the AMC charges in respect to the agreements. Vide email dated 01.05.2018 the corporate debtor disputed the invoice dated 03.08.2017 for the amount of Rs.29,94,405.76/- on the grounds that the same was exorbitantly higher than the amount capped in the principal agreement. The invoice was raised after a delay of 6 months and there was a lack of supporting documents against the said invoice. The petitioner had not refuted the stand of the respondent that it was liable to pay AMC charges to the limit of 6 lakhs, however, the terms of the principal agreement were not binding and AMC charges were governed by DSTK Addendum-1 and DSTK Addendum-2, which is false. The amount claimed by the petitioner included charges paid for skill support which was not part of AMC cost. There exists



nothing to show that the petitioner provided service to the respondent. It was not an operational debt within Section 5(21) of IBC and the petitioner was not an operational creditor in terms of Section 5(20) of IBC. Since, no services had been provided, therefore, no debt under Section 3(11) of IBC was due. The petition was filed with a false affidavit.

7. The rejoinder was filed vide Diary No.6500 dated 21.11.2019 wherein it is stated that the Corporate Debtor agreed for AMC Charges to Operational Creditor. The principal agreement was not applicable as it was executed between the respondent and Uninor for additional hardware purchase by Uninor from third-party equipment providers in addition of the hardware supply by SIPL. The AMC Charge service for additional hardware shall be provided free upto the limit of 6 lakhs p.a. which means that Uninor won't pay to respondent upto 6 lakhs for AMC Charges on additional hardware but will pay the amount exceeding 6 lakhs. There was no cap of 6 lakhs in respect of AMC, an agreement signed between Uninor and Corporate Debtor was not applicable in case of an agreement between Corporate Debtor and Operational Creditor. The Corporate Debtor had not produced any document to show that Operational Creditor admitted its mistake and waived the amount to the Corporate Debtor. Vide Email dated 14.05.2018 attached by the respondent does not highlight the wilful withdrawal of legal demand of AMC Charges for the financial year 2015-16 but clearly showed the goodwill gesture for waiving Rs.22 lakhs. It was further submitted that despite repeated reminders and requests by Operational Creditor, the Corporate Debtor had failed to make payment to Operational Creditor towards AMC and Revenue Share. The short written



submissions have been filed by the petitioner vide Diary No.00579/3 dated 29.07.2022 and by the respondent corporate debtor vide diary No.00579/5 dated 02.01.2023.

8. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

9. The first issue for consideration is whether the demand notice dated 15.02.2019 was properly served through registered post. The postal receipts and tracking report are attached as Annexure A-10 of the petition. Moreover, the corporate debtor gave a reply dated 24.02.2019 to demand notice. Therefore, the demand notice was duly served.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by the petitioner by way of affidavit that the operational creditor had received baseless, bogus and sham notice of dispute under Section 8(2) relating to the Operational Debt. The corporate debtor had rejected the demand of the operational creditor raising the false dispute of incorrect invoices and refused to make the payment of the Operational Debt against the pending invoices. It may be noted that an agreement was entered on 23.02.2012 between Unitech Wires Pvt. Ltd. ('UNINOR') and the corporate debtor. An agreement for DSTK services was executed on 30.03.2012 by and between the corporate debtor and Smartrust Infosolutions Pvt. Ltd.(hereinafter referred as 'SIPL') for launching DSTK Services through various delivery channels for Uninor subscribers (DSTK Agreement). On 01.02.2013, vide letter, SIPL consolidated with the operational creditor. The Addendums were made to the DSTK Agreement on 15.12.2014 (referred to as DSTK Addendum-1) and on



08.11.2017, a second Addendum was made to DSTK Agreement (DSTK Addendum-2) which was assigned to operational creditor vide Deed of Novation dated 14.06.2017. Thus, all rights and obligations under the Agreement stood transferred to the operational creditor. A letter was addressed by an operational creditor to the corporate debtor informing the principal amount of Rs.29,94,405.76/- and tax payable towards AMC Charges. It is submitted by the respondent that there was a pre-existing dispute between the parties qua the AMC charges in respect to the agreement. Vide email dated 01.05.2018 the corporate debtor disputed the invoice dated 03.08.2017 for the amount of Rs.29,94,405.76/- on the grounds that the same was exorbitantly higher than the amount capped in the principal agreement. The invoice was raised after a delay of 6 months and there was a lack of supporting documents against the said invoice. The petitioner had not refuted the stand of the respondent that it was not liable to pay AMC charges to the limit of 6 lakhs.

11. However, the contention of the respondent/ corporate debtor is untenable because the terms of the principal agreement were not binding and AMC charges were governed by DSTK Addendum-1 and DSTK Addendum-2. The allegation raised by the respondent/ corporate debtor that the amount claimed by the petitioner included charges paid for skill support which was not part of AMC cost is without basis and evidence. It is seen from the records that in the letter dated 09.12.2016 addressed to the corporate debtor, wherein the amount of Rs. 25,37,632 was raised claiming the AMC Charges and the invoice dated 03.08.2017 was raised claiming the principal amount of Rs.29,94,405.76/- (for the financial year 2016-17) on the



corporate debtor is beyond the exempted limit of Rs. 6 Lakhs for which respondent/ corporate debtor is liable to pay. Hence, it can be safely concluded that the invoice was raised in respect of the AMC Charges and not the skill support. Therefore, there is no pre-existing dispute regarding the claim in hand.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 15.02.2019 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 09.12.2016 i.e when the letter dated 09.12.2016 was acknowledged by the corporate debtor and expressly admitted its liability to make payment of AMC Charges. This application was filed vide Diary No. 2312 on 07.05.2019 and was re-filed vide Diary No.2742 dated 30.05.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 1,05,79,443/- (Rupees One Crore Five Lakhs Seventy Nine Thousand Four Hundred and Fourty three Only) are attached with the main petition. Copy of working competition of operational debt (Annexure A3), Agreement dated 23.03.2012 (Annexure A4), DSTK Agreement (Annexure A5), Invoice dated 03.08.2017 (Annexure A6), Acknowledgement towards payment of AMC for the financial year 2012-13, 2013-14 and 2014-15 (Annexure A7), Invoices (Annexure A8), Bank Account Statement (Annexure A12) are attached with the main



petition. Accordingly, the petitioner proved the debt and the default, which is more than the threshold limit of one crore.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts, the liability of the corporate debtor is established.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Lumata Digital India Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Dinesh Kumar and there is nothing adverse against him. In view of the above, we appoint Mr. Dinesh Kumar, Registration No. IBBI/IP-P00860/2017-18/11442, E-mail: [dkgc2004@gmail.com](mailto:dkgc2004@gmail.com), Mobile No.+91-9896252550, the Interim Resolution Professional with the following directions:-



i.) The term of appointment of Mr. Dinesh Kumar shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6



of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required



under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which



would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

20. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by



the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

SD/-

(Subrata Kumar Dash)  
Member (Technical)

SD/-

(Harnam Singh Thakur)  
Member (Judicial)

February 14 , 2023  
DS/TB