

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No. II)
KOLKATA**

C.P (IB) No.724/KB/2020

*An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule
6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,
2016.*

In the matter of:

Iserve Solutions & Services Private Limited (CIN U72200WB2006PTC112277)

... Operational Creditor

Versus

Capital Electronics and Appliances Limited (CIN U31901WB2006PLC110699)

...Corporate Debtor

Date of hearing: 20 December, 2022

Order Pronounced on: 16 January, 2023

Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference/Physical hearing

For the Operational Creditor : Mr. Somnath Saha, Adv.

For the Corporate Debtor : Mr. Varun Kothari, Adv.

Mr. Nikunj Berlia, Adv.

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Iserve Solutions & Services Private Limited v. Capital Electronics and Appliances Limited

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court is convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) by Mr. Rajesh Agarwal, Director, Iserve Solutions & Services Private Limited (“**Operational Creditor**”), duly authorised *vide* Board Resolution dated 18 December, 2019¹ seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) under the Insolvency and Bankruptcy Code, 2016 (“**Code**”) against Capital Electronics and Appliances Limited (“**Corporate Debtor**”).
3. The present petition was filed on 13 March, 2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make a payment of a sum of Rs.10,75,468/- (Rupees Ten Lakh Seventy Five Thousand Four Hundred Sixty Eight only) including interest charged @24% p.a.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs. 3,35,00,000/- (Rupees Three Crore Thirty Five Lakh only) with subscribed share capital of Rs.3,33,48,410/- (Rupees Three Crore Thirty Three Lakh Forty Eight Thousand Four Hundred Ten only). Part – IV of the Petition deals with the Particulars of the Operational Debt.
5. **Submission of learned Counsel appearing for the Operational Creditor**
 - i. That, on the basis of a verbal contract, the Operational Creditor supplied Inspiron Laptop to the Corporate Debtor and raised two invoices dated 02 November, 2018 & 09 November, 2018, details of which are as follows;

SI. No.	Invoice Details	Amount
1.	Invoice No. ISSH/06900/18-19 dated 02 November, 2018	Rs.7,83,603/-
2.	Invoice No. ISSH/06024/18-19 dated 09 November, 2018	Rs.89,935/-
Total		Rs.8,73,538/-

¹ Page 62 of the Petition – Annexure - N.

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- ii. The said invoices were duly accepted by the Corporate Debtor and the Corporate Debtor agreed to make payments against the invoices raised. However, only a sum of Rs.2,32,418/- (Rupees Two Lakh Thirty Two Thousand Four Hundred Eighteen only) was received on 22 May, 2019, 23 May, 2019, 27 May, 2019, 03 June, 2019 and 04 June, 2019 from the Corporate Debtor for which due credit was given.
 - iii. That, the Corporate Debtor failed and neglected to make payments of the outstanding dues to the Operational Creditor amounting to Rs.10,75,468/- (Rupees Ten Lakh Seventy Five Thousand Four Hundred and Sixty Eight only) including interest charged @ 24% p.a.
 - iv. By reason of such default as stated, the Operational Creditor issued a demand notice in FORM 3 dated 19 December, 2019 under the Insolvency and Bankruptcy Code, 2016 calling upon the Corporate Debtor to clear the outstanding dues of Rs.10,75,468/- (Rupees Ten Lakh Seventy Five Thousand Four Hundred and Sixty Eight only) within 10 (ten) days failing which the Operational Creditor would initiate legal proceedings against the Corporate Debtor.² In spite of receipt of the same the Corporate Debtor, instead of making payment against the outstanding dues, made purported reply to the said notice on 05 January, 2020 and 13 January, 2020.³
 - v. The delivery of goods (Inspiron Laptop) in quantity and quality is not disputed, whereas, the Corporate Debtor has admitted a deficit payment of Rs.6,18,556/-
 - vi. The Application is well within time and debt is due. As such it deserves to be admitted.
- 6. *Per contra, it is alleged on behalf of the Corporate Debtor that,***
- i. The Application suffers from gross suppression of material facts.
 - ii. It is ex-facie defective and not in compliance with the rules and regulations prescribed in the Code and regulations framed there under and hence not maintainable in law under the provision of the Code.

² Page 42-45 of the Petition.

³ Page 60-61 of the Petition.

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- iii. The alleged claim is also barred by limitation.
7. ***The arguments advanced by the Corporate Debtor in support are the followings;***
- i. That the Corporate Debtor is a dealer of various types of electronics goods and the Operational Creditor has been supplying electronics goods to the Corporate Debtor since last few years.
- ii. That, the Operational Creditor has only relied on two invoices in its application dated November 2, 2018 and November 11, 2018. It has suppressed all other transactions between the Operational Creditor and the Corporate Debtor. That, since 2017 and till date, the Operational Creditor has supplied goods worth Rs. 3,36,34,096.00/- to the Corporate Debtor and the Corporate Debtor has paid a total sum of Rs 3,30,15,540.00/- to the Operational Creditor against such supplies.
- iii. In addition to the payment of Rs.3,30,15,540.00/- the Corporate Debtor has also made a payment of a sum of Rs.43,27,344/- towards dues for a period prior to Financial year 2017-2018 [*Annexure 'A'*]. The Operational Creditor has deliberately suppressed the entire transaction history between the parties.
- iv. The Operational Creditor has always maintained a Running Account with the Corporate Debtor. The Corporate Debtor has made payments to Operational Creditor on Running Account basis from time to time, there is no sum due.
- v. That, the alleged sum claimed by the Operational Creditor on account of the two alleged invoices dated November 2, 2018 and November 11, 2018 is not due or payable. The entire payment of the Operational Creditor including the aforesaid two invoices has been duly paid by the Corporate Debtor.
- vi. That, there has been a difference in price agreed by and between the parties for selling such goods in comparison with the invoices raised by the Operational Creditor for such goods.
- vii. That, the Corporate Debtor has by way of contemporaneous correspondence called upon the Operational Creditor to reconcile the accounts and issue the necessary credit note towards the difference in price of the goods billed by the Operational Creditor. In support a copy of the e-mail dated January 16,

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- 2019 sent by the corporate debtor to the applicant calling upon the Operational Creditor to issue appropriate credit note for adjusting the price difference in the bills have been used as *Annexure 'B'*.
- viii. That, the Corporate Debtor has made several written requests to the Operational Creditor calling upon them to reconcile the accounts for last three years taking into account the difference in price. However, the Operational Creditor has not replied to such e-mails. The Operational Creditor till date has supplied total number of 885 laptops since April 2017 amounting to Rs.3,36,34,096 to the Corporate Debtor. There is a price variation of around 2% in price of each laptop. The total difference in price is amounting to Rs.6,19,000.00/- In support e-mails dated January 5, 2020, January 15, 2020 and January 16, 2020 have been used.
- ix. That, there is no contract for payment of interest on any alleged delayed payment as wrongfully claimed by the Operational Creditor in the application. The Operational Creditor has never claimed any interest on account of alleged delayed payment till date.
- x. The Operational Creditor forwarded copies of alleged ledger prepared by it to the Corporate Debtor, which would demonstrate that on several occasions the Operational Creditor unilaterally charged interest in its books of account and thereafter reversed the same without claiming it from the Corporate Debtor.
- xi. The alleged ledger also does not take into consideration payment made by Corporate Debtor to the tune of Rs.45,26,540 from 01 April, 17 to 23 June, 20 consisting of several transactions of payments.
- 8. *As a Rejoinder to the Reply filed by the Corporate Debtor, the Operational Creditor would submit that,***
- i. It had supplied Inspiron Laptop to the Corporate Debtor. That Corporate Debtor committed default in making payment of Rs.10,75,468/- (Rs. 6,41,120 on Principal Account + Rs. 4,34,348 Interest) including interest at the rate of 15% per annum on the delayed payment from the date of default,

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- i.e. 38 days from the date of invoice till realization.
- ii. At Para No. (h) at page 4 of the reply says that '*the applicant has supplied goods worth Rs.3,36,34,096 to the Corporate debtor and the Corporate Debtor has paid a total sum of Rs. 3,30,15,540 to the applicant against such supply.*' Therefore even as per the Corporate Debtor the difference in figure and/or deficit payment stood Rs. 3,36,34,096 - 3,30,15,540 = 6,18,556. It has been further admitted that the deficit payment of Rs. 6,18,556/- does not include interest as a delayed payment.
- iii. Further the contention of the Corporate Debtor that they raised an issue with respect to price variation around 2% in price of each laptop, it is an after thought, and a manufactured story for the Corporate Debtor received invoices & supply of materials since 2017, while the amount said to be in excess, of Rs. 6 Lakh fell due in the year 2019, the rate being pre-fixed and thereafter materials been supplied on the basis of invoices. Moreover the Corporate Debtor is still under confusion as to what exact 'Price Variation' they can claim hence they submit 'around 2%' i.e. percentage of price variation is not specified.
- iv. The Corporate Debtor has clearly admitted a deficit payment of an amount in excess of Rs. 6 Lacks but it is disputing the rate of interest charged/calculated by applicant by way of the petition. That, the Corporate Debtor, by a letter dated 14 March 2020. (Annexure F) at Page No. 64 of reply admits the due amount but objects only interest part i.e., rate of interest charged.
- v. That, at the bottom, all the invoices bear an endorsement "*Interest @24% will be charged if the payment made after due date*" and at the Top right column "*38 Days*" is the time limit mentioned for extend of credit. But in reality interest @ 15% p.a. charged and same mentioned in Debit Note at page No. 35.

9. Analysis and Findings

- i. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record. The

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following are clearly discerned;

- ii. That the business relationship between the Operational Creditor and the Corporate Debtor exist since 2017.
 - iii. This application has been filed in connection with two invoices bearing Invoice No. ISSH/06024/18-19 dated 09 November, 2018 and Invoice No. ISSH/06900/18-19 dated 02 November, 2018 issued by Operational Creditor and accepted with signature and seal by Corporate Debtor.
 - iv. Further, as regards the defence raised by the Corporate Debtor that they have made a payment of a sum of Rs.43,27,344/- towards dues for a period prior to Financial year 2017-2018 [*Annexure 'A'*], and there are no outstanding dues, it is imperative to mention that Annexure A [*at pages 10 -47 of the Reply*] is not a Bank Statement; hence, it is difficult to ascertain whether payments were in fact made by the Corporate Debtor. The entries are not authenticated (by Banker) and the Corporate Debtor has failed to disclose the origin and source of such information.
 - v. Notwithstanding, the issuance of two emails dated 05 January, 2020 and 13 January, 2020 were sent by the Corporate Debtor to the Operational Creditor, such emails do not form a plausible defence of pre-existing disputes, but only a moonshine defence unsupported by any substantive evidences.
 - vi. Further, it is evident that the petition is within limitation and we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.
- 10.** Accordingly, in the aforesaid backdrop, we would order as follows:-
- a. The application bearing ***CP (IB) No. 724/KB/2020*** filed by Mr. Rajesh Agarwal, Director, Iserve Solutions & Services Private Limited, under section 9 of the Code read with rule 6(1) of the

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Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Capital Electronics and Appliances Limited, is *admitted*.

- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Rasik Singhania**, registration number **IBBI/IPA-001/IP-P00390/2017-18/10708**, email: **rasik.singhania@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the

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date of receipt of this Order, in default of which coercive steps will follow.

- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - h. The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
 - i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
 - j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
2. **CP (IB) No. 724/KB/2020** to come up on **22.02.2023** for filing the periodical report.
 3. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on 16th day of January, 2023

SA [LRA]