

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

CP (IB) No.137 /MB/C-I/2023

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Gospell Digital Technologies Co. Limited

Gospell Industrial Park, Guanshandong Street,
Chenzhou City, Suxian District, Hunan, China-
423000.

... Operational Creditor/Petitioner

Versus

Altius Digital Private Limited.

[CIN: U51101MH2015PTC264918]

102, 1st Floor, Building No. A-5, Babosa Industrial
Park, Saravali Village, Nashik-Mumbai Highway,
Bhiwandi, Thane, Maharashtra-421302.

...Corporate Debtor/Respondent

Order Delivered on 19.12.2023

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

- For the Operational Creditor : Mr. Shyam Kapadia a/w Mr. Sarath Sampat & Mr. Harsh Behany, Advocates.
- For the Corporate Debtor : Mr. Ashish Pyasi a/w Mr. Abhay Wadhwa & Mr. Avinash Khanolkar i/b Ms. Surekha Yadav, Advocates.

ORDER***Per: Justice V.G. Bisht, Member(Judicial)***

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Gospel Digital Technology Co. Ltd.** ("the Operational Creditor hereafter referred to as Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Altius Digital Private Limited** ("the Corporate Debtor hereafter referred to as Respondent").
2. The Respondent was incorporated on 27.05.2015 under the Companies Act, 2013. Its registered office is at 102, 1st Floor, Building No. A-5, Babosa Industrial Park, Saravali Village, Nashik-Mumbai Highway, Bhiwandi, Thane, Maharashtra-421302. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Total Outstanding amount alleged to be in default is (USD) \$1,65,33,129.80 i.e., Rs. 135,02,60,710.77/- (Rupees One Hundred and Thirty-Five Crores Two Lakhs Sixty Thousand Seven Hundred and Ten and Seventy-Seven Paise Only) as per the exchange rate of Rs. 81.67/- on 18th November 2022 comprising of principal amount of (USD) \$1,29,07,968.58 i.e., Rs. 105,41,93,793.93/- and

interest (USD) \$36,25,161.22/- i.e., Rs. 29,60,66,916.84/- at the rate of 8% p.a. till 18.11.2022.

4. However, the Petitioner has in terms of Section 10A of the Code, considered the unpaid invoices starting from 18th May 2018 and the last invoice considered to be in default was raised on 10th January 2020. Accordingly, the revised Total Amount – USD \$1,56,24,907.96 i.e., Rs.127,60,86,233.09/- (Rupees One Hundred and Twenty-Seven Crores Sixty Lakhs Eighty-Six Thousand Two Hundred and Thirty-Three and Nine Paise only) as per the exchange rate of Rs. 81.67/- on 18th November 2022. The principal amount being (USD) \$1,21,47,968.58/- i.e., Rs. 99,21,24,593.93/- + interest (USD) \$34,76,939.38/- i.e., Rs. 28,39,61,639.16/-) as per the exchange rate of Rs. 81.67/- on 18th November 2022, for the unpaid invoices starting from 18th May 2018, and the last invoice considered to be in default was raised on 10th January 2020. Chart showing the amounts due and payable by the Corporate Debtor to the Operational Creditor is annexed as Exhibit “B”.
5. The date of default stated to be in Part-IV of the Petition is 10th March 2020.

Submissions made by the Petitioner:

6. The Operational Creditor is engaged in the business of Research & Development (R&D), manufacture and sales of Digital Television (‘DTV’) software and hardware products. The Corporate Debtor is a Value-Added Distributor, Reseller, and Manufacturer of high grade set top boxes.

7. The Corporate Debtor had approached the Operational Creditor to help procure, manufacture and deploy Cable & Broadcast Solutions for its clients, agnostic of all technical specifications and requirements.
8. Thus, since the year 2015 onwards, the Operational Creditor, as per the requirements of the Corporate Debtor has manufactured and supplied numerous Set-Top Boxes (“STBs”)/ its components, head end equipment and accessories. That in furtherance of the requests of the Corporate Debtor, the Corporate Debtor would place Purchase Order(s) upon the Operational Creditor for supply of the same and thereafter the Operational Creditor would manufacture and ship the goods i.e., STBs/ its components, head end equipment and accessories from China to the Corporate Debtor.
9. In furtherance of the Purchase Orders, various Invoices were raised by Operational Creditor on the Corporate Debtor which remained unpaid. It is submitted that the Corporate Debtor has accepted the delivery of the goods and even consumed the same without raising any dispute as to the quality, quantity and/or price. The Petitioner has placed on record copies of purchase orders, proforma invoices and unpaid invoices.
10. It is submitted that, as per the terms of the said invoices, the Corporate Debtor was to make the payment within the time specified therein, failing which the Operational Creditor was entitled to levy an interest @ 8% p.a., upon the Corporate Debtor for the delayed period.
11. The Operational Creditor had followed up with the Corporate Debtor on numerous occasions both through emails and telephone, requesting the Corporate Debtor to release the payments against the pending invoices, however, despite various admissions and commitments made

by the Corporate Debtor, it has miserably failed to make payment of the same.

12. It is submitted that on 3rd March 2021, the Corporate Debtor by its email sent to the Operational Creditor confirmed that it was liable to make the payment of (USD) \$8,881,595/- as on 31st December 2020. The copy of the email dated 3rd March 2021, alongwith duly signed and stamped Confirmation for receivable and payable balances is annexed as Exhibit "G".
13. In view of the above, and having failed to make payments, the Operational Creditor was constrained to send legal notice calling upon the Corporate Debtor to forthwith make payment of the pending amount(s) due against invoice(s) raised by the Operational Creditor.
14. Since, the Corporate Debtor was not discharging the dues of the Operational Creditor despite several reminders and requests, the Operational Creditor was constrained to issue the statutory demand notice dated 18th November 2022, under Section 8 of the Insolvency and Bankruptcy Code, 2016. The said statutory demand notice was served at the registered email address of the Corporate Debtor on 19th November 2022 and by speed post on the registered office of the Corporate Debtor in Mumbai on 22nd November 2022.
15. The Corporate Debtor vide their letter dated 1st December 2022 replied to the Demand Notice. It is argued that as per the books of the Operational Creditor, a sum of USD 14,707,484.74 was payable to the Corporate Debtor as on 31 December 2020. However, in its balance confirmation, the Corporate Debtor has confirmed that as per its book, a sum of USD 8,881,595 is due and payable by the Corporate Debtor to

the Operational Creditor. Further, the director of the Corporate Debtor has duly affixed his signature as well as the stamp on the said balance confirmation.

16. Accordingly, it is submitted that the sum of USD 8,881,595 is more than the threshold of Rs. 1 Crore prescribed under Section 4 of the Code. A part payment a sum of USD 714,699 was made by the Corporate Debtor. Thus, the Corporate Debtor has not paid the entire amount due and payable as per its own book to the Operational Creditor and the amount outstanding as per its own books is also more than the threshold of Rs. 1 Crore.
17. Thus, even as per its own admission, the Corporate Debtor has defaulted in making the entire payment to the Operational Creditor which was due and payable as on 31 December 2020. In furtherance, of the said submission the Ld. Counsel appearing for the Petitioner has taken us through email dated 3rd June 2021, wherein the Corporate Debtor had confirmed and stated that the outstanding as per its own books of accounts is USD 7 to 8 million.
18. Therefore, in summation the Petitioner submits that the Corporate Debtor has acknowledged the debt which was due and payable to the Operational Creditor.

Submissions made by the Corporate Debtor/ Respondent by way of Affidavit in reply.

19. The Corporate Debtor has at the outset denied the existence of debt and has raised pre-existing dispute. The Ld. Counsel for the Corporate Debtor has taken us through the agreement dated 21.07.2015 wherein it is stated that the Corporate Debtor will be entitled to Rs.50 per STB for handling the goods movement and warehouse charges in India after

import for 90 days. The Corporate Debtor was further entitled to receive 4% of sales volume.

20. The Corporate Debtor contends that the it was being used as an instrument to dump inferior quality of goods in the Indian Market. The Operational Creditor has supplied defective goods to inflate the sales. Since, the Corporate Debtor was representing the Operational Creditor it was forced to take back all the defective goods and materials from the customers and suffer on account of non-payment by customers, thereby resulting in huge loss.
21. Further, the Corporate Debtor was importing goods large volume of goods to support the Operational Creditor it was charged with anti-dumping custom duty in 2017 at the rate of 22% resulting in losses to the inventory lying in the custom bonded warehouse.
22. It is submitted that the Operational Creditor did window dressing of books of accounts in china by not reflecting the sales commission and losses. Further, it is argued that there is dispute with respect to reconciliation of books of accounts, the Corporate Debtor has raised debit notes arising out of expenses and losses in India, which were not acknowledged and reflected in the books of the Operational Creditor. The Applicant agreed to issue Credit Notes in favor of the Corporate Debtor as the Applicant was proceeding for listing in China, and had the inflated book to show for the listing.
23. It is further submitted that the Corporate Debtor was entitled to certain discounts on the prices of the products which shall be granted by the Applicant. The Corporate Debtor acting on the representation made by the Applicant and in accordance with the terms of the Agreement sought

discounts from the Applicant which the Applicant has failed to consider leading to the losses to Corporate Debtor and unwarranted financial burden.

24. Further, the Applicant have been continuously dealing with the customers of the Corporate Debtor directly which resulted into not only loss of business but also affected the recovery as the necessary support is now being supplied by the Applicant fraudulently and bypassing the Corporate Debtor which is completely against the agreed terms of the Distributor Agreement.
25. The Corporate Debtor submits that since there are issues of reconciliation of accounts and material breach of the agreement, this qualifies as pre-existing dispute and accordingly, the Petition is liable to be rejected.

Findings

26. We have heard the submissions of both sides and perused the records.
27. The Corporate Debtor has placed on record one set of agreement dated 21.07.2015 evidencing the relationship between them, which suggests that goods were purchased on the condition that consideration shall be payable only after realization of the proceeds of sale to the customers by the Corporate Debtor. On the other hand, it is the case of the Applicant that the consideration against purchase of material by the Corporate Debtor was payable to the Applicant in accordance with the payment terms stated on each invoice, irrespective of realisation from the Corporate Debtor's customers. The Applicant has disputed the existence of this agreement.

28. Nonetheless, the Corporate Debtor has consistently acknowledged that 7-8 million is outstanding and this payment is held up because of poor realization from debtors. We find that email dated 3.3.2021 from the Corporate Debtor clearly demonstrates the outstanding debt of Rs. USD 8,881,595/-. Though, the Corporate Debtor has raised the issue of discounts, write-offs, goods returned and free goods and the Operational Creditor has consistently assured to look into these issues on case to case basis, we are of considered view that a debt of more than Rupees One Crore, which can be said to be undisputed, is certainly in default. Further, even if it is accepted that the Applicant was to be paid upon realization from the customers, it is not the case of the Corporate Debtor that the amount outstanding from the customer along with the value of unsold stock is higher or equal to the amounts to be collected from the customers.
29. It is undisputed fact that the evidence on record pertaining to import of goods by the Corporate Debtor i.e. invoice, shipping bill and confirmation of account balance clearly suggests that the payment was to be made within fixed period as stated on each invoice. These documents nowhere support the agreement dated 21.07.2015 claim to be correct understanding by the Corporate Debtor. We also find that the Corporate Debtor has consistently expressed difficulty in clearing the outstanding dues on account of Covid-19 Pandemic.
30. The Applicant has placed reliance on Hon'ble NCLAT in the case of *Naresh Choudhary Vs. Sterling Enamelled Wires Pvt. Ltd. CA(AT)(Insolvency) 39 of 2023* and invited our attention at para 13 to contend that the Hon'ble NCLAT had distinguished the decision in case of *Sanjay Bhausahab Bhangre Vs. Khushbu Dye Chem Private Limited in*

Company Appeal (AT)(Ins.) 621 of 2022 and XYKno Capital Services Pvt. Ltd. Vs. Rattan India Power Limited in Company Appeal (AT)(Ins.) No. 913 of 2022, and held that “*the facts are distinguishable as in those cases the Corporate Debtor had not acknowledged the outstanding amount unlike the present case where the outstanding debt has been clearly admitted. Hence, these judgments do not come to the aid of the Appellant*”.

31. The application made by the Petitioner is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
32. The Petition bearing CP (IB) 137/MB/C-I/2023 filed by **Gospell Digital Technologies Co Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against Altius Digital Private Limited**, the Corporate Debtor, is admitted.
33. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;

- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
34. Notwithstanding the above, during the period of moratorium: -
- i. 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;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
35. 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.
36. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
37. Mr. Dushyant Dave, having registration number IBBI/IPA-003/IP N00061/2017-18/10502, Email Id:dushyant.dave@decoderesolvency.com, registered mobile no-

9820028560 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

38. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
39. 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).
40. The Registry is 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.
41. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

42. Ordered accordingly.

Sd/-

PRABHAT KUMAR
Member (Technical)

19.12.2023
Priyal

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)