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

IBA/696/2020

(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 ***Multicity Digital Consortium Private Limited***

My Box Technologies Private Limited.
A-27, Mohan Co-Operative Industrial Estate,
Madhura Road, New Delhi – 110 004.

... Operational Creditor

-Vs-

Multicity Digital Consortium Private Limited,
S1, Manchester Square, Second Floor, No.12/1,
Puliakulam Road, Opp Kidney Centre,
Coimbatore, Tamil Nadu – 641 037.

... Corporate Debtor

Order pronounced on 27th June 2022

CORAM

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

For Operational Creditor : Mr.Ashish Garg, Advocate
For Corporate Debtor : Ms.S.Manjula Devi, Advocate

ORDER

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

Under Adjudication is IBA/696/2020 and that has been filed by **My Box Technologies 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 **Multicity Digital Consortium Private**

Limited (hereinafter referred to as **'Corporate Debtor')**. The prayer made is to admit the Application, 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 a Private Limited Company. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification No.U74120TZ2015PTC021733 and the registered office of the Corporate Debtor as per the Application is stated to be at S1, Manchester Square, Second Floor, No.12/1, Puliakulam Road, Opp Kidney Centre, Coimbatore, Tamil Nadu – 641 037.

3. 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.

4. Part IV of the application signifies the amount of debt to the tune of Rs.1,67,33,866/- (Rupees One Crore Sixty-Seven Thousand Eight Hundred and Sixty-Six Only) as the outstanding dues that are payable by the Corporate Debtor and the last date of

default is mentioned as 31.02.2019. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as follows:

i. Purchase Order No. 190216/0017 dated 16.02.2019.
ii. Certificate from Bank confirming the unpaid operational debt of the Corporate Debtor from 20.07.2020 to 07.10.2020.

5. It was submitted by the learned counsel for the Operational Creditor that the Corporate Debtor approached the Operational Creditor to buy different kinds of Set Top Boxes along with the software for the upgradation of Set Top Boxes (hereinafter collectively referred to as STB).

6. Pursuant to that a Supply Agreement (the Agreement) dated 28.05.2018 was entered into between the Operational Creditor and the Corporate Debtor. In addition to that addendum to the agreement was executed between the Corporate Debtor and the Operational Creditor.

7. Thereafter, the Corporate Debtor has placed a Purchase order on the Operational Creditor for the supply of STB. Accordingly, the Operational Creditor supplied the STB and issued the invoices to the Corporate Debtor.

8. It was further submitted that as per clause 6.1 of the Agreement the Corporate Debtor has to make payment against the

invoice in the following manner, first 40% Advance, 10% at the end of 30th day, 10% at the end of 60th day and the remaining 40% at the end of 90th day from the supply of STBs.

9. It was further submitted that the Corporate Debtor has filed to make the agreed payment for the said supply of STBs. In turn, the Operational Creditor sent various e-mails dated 25.02.2020, 18.02.2020, 12.02.2020, 11.02.2020 and 01.03.2019, demanding the Corporate Debtor to make the payment.

10. It was further submitted that the Corporate Debtor has defaulted around Rs.1,67,33,866/- (along with interest), in the absence of any proper reply from the Corporate Debtor regarding the outstanding payment the Operational Creditor proceeded to initiate legal action against the Corporate Debtor. Apprehending the legal action the Corporate Debtor sent a frivolous complaint letter dated 13.03.2020 to the Operational Creditor which was also countered by the Operational Creditor.

12. It was further submitted that after waiting for sufficient time, the Operational Creditor has caused a Demand Notice dated 13.04.2020 to the Corporate Debtor. Not satisfied with the reply of the Corporate Debtor the Operational Creditor has filed this application to initiate CIRP against the Corporate Debtor.

13. *Per Contra,* Learned Counsel for the Corporate Debtor submitted that the date of default mentioned it the application is incorrect, the due date for making payment for invoice No.0401 payment due extends up to May 2020. Similarly, for the invoice Nos. 0441 and 0460 the due dates were extended up to June 2020 and July 2020 those defaults were happened during the COVID-19 period and the application is hit by Section 10A of IBC, 2016.

14. It was further submitted that the remaining default amount is below the threshold amount prescribed in Section 4 of IBC, 2016. Moreover, pointed out that there is a pre-existing dispute between the parties, regarding which a complaint letter dated 13.02.2020 was sent to the applicant. In view of the above submissions, the Corporate Debtor sought dismissal of this application.

15. We have heard learned counsel for both sides. On a perusal of the documents placed on record, it is seen that in Terms and Condition No.4 of the purchase order No. PO-190216-0017 dated 16.02.2019, it was mentioned as follows

> *"Payment Terms - 40% Advance, Balance 10% at the end of 30th day, 10% at the end of 60th day, 40% at the end of 90th day."*

Further, in payment and terms of the invoice Nos. 0401, 0441 and 0460, issued by the Operational Creditor it was mentioned as follows

"40% Adv 10% at 30th day 10% at 60th day 40% at 90th day"

It is also noted that the date and time of the supply services of all the invoices are the same as the invoice issued date which clearly mentioned in the invoice itself.

Even a cursory look at the aforesaid clauses will make clear that the payment of 40% of the total amount mentioned in the invoice shall be paid at date of invoice. Similarly, the remaining 10%, 10% and 40% amount shall be paid on the 30th, 60th and 90th day from the date of invoice.

16. It is apt here to refer to Section 10A of IBC, 2016

"Section 10A. Suspension of initiation of corporate insolvency resolution process.—

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections ***before 25th March, 2020."***

17. Here, we see that the invoice Nos. 0401, 0441 and 0460 were raised on 31.10.2019, 30.11.2019 and 31.12.2019, if the payment terms agreed in the above invoices are considered, full payment of invoice amount should be paid by the Corporate Debtor on or before the 90th day of the invoice date i.e., 31.01.2020, 29.02.2020 and 31.03.2020, which clarifies that the date of default of the invoice Nos. 0401, 0441 would not be after 25.03.2020, it makes clear that the application was not hit by Section 10A of IBC, 2016.

18. It is also seen that the total amount mentioned in the invoice Nos.0401, 0441 itself exceeds the threshold limit of 1 Crore specified in Section 4 of IBC, 2016.

19. Coming to the next contention regarding the pre-existing dispute, we see that in the complaint letter dated 13.03.2020 it was stated as below

"We have been receiving the set up box STB Error E 100 several times over past 6 months. The details of the occurrence of this error are given below:"

But in the e-mails dated 25.02.2020 sent to the Operational Creditor, the Corporate Debtor conversed as follows

"During our last meeting in November, we had given a payment schedule, which we have honoured our best. We would like to give a schedule including the shortfall and the balance outstanding as follows:-

26.02.2020
1,00,000/-

27.02.2020
1,00,000/-
.
.
Total
1,38,00,000/-
We have prepared the above schedule after taking into all factors so that it does not miss and is honoured as per our commitment.

We request you to consider the above schedule and support us by releasing the software accordingly."

Reading the above communication makes clear that the Corporate Debtor has admitted it is liable to pay around Rs.1,38,00,000/- to the Operational Creditor and there is no word expressed about the existence of a dispute with the Corporate Debtor. It is relevant here to refer to the observation of Hon'ble Apex Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited,*** wherein it was held as follows

"Therefore, all that the 86 adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court

does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

20. 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 January 2022 - June 2022 appoints ***Ms.Kavitha Surana*** with Registration Number [***IBBI/IPA-002/IP-N00166/2017-18/10435] (e-mail id:- kavitha@mksurana.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.

21. 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;

22. 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.

23. 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.

24. 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.

25. 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.

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ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

JUSTICE (RETD) S.RAMATHILAGAM
MEMBER (JUDICIAL)

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