

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

IBA/791/2019

*(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 **M/s. Archipelago Research Support Services
Pvt. Ltd.**

M/s. NUTECH Solutions

Rep. by its Sole Proprietor Mr. V. Pradeep
113-A, Periyar Pathai West,
Arumbakkam, Chennai – 600 106

... Operational Creditor

-Vs-

M/s. Archipelago Research Support Services Pvt. Ltd.

20/45, Postal Colony, First Street,
West Mambalam,
Chennai – 600 033

...Corporate Debtor

Order Pronounced on 23rd December 2020

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : Prakash Venkataramani, Advocate

For Corporate Debtor : None present

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by **M/s. NUTECH Solutions** (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Archipelago Research Support Services 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 sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Sole proprietorship firm. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U72900TN2018PTC124223 was incorporated on 27.08.2018 and that its Authorized Share capital is Rs.1,00,00,000/- and Paid up capital is Rs.10,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 20/45 Postal Colony First Street, West Mambalam, Chennai – 600033. Part-III of the Application shows that 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 same.

3. From Part-IV of the Application, it is seen that a sum of Rs.3,34,819/- is being claimed by the Operational Creditor as Operational Debt, for the supply and installation of office support equipments to the Corporate Debtor for the period from 22.10.2018 to 05.10.2019.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor supplied office support equipments to the Corporate Debtor such as projector, caller ID phones, cables etc., for the period from 22.10.2018 and 05.10.2019 and has raised 12 Invoices on various dates in the following manner;

- i. Inv. No. 1088/18-19 dated 22.10.2018
- ii. Inv. No. 1099/18-19 dated 23.10.2018
- iii. Inv. No. 1125/18-19 dated 26.10.2018
- iv. Inv. No. 1132/18-19 dated 27.10.2018
- v. Inv. No. 1037/18-19 dated 29.10.2018
- vi. Inv. No. 1038/18-19 dated 29.10.2018
- vii. Inv. No. 1236/18-19 dated 16.11.2018
- viii. Inv. No. 1237/18-19 dated 16.11.2018
- ix. Inv. No. 1238/18-19 dated 16.11.2018
- x. Inv. No. 1379/18-19 dated 08.12.2018
- xi. Inv. No. 1441/18-19 dated 17.12.2018
- xii. Inv. No. 1549/18-19 dated 05.01.2019



5. The Learned Counsel for the Operational Creditor submitted that the Demand Notice as mandated under Section 8 of IBC, 2016 in Form 3 was sent to the Corporate Debtor on 17.05.2019 and was delivered to the Corporate Debtor on 21.05.2019 and the proof of the same is placed at page 13 of the typed set filed along with the Application.

6. The Learned Counsel for the Operational Creditor also submitted that the Corporate Debtor has issued Cheque No. 182448 dated 11.02.2019 for a sum of Rs.3,11,634/- to the Operational Creditor in discharge of their dues towards the Operational Creditor, however when the said cheque was presented for realization, the said cheque was dishonoured for the reason "Funds Insufficient". The Operational Creditor has placed the said return memo at page 51 of the typed set filed along with the Application.

7. In relation to the Corporate Debtor, it is seen from the records, that the matter first came up for hearing on 08.08.2019 and there was no representation on behalf of the Corporate Debtor. Further when the matter was called on 29.08.2019 there was no representation on behalf of the Corporate Debtor. Again when the matter was posted for



hearing on 16.10.2019, 21.11.2019, 17.12.2019, 06.01.2020, 30.01.2020, 25.02.2020, 17.03.2020 and on 16.10.2020, there was no representation on behalf of the Corporate Debtor. In spite of notice being served, the Corporate Debtor has preferred not to appear before this Tribunal and in the said circumstances, this Tribunal was constrained to hear the matter in the absence of the Corporate Debtor.

8. From the documents filed by the Operational Creditor it is seen that the Corporate Debtor has defaulted in paying its dues to the Operational Creditor and as such no documents is being placed on record to show that there exists any dispute between the parties, prior to the issuance of the Demand Notice by the Operational Creditor.

9. However, in relation to the procedural compliances as mandated under IBC, 2016, it is seen that the Operational Creditor has sent a Demand Notice to the Corporate Debtor on 17.05.2019, which was delivered on the Corporate Debtor on 21.05.2019. The Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 stating thereon that despite the receipt of the said Form - 3 notice, and before the expiry of the period of 10 days the Corporate Debtor has neither responded nor remitted the claimed



amount to the Operational Creditor and no notice of any dispute or any communication whatsoever has been received by the Operational Creditor.

10. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the Date of Default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

11. In relation to the 'Question of Limitation' is concerned, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor in relation to the Corporate Debtor which discloses that the invoices have been raised commencing from 22.10.2018 to 05.01.2019 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 27.06.2019 and as such it falls well within the period of limitation.



12. 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 26th November 2020 till 31st December 2020 appoints **Mr. S.S. Ravichandran**, with Registration No **IBBI/IPA-001/IP-P01044/2017-2018/11717**, (email id:- **ssribc@gmail.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. 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.

13. 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



14. 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.

15. The Operational Creditor is directed to pay a sum of **Rs. 2,00,000/-** (*Rupees Two Lakhs 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.

16. 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.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond