

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.1480/KB/2018

In the matter of

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.

And

In the matter of:

M/s Global Infonet Distribution Private Limited, CIN: U51101DL2007PTC171871 having its registered office at C-143, Okhla Industrial Area, Phase-I, New Delhi-110020.

... Operational Creditor

Versus

In the matter of:

M/s Nishan Systems Private Limited, CIN U72300WB2013PTC193478, having its registered office at Flat No. 41, Phulbagan Road, Kolkata, West Bengal-700086.

...Corporate Debtor

Date of hearing : 15/02/2022

Order Pronounced on : 09/03/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr.Yogendra Pal Singhal, Liquidator] For Operational Creditor
1. Mr. Rohit Kumar Keshri,PCS] For Corporate Debtor
2. Mr. Rantu Kumar Das, PCS.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **M/s Global Infonet Distribution Private Limited**, a corporate entity, through its Authorised Representative Mr. Nizamuddin, authorised vide Board Resolution dated 16.07.2018 (Annexure- A) (hereinafter referred to as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **M/s Nishan Systems Private Limited, CIN U72300WB2013PTC193478**, having its Registered office at 42P, Raja Santosh Road, Kolkata-700027, (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor had supplied Computer Software, SAP and other Software Components to the Corporate Debtor for the invoice no. SIDEL 1000139 dated 31.08.2017 for Rs.7,41,050/-, invoice no. SIDEL 1000184 dated 31.08.2017 for Rs.1,22,086/-, invoice no. SIDEL 1000862 dated 30.12.2017 for Rs.75,168/-, invoice no.SIDEL 1000863 dated 30.12.2017 for Rs.1,68,744/-, invoice no. SIDEL 1000864 dated 30.12.2017 for Rs.1,79,249/-, invoice no. SIDEL 1001071, dated 31.12.2017 for Rs. 71,759/- and invoice no. SIDEL 1000972 dated 31.12.2017 for Rs.5,83,940/- were issued as per the terms and conditions contained in the said invoices.
4. It is submitted that the Corporate Debtor had made some part

payments and thereafter a balance sum of Rs.12,79,433/- (Rupees Twelve Lakhs Seventy Nine Thousand Four Hundred Thirty Three only) became due and payable by the Corporate Debtor along with the agreed interest @ 24% per annum. It is submitted that despite promise and assurances made by the Corporate Debtor to make the above balance payment to the Operational Creditor, till date the said amount has not been paid by the Corporate Debtor to the Operational Creditor in discharge of its admitted liability.

5. It is submitted that the Operational Creditor has sent a Demand Notice in Form-3 on 7th August, 2018 to the Corporate Debtor demanding payment of Rs.12,79,433/- within 10 days from the receipt of the Notice.

6. It is submitted that in its reply dated 16th August, 2018, the Corporate Debtor informed the Operational Creditor that this is a pre motivated attempt on the part of the Operational Creditor to harass and disturb the Corporate Debtor and cause mental agony, loss and fear by illegal means. It is submitted by the Corporate Debtor that the Corporate Debtor has already made payment of all the bills raised by the clients as alleged in the Demand Notice after adjusting TDS, Credit Note and Invoice against MDFS (Marketing Development Funds).It was further informed by the Corporate Debtor that since,2013, majority of the clients of the Corporate Debtor were using SAP software under Global Infonet Distribution Private Limited as they had developed a very good business relationship with their clients but somehow the disbursement of MDFS which was supposed to be provided by SAP through the client of the Operational Creditor was inconsistent, the business development team of Operational Creditor always acknowledged the claims and promised to disburse the same and several email communications with Operational Creditor and the Corporate Debtor were enclosed with the reply as Annexure-4.

7. The Corporate Debtor in its reply to the notice further asked the Operational Creditor to tender unconditional and unreserved apology in

writing, failing which, they would reserve their right to prosecute proceedings against the Operational Creditor holding them liable for all the losses and damages suffered and all the costs, charges and expenses incurred by them. They flatly denied that there was any liability on the Corporate Debtor.

8. The Operational Creditor has further filed an affidavit under section 9 (3)(B) which mentions in para 2 “ *That subsequent to the dispatch and receipt of Demand Notice/ Invoice, I say no plausible notice of dispute has been raised by the Corporate Debtor relating to the unpaid operational debt nor any payment has been made by the Corporate Debtor to the Operational Creditor.*”

9. **In reply** to the petition, the Corporate Debtor through its Director Sri Angshuman Basu, submitted that Corporate Debtor has already paid the invoice issued by the Operational Creditor as mentioned in the said application and that the application filed by the Operational Creditor is ‘an abuse of process of law’ and to take undue gain from the Corporate Debtor. It is submitted that the Operational Creditor has suppressed the fact of payment of operational debt and further advance payment to Operational Creditor in first week of February, 2018, a part of which was returned later on 22.02.2018. The Corporate Debtor annexed bank statement as the proof of the payment along with advance/excess payment. It is denied by the Corporate Debtor that Operational Creditor has a debt of Rs.12,79,433/- against the Corporate Debtor. In Paras 4 and 5 of the reply affidavit, the Corporate Debtor has submitted as under:-

“ 4. With reference to PART (IV) of the Application, it is denied and disputed that the Operational Creditor has a debt of Rs.12,79,433/- against the Corporate Debtor. It is stated that since 2013, majority of the clients of Corporate Debtor were engaged in the business of sale and implementation of SAP software marketed by them as partners and such SAP was re-sold by Operational Creditor in line with approved business relationship with Operational Creditor, but somehow the disbursement of MDF (Marketing Development Funds) which was supposed to be provided by SAP through

Operational Creditor was inconsistent. It is also submitted that the business development team of the Operational Creditor always acknowledged the claims and promised to disburse the same to Corporate Debtor. It is pertinent to note that SAP has blocked the Operational Creditor in dealing the SAP software due to misleading policies and mala fide intention and stopped further supply of SAP software to Operational Creditor which has immensely affected the business of Corporate Debtor and Corporate Debtor suffered a Licence loss of Rs.5,27,643/- for which Corporate Debtor have already given advance to your Operational Creditor Rs.4,00,793/- on 2nd February, 2018 and also the implementation and business loss of Roughly Rs.20,00,000/-. Later the Operational Creditor Refund the advance payment to Corporate Debtor as they were unable to provide us SAP Software. A copy of the said Purchase Order along with the Communication with Operational Creditor are attached and collectively marked as Annexure R-4. It is pertinent to note that the Operational Creditor has made several misleading statement and suppressed several material facts and payment made to the Operational Creditor. The Operational Creditor with malafide intension even not attached the Exact Copy of Reply of Demand Notice where the detail of payment to Operational Creditor was already attached. A True Copy of the said reply of Demand Notice is attached and as Annexure R-5. The Respondent prays leave to refer the said reply of Demand Notice during the time of hearing.

5. With reference to PART (V) of the Application save what are matter of Records, all other statements made therein are denied and disputed. It is submitted that the Operational Creditor has filed frivolous application to harass the petitioner and to digest the claim of Corporate Debtor of Rs.1,37,116/- towards re-imbusement of MDF funds as they received form SAP. It is prayed that the said Application be dismissed with exemplary costs and the direction be given to release the claim of Respondent. All the prayers made therein are denied and disputed. It is submitted that the Applicant is not entitled for any relief as prayed for in the instant application or at all”.

10. In **Supplementary Affidavit** filed by the Corporate Debtor, it is submitted that the detailed Bank Statement with respect to the payments made to the Operational Creditor has already been annexed at pages 80 to 84 of the main petition. It is further submitted by the Corporate Debtor that the

Operational Creditor had raised total invoice of Rs.19,41,996/- as stated in the petition and in respect of the said invoice, the Corporate Debtor has made a payment in the following ways:-

- “ (a) An amount of Rs.14,83,232/- through Bank Account transfer. A copy of proof of payments are already attached.
- (b) An amount of Rs.17,201.83/- towards payment of TDS by Corporate Debtor.
- (c) An amount of Rs.5,17,486/- is adjusted towards the expenses made for Marketing Development Funds(MDF) by the Operational Creditor on behalf of the Corporate Debtor as and when requested and raised the respective invoices through email to the Operational Creditor . Copies of said invoices are already attached at page no.64 to 79 of the main petition and the chart towards the payment for the same is already shown at page no. 63 of the main petition. Further for ready reference, I am hereby attaching copies of MDF invoices raised to Operational Creditor along with the emails for acknowledgement and marked as Annexure “A-2”.

11. It is further submitted on behalf of the Corporate Debtor that rather the Corporate Debtor is having a claim over Operational Creditor for excess payment of Rs.75,924/- after adjusting MDF Funds payment as can be evident in page no. 63 of the petition.

12. After hearing both the parties, it transpired that the Operational Creditor is the liquidator appointed in the matter of Global Infonet Distribution Private Limited, who is continuing these proceedings filed by the Operational Creditor Global Infonet Distribution Private Limited presently in liquidation. The total claimed amount by the Operational Creditor in the petition of Rs.12,79,433/-

13. It would be seen that after the Operational Creditor company had gone into liquidation, its Liquidator continued pursuing this C.P. against M/s Nishan Systems Private Limited as Liquidator of M/s Global Infonet Distribution Private Limited, the Operational Creditor herein. Before continuing and pursuing the present petition, the Liquidator has not sought any permission or directions from this Adjudicating Authority. Section 35 of the Code envisages that the Liquidator shall have all the powers and duties

subject to the directions of the Adjudicating Authority. We do not find any application seeking the directions from this Adjudicating Authority in this respect or any order having been passed by this Adjudicating Authority permitting him to continue these proceedings. It would also be seen that the last audited accounts of the Corporate Debtor in C.P.(IB) No. 712/ND/2019 passed on 21st August,2020 i.e. Operational Creditor in this petition was audited only for the year ending 31st March, 2017 and thereafter no returns were filed and that the accounts of the Operational Creditor were not prepared since 2018. It would further be noticed that the petition filed by the Operational Creditor claiming the amount of Rs.12,79,433/- mentioned in the Demand Notice along with the details of the invoices mentioned at page 11 of the petition and that the Corporate Debtor claims to have already paid the said amount as detailed in page 11 of the petition itself through Banking channels. It is submitted by the Corporate Debtor that a sum of Rs.14,82,232.00/- was paid through adjustments towards agreed Marketing Development Funds as received from SAP (Rs.5,37,793.83) and TDS Rs.17,201.83. The following Tabular chart would show Invoice wise payment made to the Operational Creditor by the Corporate Debtor;

Sl. No	Invoice Detail	Amount Paid (after TDS)	Proof of payment (Bank Statement)	Mode of payment
1.	SIDEL1000139	616763	Pg-80 (petition) & Pg-51 (Reply)	Advance - Petition-p-21-22
2.	SIDEL1000184	116601	Pg-82(Petition)& Pg-53(Petition)	Advance- Petition-p-23-24
3.	<u>SIDEL1000862</u> <u>SIDEL1000863</u> <u>SIDEL1000864</u>	(168698+17920 1+75091)= 422990	Pg-83(petition & Pg-54(Reply)	Due Date within 30 days - petition -p-25-27(Payment made on 04.01.2018-Reply p-34)
4.	SIDEL1000972	126878	Pg-84(petition) & Pg- 55 (Reply)	Advance- Petition-P-29
5.	SIDEL10001071	200000	Pg-83(Petition) & Pg-54 (Reply)	Due Date within 30 days- petition - P-28

14. The Corporate Debtor had further submitted that it had incurred expenses for Marketing Development Events, held Awareness Program on

behalf of the Operational Creditor, with an understanding that expenses will be incurred by SAP and will be paid through its distributor in India i.e Operational Creditor.(Email Conversation along with the detail of expense attached in pg-35(for Rs.111700), Page 36 (For Rs.155970), Page-38 (For Rs.137116) and Pg-44(For Rs.112500) of the Reply. The same is an admitted facts and was never disputed by Operational Creditor either in Demand Notice or in Instant Petition.

15. The Corporate Debtor further submitted that these facts have been admitted and have never been disputed by the Operational Creditor either in Demand Notice or in the petition.

16. That in the aforesaid chart invoice Nos. SIDEL1000139, SIDEL1000184, SIDEL1000972, at serial no. 1, 2 and 4 respectively, the payment was received by the Operational Creditor from the Corporate Debtor in advance. As regards other payments, where the payments had not been received in advance, the invoice specifically stated that due date for payment will be within 30 days.

17. Having perused the pleadings of the parties and the documents placed on record and after hearing both the parties in detail, we find that since the payment claimed in the petition by the Operational Creditor had already been received by the Operational Creditor, these proceedings could not have been continued by the Operational Creditor. The plea of the Liquidator of the Operational Creditor that payment has not been made cannot be believed. If the Liquidator had sought permission before pursuing these proceedings, this Adjudicating Authority would have considered this aspect at that stage itself.

18. We have gone through the record and in reply to the notice sent by the Operational Creditor, the Corporate Debtor has opposed the demand of the Operational Creditor on two counts; (1) that the full payment has been made and as per the invoice issued; and (2) that some advance payment has also been made. The Corporate Debtor has filed the affidavit to this effect.

19. In view of the fact that the payment as per the invoice has already been made and there is no liability outstanding, the petition does not deserve any consideration particularly because the Corporate Debtor has raised certain disputes in the reply affidavit which may be taken as per pre existing disputes. The Operational Creditor (Liquidator) of M/s Global Infonet Distribution Pvt. Ltd. cannot claim anything more than the amount mentioned in the petition filed by its erstwhile Board of Directors.

20. In view of the aforesaid facts and pleadings of the parties, We, therefore, do not find any merit in the petition and the same is rejected.

21. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 9th day of March, 2022

PJ.