

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.(IB)No.98/BB/2020

U/s.7 of the IBC, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016Between:**VOXTBV India Pvt. Ltd.**

No.645, 1st Cross, 1st Main,
1st Stage 1 Floor, Right Wing,
Binnamangala, Indiranagar,
Bangalore – 560038.

- Petitioner/Financial Creditor

And**Mack Telecom Services Pvt. Ltd.**

No.645, 1st Cross, 1st Main,
1st Stage 1 Floor, Right Wing,
Binnamangala, Indiranagar,
Bangalore – 560038.

- Respondent/Corporate Debtor

Order Pronounced on: 9th November, 2020

- Coram:
1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through video conference)

For the Petitioner : Mr. S. Vivekananda, Advocate
For the Respondent : Mr. K. Dushyanth Kumar, PCS

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.98/BB/2020 is filed by VOXTBV India Private Limited ('the Petitioner/Financial Creditor'), U/s.7 of the IBC, 2016, R/w Rule 4 of I&B (AAA)

Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Mack Telecom Services Pvt. Ltd. ("the Respondent/Corporate Debtor") on the ground that it has committed default for an amount of Rs.2,56,95,788/- (Rupees Two Crore Fifty Six Lakh Ninety Five Thousand Seven Hundred and Eighty Eight only) including the interest at the rate 14.4%.

2. Brief facts of the case as mentioned in the Petition which are relevant to the issue in question, by inter alia contending as follows:

- 1) M/s. VOXTBV India Private Limited ("the Petitioner/Financial Creditor") is incorporated on 04.12.2002 under the Companies Act, 1956 by name Vox Spectrum Private Limited bearing CIN:U32202KA2002PTC045431. M/s Mack Telecom Services Private Limited ("the Respondent/Corporate Debtor") is incorporated on 13.12.1995 under the Companies Act, 1956, bearing CIN:U64201KA1995PTC019385. Its Authorised Share Capital is Rs.18,00,00,000/- divided into 1,80,00,000/- equity shares of Rs.10/- and the Paid up capital is Rs.18,00,00,000/- divided into 1,80,00,000 equity shares of Rs.10/- each.
- 2) It is stated that the Financial Creditor had given loan to the tune of Rs.2,00,00,000/- (Rupees Two Crore only) and a Loan Agreement was executed on 1st June, 2014 between the Applicant and the Corporate Debtor. The period of the loan agreement was of 5(Five) years and the repayment was to be made by 1st June, 2019. However, the Corporate Debtor failed to appreciate the said facts and had failed to make the payment accordingly. The default of the Corporate Debtor tantamount to Rs.2,56,95,788/- including the Principal of Rs.1,89,79,914/- and the interest at the rate of 14.4% amounting to 67,15,874/- which is due to the Applicant herein, i.e. the Financial Creditor in the aforesaid matter.
- 3) Keeping this in view, the Petitioner herein has filed the present Petition against the Corporate Debtor for initiation of Corporate Insolvency Resolution Process under Section 7 the Insolvency and Bankruptcy Code, 2016. The




said debt had been registered with the NeSL and the Form C pertaining to the said debt is obtained thereon which is appended to the Application.

- 4) It is stated that the Applicant proposes Mr. Ranghuram Manchi an Insolvency Professional registered with Insolvency and Bankruptcy Board of India bearing Registration number IBBI/IPA-002/IP-N00840/2019-2020/12732 and having his address at Flat No. A 406, 4th Floor, Mantri Greens, 01, Sampige Road, Malleswaram, Bangalore, Karnataka – 560003.
 - 5) It is stated that the nature of the debt in the present case is well within the scope of Section 5 of the Insolvency and Bankruptcy Code, 2016. As per Section 5(8)(a) it is a financial debt being money borrowed against the payment of interest. In the present case the Applicant is the holding company of Corporate Debtor who has provided unsecured loan at a nominal rate of interest as agreed upon in the loan agreement.
3. The Respondent has filed Written submissions dated 25.06.2020, by inter alia contending as follows:
- 1) The Corporate Debtor states that it could not generate any revenue in the recent Financial Years and is not in a position to enter into any business contracts. The Corporate Debtor is not able to successfully carry out business as enumerated in its Memorandum of Association and is also not in a position to honour its financial commitments. The assets of the Corporate Debtor are not sufficient to pay off its liabilities.
 - 2) Further, the list of Financial as well Operational Creditors to whom the Corporate Debt is due and has to pay amounts that are outstanding till date is enclosed. Further as per the Annual Financial Statements for the Financial Year, though the assets are more than the existing liabilities, there are no liquid assets to pay off the debts of the Company. Due to the absence of the liquid assets, the Corporate Debtor will not be able to honour any payments with respect to the existing debts in the near future. The Corporate Debtor also is not in a position to ascertain the credit worthiness of the trade/account receivables and how the same can be converted into liquid assets for re-



- payment of debts. The Corporate Debtor hereby fails the test of Cash Flow and is facing cash-flow insolvency.
- 3) The Corporate Debtor has not disputed the claim of Rs.2,56,95,788/- made by the Applicant in the Application. The debt is indeed due to the Applicant and the same is outstanding in the books of the Corporate Debtor. Further, the Corporate Debtor had entered into Agreement of Loan with the Applicant on 1st June, 2014 and the Corporate Debtor does not deny the existence of such agreement and also does not deny the advancement of loan amount to the Corporate Debtor by the Applicant. Financial Statements have been filed to show the outstanding debt. Bank Statements showing that no such amounts have been credited in its accounts, have been filed.
 - 4) After the expiry of the Loan Agreement on 1st June, 2019, the Corporate Debtor could not repay the loan amount as agreed in the Loan Agreement due to the financial constraints so faced by the Corporate Debtor. The five years period so given to the Corporate Debtor had lapsed and it could not abide by the obligations of the Loan Agreement and it is admitted that there is breach of the financial and contractual obligations on part of the Corporate Debtor. As such there is an express agreement and it falls under Section 5(8) of the Code. The Financial Creditor and the Corporate Debtor shared a creditor-debtor relationship. The Corporate Debtor admits the fact that the debt is a Financial Debt.
 - 5) The Corporate Debtor in the present scenario is not in a position to repay the loan amount to the Applicant and also the Corporate Debtor has many statutory and non-statutory liabilities in existence, which the Corporate Debtor is not in a position to extinguish by way of repayment.
 - 6) The Corporate Debtor indicated its willingness to admit the instant application and issue directions for the initiation of liquidation process of the Company as the Company is not a going concern and had been facing difficulties in carrying out its business activities and its endeavors to satisfy the obligations and to ensure that the business flourishes are not being successful and the



Corporate Debtor is facing multiple trials and tribulations and a feasible and efficient resolution possibility may not be arrived at, in the present subject matter.

4. Mr. S. Vivekananda, learned Counsel for the Petitioner and Mr. K. Dushyanth Kumar, learned PCS for the Respondent appeared and heard **through video conference**. We have perused the pleadings of the parties and the extant provisions of the Code and Rules made thereunder.
5. It is seen that the Financial Creditor had given loan to the tune of Rs.2,00,00,000/- (Rupees Two Crore only) vide Loan Agreement dated 1st June, 2014 between the Applicant and the Corporate Debtor. Copy of the Loan Agreement has been filed, which shows the agreement to the granting of unsecured loan of Rs 2 crore at interest of 14.4% compounded annually. The repayment was to be made by 1st June, 2019. As per the working of the computation of the amount payable, filed with the Petition, it is seen that against the total amount due of Rs 3,91,88,633, the amount of default was Rs 2,56,95,788 as on 01.06.2019, including interest of Rs67,15,874/-. We have also perused the record of default of the Corporate Debtor maintained by the Operational Creditor with the National E-Governance Service Limited. The Balance Sheet for the YE 31.03.2019 shows under Short Term Loans and Advances shows Loans and Advances to Subsidiaries at Rs 2,39,87,749.
6. The Corporate Debtor has admitted the debt and the default. It has also admitted that it has been unable generate any income and its efforts at revival of the business have not succeeded. It suffers from cash flow insolvency and does not see any possibility of repaying its debts in future as well. Its assets are not such that can be liquidated to create cash flow for payment of debt. It is willing to undergo CIRP. During the course of hearing it was stated that this is fit case for liquidation and that after CIRP is initiated, an application would be filed seeking orders for liquidation. Thus it is clear that the Corporate Debtor is facing insolvency having lost its ability to pay its debts, meet its expenses, or run its business.



7. It is a settled position of law that once the debt and default in question is proved, and there being no legitimate dispute raised by the Corporate Debtor with regard to the existence of the same, it is mandatory for the Adjudicating Authority to initiate CIRP, appoint IRP, impose moratorium etc. In these circumstances, we are convinced that it is fit case to be admitted and for initiating CIRP in respect of Corporate Debtor.
8. The Applicant has proposed Mr. Ranghuram Manchi an Insolvency Professional registered with the IBBI, bearing Registration number IBBI/IPA-002/IP-N00840/2019-2020/12732 and having his address at Flat No. A 406, 4th Floor, Mantri Greens, 01, Sampige Road, Malleswaram, Bangalore, Karnataka – 560003. His consent in Form 2 has been filed along with the eligibility certificate.
9. In view of the above facts and circumstances of the case and the law on the issue, by exercising powers conferred on the Adjudicating Authority, U/s 7 (5)(i) of the Code, the Company petition bearing C.P.(IB) No.98/BB/2020 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:
 - 1) Mr. Ranghuram Manchi an Insolvency Professional registered with the IBBI, bearing Registration number IBBI/IPA-002/IP-N00840/2019-2020/12732 and having his address at Flat No. A 406, 4th Floor, Mantri Greens, 01, Sampige Road, Malleswaram, Bangalore, Karnataka – 560003 is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
 - 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor 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 Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
- d) 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;
- e) 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.
- f) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- g) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- 4) The Board of Directors and all the staff of Respondent/Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on 9ththDecember 2020.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

Amar



(ASHOK KUMAR BORAH)
MEMBER, JUDICIAL