IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.97/BB/2021
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

TVS Supply Chain Solutions Limited,
No. 10, Jawahar Road,
Chokkikulam,
Madurai - 625002. ... Operational Creditor/Petitioner

VERSUS

ARN IOT Solutions Private Limited,
No. 14/33, 37th Cross,
8th Block, Jayanagar,
Bengaluru – 560082 ... Corporate Debtor/ Respondent

Order delivered on: 1st December, 2022

Coram: 1. Hon'ble Shri Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Arkaprava Guha Niyogi
For the Respondent : Shri Rudran Menon

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC'**/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016 by TVS Supply Chain Solutions Limited (for brevity **'Operational Creditor/Petitioner'**) *interalia* seeking to initiate Corporate Insolvency Resolution Process in respect of ARN IOT Solutions Private Limited (hereinafter referred as **'Corporate Debtor/Respondent).**

2. The Corporate Debtor, namely, ARN IOT Solutions Private Limited is a Company incorporated on 06.07.2012 with CIN: U32204KA2012PTC064749 having its registered office at No. 14/33, 37th Cross, 8th Block, Jayanagar, Bengaluru - 560082, which falls within the territorial jurisdiction of this Adjudicating

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Authority. The Nominal Share Capital of the Respondent/Corporate Debtor is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) and Paid up Share Capital is Rs.1,00,000/- (Rupees One Lakh only) as per the Company Master Data attached at Page No. 47 of this application.

3. The present application has been filed by the Operational Creditor against the Corporate Debtor in respect of the default amount of Rs.2,04,46,734.32/- (Rupees Two Crores Four Lakhs Forty-Six Thousand Seven Hundred Thirty Four and Thirty Two Paisa only) as on 21.11.2019.

4. It is stated that the Corporate Debtor had issued a Purchase Order dated 23.08.2019 to Operational Creditor for purchase of telecom tower material. The Operational Creditor supplied the required materials against the Purchase order, subsequently, the Corporate debtor also issued a work completion certificate dated 27.08.2019, acknowledging the completion of work by the Operational Creditor. Pursuant to completion of the work, the Operational Creditor raised an Invoice dated 30.08.2019 for an amount of Rs. 2,72,91,040/- (Rupees Two Crores Seventy Two Lakhs Ninety One Thousand and forty only).

5. It is stated that the Corporate Debtor has acknowledged the said invoice and has made payments to the tune of Rs. 28,44,305.88 /- (Rupees Twenty eight lakhs forty four thousand three hundred and five rupees and eighty eight only) on 3.2.2021. Further, the Corporate Debtor has also made payment of Rs.40,00,000/- (Rupees Forty Lakhs only) on 04.03.2021 to the Operational Creditor. However, the Corporate Debtor failed to clear the pending amount of Rs. 2,04,46,734.32 (Rupees Two Crores Four Lakhs Forty Six Thousand Seven Hundred Thirty Four and Thirty Two Paisa only).

6. Despite continuous reminders, the Corporate Debtor failed to make payments or make efforts in clearing the pending amount. The Corporate Debtor has been evading making the payment. Therefore, the Operational Creditors issued a demand notice dated 26.05.2021 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016.

7. It was explained that the Corporate Debtor has acknowledged the receipt of the said demand notice and sent a holding reply dated 07.06.2021. Pursuant to which, post expiry of the statutory period of 10 days from the receipt of the demand notice the Corporate Debtor sent a reply dated 07.07.2021. In the said

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reply the Corporate Debtor has admitted its liability to pay the operational debt and requested more time to make the payments. It is stated that the Corporate Debtor is withholding payments for reasons best known to them.

8. In response to the Corporate Debtor's reply, the Operational Creditor vide its response dated 24.08.2021 reiterated its demand and requested the Corporate Debtor to immediately pay the admitted amount of Rs. 2,04,46,734.32/-. Hence the present petition.

9. The Respondent/Corporate Debtor has filed the reply to the C.P., on 03.06.2022 by *inter alia* contending as under:

   a. It is submitted that the Respondent is a Private Company registered under the provisions of the Companies Act, 1956 and is involved in the business of the Manufacture of IOT (Internet of Things) related equipments. The Respondent is represented by its Director Mr. Subramanian Elango.

   b. The Respondent also provides various intermediary services to its customers and clients. In order to meet the requirements of its customers, the Respondent buys material required, on behalf of its customers from any other company through which its clients cannot buy the materials and supply it to its clients/customers.

   c. The Operational Creditor is a private company involved in the manufacture and supply of various materials and one among the material that is sourced and supplied by the Applicant includes Telephone Tower materials.

   d. It is submitted that the Respondent was approached by a Company called Indoshell Mould Limited and sought to supply them with the Telecom Tower materials of certain quantity with a total value of Rs. 2,64,60,320/-. Since the Respondent also provides the services of an Intermediary between the parties, and the said materials which sought by Indoshell Mould Limited was not available with the Respondent, they in-turn approached the Petitioner seeking availability of the Telecom materials as requested. It is further submitted that the Petitioner confirmed the availability of the aforesaid materials as sought by the Indoshell Mould limited. The Respondent placed the purchase order dated 23.08.2019 whereby it was agreed that the Petitioner would supply the quantities of Telecom materials as sought by the Respondent for a total consideration of Rs. 2,72,91,040/-.

   e. It is submitted that the Petitioner duly supplied the materials as sought for by the Respondent in the Purchase order dated 23.08.2019 and on August

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27, 2019 the Respondent also issued a Work completion certificate. Upon the materials received by the Respondent, and in furtherance of the works being completed, the respondent raised invoices for an amount of Rs. 2,64,60,320/- on Indoshell Mould Limited.

f. The Respondent was making the payment to the Petitioner as and when they received the payments from the Indoshell Mould Limited. Further the Respondent has already made part payments of money on two occasion viz., February 03, 2021 the Respondent made a payment of Rs. 50,00,000/- out of which Rs. 28,44,305.88/- pertains to aforesaid invoice and also on 4th March 2021 whereby the Respondent has further made a payment of Rs. 40,00,000/-. It is submitted that the said fact of the Respondent making payments to the Petitioner is an admitted fact.

g. The Respondent subsequent to the payment of the aforesaid amount could not pay the remaining amounts on time as the Business of the Respondent and also of the Respondent's customer i.e., Indoshell Mould Limited was hit by the effect of the Covid-19 which is also known to the Applicant. Further the Respondent due to loss in Business due to the ongoing Covid -19 during the periods 2020 and 2021 sought an extension to pay the remaining amounts that is owed to the Applicant.

h. The Respondent further placed other Purchase orders to the Petitioner and the payments as regards the said Purchase Order is fully settled and the Respondent has never defaulted in making timely payments owned by the Petitioner. Further the Respondent has duly acknowledged the debt owed to the Petitioner and further undertaken to make the payments that is due towards the Applicant arising out of the Purchase order.

i. The Respondent submitted that subsequent to the initiation of the instant proceedings has also made payments to the Petitioner. The said payment are made to the Petitioner as and when immediately the amount received from its customer i..e, Indoshell Mould Limited. The Respondent recently upon the receipt of payment from Indoshell Mould Limited for an amount of Rs.23,00,000/- has paid the amount to the Applicant vide an RTGS transfer on February 22, 2022 and made more payments on 30.04.2022 and 31.05.2022. The copies of the bank statements reflecting the payments is attached as Annexed R5 of the reply.

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j. It is stated that since the Respondents has agreed to pay the remaining amounts as per the time schedule annexure at Annexure R6 of the reply, the claim of the Applicant in the instant application will not survive for consideration.

10. The Petitioner/Operational Creditor has filed rejoinder on 05.09.2022 to the reply filed by the Respondent/Corporate Debtor reiterating the facts mentioned in the C.P and further submitted as under:

a. The Petitioner has duly disclosed receipt of all part payments made by the Respondent in the petition. It is pertinent to note that despite categorically admitting its liability to make payments to the Applicant, the Respondent has cited untenable reasons for withholding payments to the Petitioner such as non-receipt of payment by its client i.e., Indoshell Mould Limited. The liability for the said default in payment can only be attributed to the Respondent, as the Purchase order dated 23.08.2019 is strictly a bi-partite arrangement between the Petitioner and the Respondent. Any other arrangement of the Respondent that may exist with its customer, a third party, does not affect or influence the present arrangement between the Applicant and the Respondent in any manner whatsoever.

b. The Petitioner submits that it is not privy to the arrangement between the Respondent and its client i.e., Indoshell Mould Limited and hence cannot be deprived of its legitimate dues on account of alleged defaults by the Respondent's client.

c. It is submitted that the Respondent is seeking disposal of the petition based on the mere assurance that the Respondent will make payments in the upcoming months. It is further stated that until it filed the present petition the Respondent was avoiding making payments to the Petitioner. Hence the petition cannot be disposed off merely based on the Respondent's statements that payments will be made at a later stage.

d. It is submitted that the Applicant's invoice has been pending since 30.08.2019 and the Respondent has started making part-payments only pursuant to filing of the present proceedings. It is matter of record that as on this date the Respondent still owes an amount of Rs. 1,03,46,734.32/- to the Petitioner and hence the present petition is maintainable and has every right to initiate CIRP against the Respondent.

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11. We have heard the learned Counsel for the Petitioner and learned Counsel for the Respondent and have also perused the records carefully.

12. It is noticed that, earlier, both the parties have sought various adjournments for settling the matter, however the same was failed. On 26.09.2022, during the hearing the Petitioner did not accept the undertaking given by the Respondent in his reply and stated that it wants to pursue the matter for the admission of the CIRP. It was contended that the liability for the default in payment can only be attributed to the Respondent as the Purchase Order dated 23.08.2019 is strictly a bi-partite arrangement between the Petitioner and Respondent and any other arrangement of the Respondent that may exist with a third party does not affect or influence the present arrangement. Therefore, the Adjudicating Authority directed the Respondent stating that *"as the Respondent has not given any proposal to the Petitioner and agreed to pay the remaining amounts as and when the Respondent receives the amount from its customers i.e., Indoshell Mould Limited which is third party for the present case and there is also no settlement agreed executed between the Petitioner and Respondent. Therefore, we direct the Respondent to pay a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) towards the instalment of September 2022 within one week to show its bonafide.* Even after giving substantial time to the Respondent to pay the amount/instalment and settle the matter, the Respondent failed to make the remaining payment. Moreover, the time schedule which is submitted by the Respondent in his reply as Annexure R6 is given by its customer i.e. Indoshell Mould limited which is a third party for the present proceedings. Moreover, when the case was listed next on 28.10.2022, no one attended for the Respondent. In view of the above facts and circumstances, the application needs to be admitted.

13. The application filed in the prescribed Form No.5 is found to be complete.

14. The claim of the Petitioner is based on Purchase order (Annexure –A2) dated 23.08.2019 and the Petition is filed on 27.08.2021. Therefore, the Petition has been filed within the period of limitation. Moreover, the demand notice in Form-3 dated 26.05.2021 issued by the Petitioner was served through email/RPAD to the Respondent, which the Respondent has acknowledged, and sent a reply to the same on 07.07.2021.

15. The various documents including purchase order dated 23.08.2019, work completion certificate dated 27.08.2019, invoice, reply for the demand notice by the Corporate debtor filed along with the C.P proved the debt and default of the

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Corporate Debtor. Further, there is no dispute to the liability of the Corporate Debtor, as the Corporate Debtor in its reply has admitted the debt and stated that due to loss in business by ongoing Covid-19 during the period 2020-2021 the Respondent was not able to make the remaining payments on time.

16. In the circumstances and for the aforesaid reasons and since the C.P is complete, the same is liable to be admitted. Accordingly, the C.P is **admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

    (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in

    (b) any court of law, tribunal, arbitration panel or other authority;

    (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

    (d) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

    (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

    (f) It is further directed that 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;

    (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

    (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

17. The Petitioner/Operational Creditor has proposed Mr. Kanekal Chandrasekhar, Registration No. IBBI/IPA-002/IP-N00642/2018-19/11964 as the Interim

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Resolution Professional (IRP) of the Corporate Debtor. Form-2 dated 13.09.2021 has been placed on record. However, since Certificate of Registration is not filed, the IRP shall file the same within one week from the receipt of this order.

18. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Kanekal Chandrasekhar, and there is nothing adverse against him. In view of the above, we appoint Mr. Kanekal Chandrasekhar, bearing Registration No. IBBI/IPA-002/IP-N00642/2018-19/11964, having registered address at No.6 "Shree", 9th cross, Bhuvaneshwari Nagar, Hebbal Kempapura, H.A Farm Post, Bengaluru - 560024, email-kanekal.chandra@gmail.com as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

19. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs 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.

20. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor, constitute the Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the CoC within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

21. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)

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