

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP 3653 (IB)/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of

**Embee Software Private Limited**

...Operational Creditor/ Applicant

v/s

**Mactores Innovations Private Limited**

...Corporate Debtor

**Order Dated 09.10.2019**

**Coram:** Hon'ble Member (Judicial) Mr V.P. Singh  
Hon'ble Member (Technical) Mr Rajesh Sharma

**For the Applicant:** Adv. Abhishek Adke, Adv. Pulkit Sharma,  
Adv. Pranav Shah.

**For the Respondent:** Adv. Tarannum Shaikh, Adv. Amit Tungare.

*Per V.P Singh, Member (Judicial)*

**ORDER**

1. This is an application being CP 3653/2018 filed by, **Embee Software Private Limited**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Mactores Innovations Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr Brijitendra Mohan Basu, duly authorised by Board Resolution dated 08.08.2018. The Application is filed claiming default of the operational debt of ₹34,57,916/- (Rupees Thirty Four Lakh Fifty Seven Thousand Nine Hundred and Sixteen Only) including interest at 24% p.a. Copy of the Board Resolution is annexed to the Application.
3. The Applicant Company is a reseller of software, online services and other web-based services created/developed/owned by

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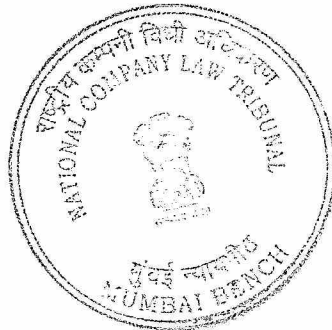
Microsoft Corporation (Company incorporated as per the laws of the United States of America). The Applicant has provided a license to server and tools products and Windows Azure services to the Corporate Debtor.

4. The Applicant has annexed copies of the four agreements dated 27.11.2014, executed between the Applicant and the Corporate Debtor listed hereinbelow:
  - i. Microsoft Business and Services Agreement;
  - ii. Enterprise Agreement;
  - iii. Server and Cloud Enrolment;
  - iv. Product Selection Form.
5. It is submitted by the Applicant that the Corporate Debtor made timely payments till December 2015, however, failed to make timely payments and has only made payments of paltry sums in piecemeal. Copies of the invoices raised by the Applicant for the period 08.01.2016 to 23.01.2018 are annexed to the Application. The said invoices bear the signature and seal of the Corporate Debtor acknowledging the receipt of the same. Copy of the table of computation of outstanding amount is annexed to the Application.
6. The Applicant has annexed the email conversations between the Applicant showing that no dispute exists about the goods and services provided by the applicant/ operational creditor. The Corporate Debtor has acknowledged the debt by providing payment schedule vide email dated 26.03.2018.
7. The Applicant issued Demand Notice dated 17.08.2018 under section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3, vide email and speed post and the same was duly served on the Corporate Debtor. Copy of the Demand Notice is annexed to the Application.
8. The Corporate Debtor has sent a reply to the Demand Notice vide email dated 20.08.2018. Copy of the Reply email is annexed to the Application.
9. It is pertinent to mention that the Corporate Debtor has not raised a dispute and has only sought two days for reconciling with its



finance department, regarding the amount sought for, by the Demand Notice.

10. The Applicant has filed an affidavit in compliance of section 9(3)(b) of the I&B Code stating that after despite service of the demand notice on the corporate debtor, he has neither received the payment nor any notice of a dispute from the corporate debtor.
11. The Corporate Debtor sent a Letter dated 19.06.2018 to the operational creditor, requesting a meeting but the corporate debtor has failed to point out any pre-existing dispute in respect of the services received or denying the outstanding amount.
12. It is on record that the court notice was duly served upon the Corporate Debtor. In this regard, the Applicant has filed Affidavit of service dated 13.03.2019 along with proof of delivery of the Court Notice and the Application, but the corporate debtor chose not to file any objections in its defence, even after providing ample opportunities to do so.
13. It was orally submitted by the Counsel for the Corporate Debtor that the Applicant being merely an assignee of Microsoft Corporation to provide the service and collect money, does not provide the right to initiate the insolvency proceedings against the Corporate Debtor, because the applicant doesn't fall in the category of the operational creditor.
14. We have heard the parties and perused the records.
15. On perusal of the invoices raised for the services provided by the Applicant to the Corporate Debtor and the email conversations wherein the Corporate Debtor has assured the payment of the amounts due, particularly, the email dated 23.03.2018 which lays the payment schedule establishes the fact that there is operational debt as per section 5(21) of the I & B Code, 2016. The Corporate Debtor has admitted to pay a sum of ₹25,44,070/- (Rupees Twenty Five Lakh Forty Four Thousand and Seventy only) and attached updated payment schedule agreeing to pay the outstanding amounts as per the payment schedule, stating that there was shortfall of amounts. The Applicant has vide email dated 16.05.2018 informed that ₹50,000/- is transferred to the Applicant.



The above email conversation also makes it clear that there is default in making payment of the operational debt.

16. It is also imperative to state that the Corporate Debtor has failed to point out any pre-existing dispute about the services received and the payments to be made. The reply email dated 20.08.2018 establishes the fact that the Corporate Debtor only sought time to reconcile the amounts demanded in the Demand Notice and did not deny the operational debt.
17. It is seen that the debt and default are established, and the Corporate Debtor has not raised any dispute regarding the debt. The outstanding debt of more than Rs One Lakh is due and payable against the corporate debtor and the corporate debtor has committed default in making the payment.
18. This Application has been filed within the period of limitation from the dates of default, which arose in the year 2016 onwards as per the invoices.
19. The application filed by the operational creditor is on proper form 5, as prescribed under the Adjudicating Authority Rules is complete.
20. The Applicant has proposed the name of **Mr Mahesh Sureka**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P00413/2017-18/10736]** as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
21. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.



**ORDER**

The application filed under Section 9 of I&B Code, 2016, by **Embee Software Private Limited** against the corporate debtor, **Mactores Innovations Private Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 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) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any activity 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench at this moment appoints **Mr Mahesh Sureka**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P00413/2017-18/11736]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.


22. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-  
**RAJESH SHARMA**  
Member (Technical)

Sd/-  
**V.P. SINGH**  
Member (Judicial)

9<sup>th</sup> October 2019



Certified True Copy  
Copy Issued "free of cost"  
On 28/11/19  
  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench