

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

IBA/765-A/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. Yashica Electronics Private Limited***

M/s. LUMINOUS POWER TECHNOLOGIES PVT. LTD.

Reg. Off:-

C-56, Mayapuri Industrial Area,
Phase – II, Mayapuri,
New Delhi – 110 064

... Operational Creditor

-Vs-

M/s. YASHICA ELECTRONICS PVT. LTD.

40 – C Manimuthi, Valagam Salai Road,
Woraiyur Trichy,
Tiruchirapalli,
Tamil Nadu – 620 003

...Corporate Debtor

Order Pronounced on 20th January 2020

CORAM :

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

For Operational Creditor : G. Ranjana, Advocate

For Corporate Debtor : A.G. Sathyanarayana, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by **M/s. Luminous Power Technology Pvt. Ltd.**

(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. Yashica Electronics Private Limited*** (hereinafter referred to as '*Corporate Debtor*').

2. Part – I, of the Application discloses the fact that the Petitioner is a Private Limited Company. 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:U52335TN2013PTC092082 which was incorporated on 10.07.2013 and that its Nominal Share Capital and Paid up Capital is ₹10,00,000/- and ₹10,00,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 40 – C, Manimuthu, Valagam Salai Road, Woraiyur Trichy, Tiruchirapalli, Tamil Nadu– 620 003.

3. Part – III of the Application discloses the fact that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP from the list furnished by IBBI. From Part-IV of the Application, it is seen that a sum of ₹1,73,09,615.71/- plus



interest @ 24% per annum from the date of default till the date of realization and in all a total sum of Rs.1,82,27,835.71/- is being claimed by the Operational Creditor from the Corporate Debtor.

4. Part V of the Application describes the particulars of the documents, records and evidence of default of the Operational debt which *inter alia* includes the following;

- a) Copies of various invoices which were raised by the Operational Creditor upon the Corporate Debtor.
- b) Copy of statement of Account / Ledger maintained by the Operational Creditor depicting the outstanding amount payable by the Corporate Debtor.
- c) Copy of the Demand Notice sent in Form 3 dated 28.03.2019 sent in accordance with the provisions of Section 8 of IBC, 2016.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is engaged in the manufacturing, marketing, distribution and sale of various electrical and ancillary equipments like UPS, Fans, Modular switches and wires etc. It was submitted that a Distributorship Agreement was executed between the Operational Creditor and the Corporate Debtor on 28.03.2014 and that the Corporate Debtor has been associated with the Operational Creditor as their distributor.



6. The Learned Counsel for the Operational Creditor submitted that in pursuance of the Agreement, the Operational Creditor has dispatched various goods traded and marketed by the Operational Creditor against their respective invoices to the Corporate Debtor and the debt fell due for the first Invoice dated 30.10.2018. It was submitted that the Operational Creditor is maintaining a running account of the Corporate Debtor against which a Statement of account / ledger is maintained by the Operational Creditor and as per the said Statement of Account, there is an outstanding amount of Rs.1,73,09,615.71/- is still due and payable by the Corporate Debtor.

7. It was further submitted by the Learned Counsel for the Operational Creditor that the Operational Creditor on various occasions requested the Corporate Debtor of clearances of the pending due amount, however all such requests have fallen on deaf ears and the Corporate Debtor has wilfully neglected to pay the dues of the Operational Creditor.

8. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has sent a Demand Notice in Form 3 as mandated under Section 8 of the IBC, 2016 on 28.03.2019 to the registered office address of the



Corporate Debtor and the same was delivered on 01.04.2019, to which the Corporate Debtor has preferred not to reply. The Operational Creditor has also filed Affidavit as mandated under Section 9(3)(b) of IBC, 2016.

9. In relation to the Corporate Debtor, it is brought to the notice of this Tribunal from the record of proceedings that when the matter came up for hearing for the first time on 09.08.2019, none appeared on behalf of the Corporate Debtor and the Operational Creditor was directed to file the track delivery report. Thereafter, when the matter came up for hearing on 20.09.2018, none appeared on behalf of the Corporate Debtor and the Registry was directed to issue notice to the Corporate Debtor and subsequently on the next date of hearing i.e. 25.10.2019, before this Bench the Corporate Debtor entered appearance through its Counsel and he was directed to file vakalath on the same day and reply within 10 days. On the next date of hearing, i.e. 03.12.2019 again none appeared for the Corporate Debtor and this Authority passed the following order;

"Learned Counsel for the Petitioner is present. None appears for the Corporate Debtor. It is seen from the records that on 25.10.2019 one Mr. A. G. Sathyanarayana, Advocate has undertaken to file vakalath on behalf of the Corporate Debtor. This Bench observed that no vakalath as well as reply have been



filed on behalf of the Corporate Debtor. It is also seen that on 20.09.2019, this Tribunal has directed the Registry to issue notice to the Corporate Debtor to appear on 25.10.2019. In the circumstances, we are not inclined to direct to issue of another notice to the Corporate Debtor as the IBC is a time bound process and repeatedly time will not be granted accordingly. In the circumstances, the Corporate Debtor is set *ex parte* and the matter is posted for hearing on 09.12.2019."

10. When the matter came up for hearing on 09.12.2019, the Operational Creditor has sought adjournment for placing on record the Distributorship Agreement and the matter was posted on 08.01.2020. Thereafter, on 08.01.2020, the Bench made the following order;

"Ld. Counsel for the Petitioner is present and represents that the Order dated 09.12.2019 has been duly complied with. It is seen from the Order dated 03.12.2019 the Corporate Debtor was set *ex-parte*.

However, subsequent to the Order of *ex-parte* being passed by this Tribunal, the Registry has chosen to accept the reply as well as the Vakalath of the Corporate Debtor without any Application filed to seek for setting aside the *ex-parte* order dated 03.12.2019 and the same being allowed.

In the circumstance, we are unable to accept the reply as well as the Vakalath filed by the Corporate Debtor and the Registry is directed to return the reply and Vakalath to the Corporate Debtor particularly in the absence of any Application for setting aside the said *ex-parte* Order being filed.

We are unable to consider the request for representation made by the Ld. Counsel for the Corporate Debtor and hence upon submissions on behalf of the Petitioner the order is reserved to be passed from the available record."



11. We have heard the submissions made by the Learned Counsel for the Operational Creditor, perused the records placed on file. It is evident from the records that the Distributorship Agreement was entered into between the parties on 28.03.2014 and a perusal of the same, more particularly clause 8 deals with the Default in Payment, for the sake of convenience Clause 8 is extracted hereunder;

"8. Default in Payment

In case of a default in payment to the Company reserves the right to put the Distributor under penalty terms of the Company as will be communicated from time to time, failing which the Company shall be at liberty to take legal action and terminate all business relations with the Distributor (Including this agreement) if the issue is not settled amicably within [30] days from the communication of the default by the Company to the Distributor."

12. The Operational Creditor has filed the present petition taking into consideration, *inter alia*, Clause 8 of the Agreement as the Corporate Debtor has defaulted in payment as per the Invoices raised by the Operational Creditor. Further, after going through the clauses of the Agreement, it may be seen that nowhere the rate of interest for the delayed payment has been contemplated in the Agreement and in the present case the Operational Creditor has claimed interest at the rate of 24% per annum. In the said circumstance, we are unable to ascertain on what basis the Operational Creditor has claimed



24% per annum for the default in payment by the Corporate Debtor.

13. Further, upon perusal of the records, it may be seen that the Operational Creditor has raised a total of 41 Invoices on various dates and the Corporate Debtor has failed to make payment in respect of these invoices raised by the Operational Creditor. Thus, the Operational Creditor has proved that there is an existence of 'operational debt' and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor.

14. From the list of invoices annexed, it is evident that all the invoices are within the period of limitation of 3 years and are not barred by limitation. The claim amount as made in the petition is also in excess of Rs.1,00,000/- being the statutory minimum amount fixed under Section 4 of the IBC, 2016 for approaching this Tribunal by the creditors, in the instant case by Operational Creditor and further in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu. Further notice of demand as contemplated under Section 8 of IBC, 2016 is also seen to have been served as evident from the dispatch proof and tracking report annexed to the typed set of documents. An



affidavit is also filed under Section 9(3)(b) of IBC, 2016 on behalf of the Operational Creditor and from the statements made thereunder discloses that no notice of dispute or payment has been made within 10 days period. Thus, taking into consideration all of the above cumulatively, this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor in view of the existence of an 'operational debt' and 'default' of such debt in terms of the definition contained in IBC, 2016.

15. 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 appoints **Mr. S. Kamaraj** (IBBI/IPA-001/IP-P00116/2017-18/10251) (email id:- *rsadasivanandco@yahoo.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.



16. 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.

17. 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.

18. The Operational Creditor is directed to pay a sum of **₹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.

19. 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.

-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-
R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond