

V

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI SPECIAL BENCH**

**(IB)-1703(ND)2019**

**IN THE MATTER OF:**

**Power2SME Pvt. Ltd.**

**Plot No. 88, Udyog Vihar Phase IV,**

**Gurugram- 122015**

**...Operational Creditor**

**VERSUS**

**Himskaf Systems Pvt. Ltd.**

**35A/ 1, 2<sup>nd</sup> Floor, Shahpur Jat**

**New Delhi - 110049**

**... Corporate Debtor**

**Section: 9 of IBC, 2016**

**Order Delivered on: 15.10.2019**

**CORAM:**

**SHRI. CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner : Mr. Pankaj Bhagat, Advocate

For the Respondent : None

(IB)-1703(ND)2019

Power2SME Pvt. Ltd. vs Himskaf Systems Pvt. Ltd.

## **ORDER**

### **PER SHRI L. N. GUPTA, MEMBER (T)**

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Power2SME Pvt. Ltd. (for brevity 'Operational Creditor') through its authorized representative Mr. Munender Chauhan, who is duly authorized vide Board Resolution dated 22.05.2019, with a prayer to initiate the Corporate Insolvency process against M/s Himskaf Systems Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Power2SME Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U74900DL2012PTC230723, having its office at Plot No. 88 Udyog Vihar, Phase-IV Gurugram -122015.

3. The Corporate Debtor namely, Himskaf Systems Pvt. Ltd. is a Company incorporated on 27.09.2001 under the provisions of Companies Act, 1956 with CIN No. U29299DL2001PTC112574, having its registered Office at 35a/ 1, 2<sup>nd</sup> floor, Shahpur Jat, New Delhi - 110049.



4. The Authorised Share Capital of the Respondent Company is Rs. 1,70,00,000 and Paid-up Share Capital of the Company is Rs. 1,53,66,670 as per the Master Data of the Company annexed.
5. It is averred by the Petitioner in his petition that :

*“A Bill Discounting Tripartite Agreement dated 17.07.2016 was also executed between the Himskaf Systems Private Limited (Operational Debtor) and Power2SME Pvt. Limited (Operational Creditor) for supplying material to operational debtor i.e. Himskaf Systems Private Limited. That subsequently the bill Discounting arrangement was withdrawn by Hero FinCorp Limited (HFCL) and the Operational creditor supplied the materials Channel, Plate, Sheet, MS Piper etc.on direct credit basis to the Operational Debtor. Therefore, Hero FinCorp Limited has not at all discounted any bill and no outstanding dues of Hero FinCorp Limited.”*

6. It is further submitted by the Petitioner that it had supplied goods as per the requirements made by the Respondent in its Purchase orders. It is stated by the Petitioner that it had raised certain invoices/debit notes against the goods supplied and the services rendered by it to the Respondent. The details of the invoices/debit notes as submitted are reproduced below :

<b>DATE</b>	<b>INVOICE NO.</b>	<b>BALANCE AMOUNT</b>
27.07.2017	T/HR02/171/8/1793	Rs. 39,887
26.05.2018	T/HR02/181/9/0608	Rs. 6,33,428
26.05.2018	T/HR02/181/9/0609	Rs.15,08,923
14.06.2018	T/HR02/181/9/0900	Rs. 9,40,944
15.06.2018	T/HR02/181/9/0905	Rs.7,58,286

19.06.2018	T/HR02/181/9/0926	Rs.12,30,268
19.06.2018	T/HR02/181/9/0927	Rs. 12,11,246
20.06.2018	T/HR02/1/819/0927	Rs. 15,33,168
28.06.2018	T/HR02/1/819/1006	Rs. 8,88,410
25.07.2018	T/HR02/1/819/1313	Rs. 11,73,503
04.08.2018	T/HR02/1/819/1407	Rs. 2,62,859
15.05.2019	DN/HR02/1920/01	Rs. 26,44,697
<b>Total</b>		<b>Rs. 1,28,25,619</b>

7. As per the Ledger Account Annexed by the Petitioner, the last Part Payment received by the Petitioner was of Rs. 411.37 on 27.09.2018.

8. It is stated by the Petitioner that the Liability of the Respondent is of Rs. 1,28,25,619, which includes interest @ 30% amounting to Rs. 26,44,697. It is further added by the Petitioner that Respondent had issued two cheques bearing no. 403058 and 718169 of Rs. 50,00,000 and Rs. 20,00,000 respectively towards payment of the Liability. It is submitted by the Petitioner that both the cheques got bounced.

9. That the Petitioner submits that it had sent a Demand Notice dated 22.05.2019, under Section 8 of IBC 2016 vide Speed Post and Email at the Registered Office and other addresses of the Respondent. It is further submitted by the Petitioner that the Demand Notice could not be served through speed, However, it is stated by the Petitioner that the Demand Notice was served on 22.05.2019 through E-mail at the email-id mentioned in the Master Data of the Corporate Debtor Company.



10. That the Petitioner in their Affidavit under Section 9(3)(b) of IBC, 2016 had made specific averment regarding non-receipt of Notice of any dispute issued by the Respondent. Further, the Petitioner has annexed Certificate dated 02.07.19 issued by Axis Bank in compliance of Section 9(3) (c) of IBC, 2016.

11. As none appeared on behalf of the Respondent Company during the proceedings, the Respondent was proceeded ex-parte vide Order dated 17.09.2019 passed by this Tribunal.

12. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the operational debt beyond doubt, the Petitioner is entitled to claim its dues. The amount of default being above Rs. 1,00,000 for the unpaid invoices, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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 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 action under the Securitisation 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 corporate debtor.”


13. The Operational creditor has not proposed any IRP. Therefore, this bench based on the list furnished by IBBI, appoints Sh. Gulshan Kumar Gupta, Registration No. IBBI/IPA-001/IP-P00021/2016-17/10046 (Email [ipgulshan@gmail.com](mailto:ipgulshan@gmail.com), Mb. No. 9810510390) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

14. The Petitioner Company is directed to deposit Rs. 2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Petitioner.



15. In terms of the above, 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 this Order shall be communicated to the Petitioner, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

  
(L. N. Gupta)  
Member(T)

  
(Ch. Mohd. Sharief Tariq)  
Member (J)