

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV (*Special Bench*)

CP (IB) No.809/MB.IV/2020

*Under section 7 of the Insolvency &
Bankruptcy Code, 2016*

In the matter of

Nailesh Dresswala

...Financial Creditor

Versus

MTC ECOM Private Limited

[CIN: U74999MH2011PTC224691]

...Corporate Debtor

Order pronounced on 17.08.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Appearances:

For the Financial Creditor : Ms Anwasha Dasgupta i/b Mr
Akshay Vijay Kamble, Advocates

For the Corporate Debtor : Mr Karan Behal, Director of the
Corporate Debtor (*in person*)

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Mr Nailesh Dresswala (*Financial Creditor*), an individual, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against MTC ECOM Private Limited (*Corporate Debtor*).

2. The Corporate Debtor is a private company limited by shares and incorporated on 08.12.2011 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U74999MH2011PTC224691. Its registered office is 201-A, Pinnacle Corporate Park (2nd Floor), Building No.19, 'A' Wing, Bandra-Kurla Complex (BKC), Bandra (East), Mumbai 400051, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 03.03.2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹1,00,00,000.00 (Rupees one crore only) as principal and ₹23,43,750.00 (Rupees twenty-three lakh forty-three thousand seven hundred and fifty only) as interest as on 30.07.2018, which is the date of default.
4. The case of the Financial Creditor is as follows: -
 - (a) Initially, the Corporate Debtor entered into an Optionally Convertible Debenture Agreement (OCDA) dated 07.04.2018 with Orios Venture Partners Fund-I, Mr Anupam Mittal and Mr Karan Behal. To this Agreement, 26.04.2018, an Addendum Agreement was entered into on 12.04.2018, whereby the Corporate Debtor was to issue 15,00,000 Optionally Convertible Debentures at the face value of ₹10/-, aggregating to ₹1,50,00,000/- to Mr Chandrasekhar Behal, who was identified as one of the investors.
 - (b) On 30.04.2018, the OCDs were issued to Mr Chandrasekhar Behal. Subsequently, the Corporate Debtor repaid the principal sum in part to the extent of ₹50,00,000/- (Rupees fifty lakh only) along with interest thereon, leaving a balance amount of ₹1.00 crore as principal with interest thereon at the rate of 15% per annum.

- (c) The OCD was transferred by Mr Chandrasekhar Behal to the Financial Creditor under a Transfer Certificate dated 04.02.2020 placed at Exhibit F (pp.37-39). Thus, the Financial Creditor stepped into the shoes of Mr Chandrasekhar Behal, for a sum of ₹1,23,43,7850/-.
- (d) On 28.02.2020, the Financial Creditor wrote to the Corporate Debtor seeking repayment of the sum of ₹1,23,43,750/-. But no repayment was forthcoming.
5. The underlying documents have been placed on record as **Exhibit 'A', 'B' and 'C'** at pp.7-33. The rate of interest charged is 15% per annum. Bank statements are also attached as **Exhibit 'H'** at p.41. The total debt due and payable to the Financial Creditor is ₹1,23,43,750.00 (Rupees one crore twenty-three lakh forty-three thousand seven hundred and fifty only), as mentioned at page 4 of the Petition.
6. The Financial Creditor has served copies of the petition on the Corporate Debtor *vide* letter dated 03.03.2020 sent by TrackOn Courier, and its receipt has been attached to the Petition at p.114.
7. I have heard the submissions of both sides and perused the records.
8. The matter was listed for the first time on 13.03.2020 for issue of court notice. However, on that date, Mr Karan Behal, Director of the Corporate Debtor appeared in person. Therefore, Court Notice was deemed to have been waived.
9. Mr Karan Behal, Director of the Corporate Debtor, stated that the Corporate Debtor had shut down its operations, and that they are not in a position to repay the sum owed to the Financial Creditor. Extracts of the Resolution passed by the Board of Directors of the

Corporate Debtor at its meeting held on 09.03.2020 was placed on record. The Resolution notes the filing of petition to initiate insolvency proceedings against the Corporate Debtor. It was resolved that the Corporate Debtor shall not oppose the Company Petition filed under section 7 of the IBC and that Mr Karan Behal, Director, was to convey to this Adjudicating Authority that the Company has no objection to the initiation of CIRP against the Company. Mr Karan Behal also submitted that the Corporate Debtor does not wish to file any reply in the matter.

10. The Financial Creditor has proposed the name of Mr Dilip Vasudeo Gupta, Registration No.IBBI/IPA-002/IP-N00765/2019-2020/12484, as the Interim Resolution Professional (IRP) of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
11. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. The Corporate Debtor has unequivocally admitted, through the Board Resolution dated 09.03.2020, that any restructuring of the Corporate Debtor would be best achieved within the four corners of the Insolvency and Bankruptcy Code, 2016. Therefore, the default stands established and there is no reason to deny the admission of the petition. In view of this, this Adjudicating

Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.

12. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) No.809/MB.IV/2020** filed by Mr **Nailesh Dresswala**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **MTC ECOM Private Limited [CIN: U74999MH2011PTC224691]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (Sarfaesi) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
- (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr Dilip Vasudeo Gupta, Reg. No.IBBI/IPA-002/IP-N00765/2019-2020/12484, having address at No.8, Ellora CHS Ltd, Behind Abhyudaya Co-Op Bank Ltd, Daftary Road, Malad (East), Mumbai, 400097 [email: ipdilipgupta@gmail.com], is hereby appointed as Interim Resolution Professional (IRP) of the

Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (i) The Financial Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh 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 (CoC).
- (j) In terms of section 7(5)(a) of the IBC, the Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
Rajasekhar V.K.
Member (Judicial)