



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-4239/2022

And

(IB) –366(ND)/2021

**IN THE MATTER OF (IB) – 366(ND)/2021:**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Operational Creditor**

**VERSUS**

**M/s. MAK MOBILITY PRIVATE LIMITED**

**..... Corporate Debtor**

**IN THE MATTER OF IA-4239/2022:**

**M/s. DRIVE INDIA ENTERPRISE SOLUTIONS LIMITED**

**..... Applicant**

**VERSUS**

**M/s. MAK MOBILITY PRIVATE LIMITED**

**..... Respondent**

**Order Pronounced On: 18.10.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Jitender Chaudhary, Ms. Shilpa Chohan,  
Advs.

For the Respondent : Mr. Anand Bajpai, Mr. Shubham Saxena, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. **(IB) – 366(ND)/2021**

**M/s. Drive India Enterprise Solutions Ltd.vs. M/s. MAK Mobility Pvt. Ltd.  
IA-4239/2022And (IB) – 366(ND)/2021  
Date of Order: 18.10.2023**



This Application has been filed by M/s. Drive India Enterprise Solutions Limited, the Applicant/Operational Creditor on 07.05.2021, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. MAK Mobility Private Limited, the Respondent/Corporate Debtor, on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 2,83,78,968/- (Rupees Two Crore Eighty Three Lakh Seventy Eight Thousand Nine Hundred and Sixty Eight Only) inclusive of interest @ 18% per annum. The date of default in the present matter is 29.10.2019.

2. During the year 2013, the Corporate Debtor approached the Operational Creditor with a request to provide services to the Corporate Debtor in the form of facilitating import, distribution, logistic services and selling of mobile handsets and other telecommunication devices ("said services") as approved or identified by Corporate Debtor through its distribution channel across India including using its brand names "KONKA" or "TRIO". Pursuant to the same, a Business Agreement dated 15.07.2013 ("said Agreement") was executed between the Operational Creditor and the Corporate Debtor whereby the Operational Creditor was appointed as a distributor for the distribution of the products i.e. mobile handsets. The Corporate Debtor again approached the Operational Creditor vide Letter dated 23.06.2016 to further extend the said Agreement by a further period of 3 years on the same terms and conditions contemplated under the said Agreement.
3. As per the said Agreement, the Operational Creditor was responsible for importing Semi Knock Down Units ("SKDU") and



Complete Built Units ("CBU") of mobile phone handsets and selling the same to manufacturers identified by the Corporate Debtor on High Seas basis for the manufacturing of the finished mobile phones handsets by them.

4. The Corporate Debtor appointed M3S Mobility LLP ("M3S") as the Manufacturing Partners and further appointed M/s. SPG Global Distribution Pvt. Ltd., Swastic Agencies, Agarwal Associates as the distribution channels ("said distribution channels"). In view of the same, the Operational Creditor was to import the SKDU and supply the same to M3S on High Sea Sale basis, which in turn, assembled the separate units and converted the same into a finished final mobile phone i.e., a CBU.
5. The Operational Creditor bought the finished mobile handset i.e., CBUs assembled by M3S under the brand name "KONKA" or "TRIO" as per the High Sea Sale and thereby the Operational Creditor executed various High Sea Sale Agreements with M3S ("said HSS Agreements"). It is submitted that the said CBUs were further sold by the Operational Creditor to the said distribution channels and the said transactions were carried out by the Operational Creditor on specific instructions of the Corporate Debtor.
6. The consideration for the sale under the said HSS Agreements executed between the Operational Creditor and M3S were to be made within a period of 60 days from the date of invoice, failing which interest was to be charged at a rate of 18% per annum. As per the instructions of the Corporate Debtor in accordance with the said Agreement as well as the HSS Agreements, the Operational Creditor duly raised invoices on M3S as well as the said distribution channels, however, the same failed to release payments which were due to the Operational Creditor against the said invoices, for reasons best known to them.



7. The Operational Creditor vide Emails dated 06.02.2017, 09.02.2017, 22.02.2017, 13.04.2018 and 13.06.2018 repeatedly requested the Corporate Debtor to clear all payments against the pending invoices raised by the Operational Creditor to M3S as well as the said distribution channels.
8. The outstanding dues of the M3S as well as the said distribution channels were even confirmed by way of the periodic audit confirmation sheets which were issued by the Operational Creditor and confirmed by the respective Debtors. Pursuant to the same, a Reconciliation Statement was sent by the Operational Creditor to the Corporate Debtor.
9. The Operational Creditor issued a Demand Notice as per Form - 3 under Section 8 of the Code to the Corporate Debtor through Email on 21.02.2020 for the outstanding payment of Rs.2,35,17,221/- due to the Operational Creditor on account of supply/delivery of goods/products under the said HSS Agreements. The last payment received from the Corporate Debtor was on 23.10.2019 for a sum of Rs.1,01,900/- and from M38 on 29.10.2019 for a sum of Rs.2,15,000/-. No reply to the demand notice was received from the Corporate Debtor nor any dispute was raised.
10. The Operational Creditor issued a Legal Notice dated 17.07.2020 through its counsel to the Corporate Debtor and the same was acknowledged by the Corporate Debtor vide email dated 17.07.2020.
11. The Respondent/Corporate Debtor has filed a reply in the form of Written Submission denying the allegations made by the Applicant and contended that the Operational Creditor has never supplied the material to the Corporate Debtor and has no locus standi to file this fictitious & frivolous application. The Operational Creditor is trying to take the command of the law in their hand and misleading the Tribunal by misrepresenting the facts leading to take undue



advantage of Section 9 of IBC. The Applicant also failed to disclose the fact that the material was supplied to the Corporate Debtor and the invoices were raised to the Corporate Debtor.

12. We have heard the Ld. Counsels for both parties and also perused the documents available on record.
13. The Operational Creditor has established that he has supplied the goods/material to the Corporate Debtor and the Corporate Debtor has failed to make the payments due to the Operational Creditor which is evident from the various e-mail communications filed by the Operational Creditor along with the application.

From the bare perusal of the definition of “Operational Debt”, it is amply clear that for a debt to be classified as an Operational debt, the claim amount should be in respect of sales of any goods or rendering of contractual services or employment. Admittedly, the claim made by the Applicant is in respect of the provision of goods or services.

14. The scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment/re-payment.

In view of the above, we find that the debt arises out of the invoices raised by the Operational Creditor, the said amount is a debt disbursed against the consideration owned by the Operational Creditor, hence it is covered under the definition of “Operational Debt” and the Applicant will be treated as “Operational Creditor”.

15. We find it relevant to mention that there is no evidence to substantiate the contention raised by the Respondent and without even placing a single document on record by the Respondent that the Operational Creditor has never supplied the material to the Corporate Debtor. In the present matter, the Respondent has merely tried to create a moonshine defence to evade the liabilities owed by it to the Applicant. There is nothing on record to evidence that there is a dispute, pre-



existing before the service of the Demand Notice upon the Respondent. It is stated that there is no documentary evidence to show that there was any dispute between the parties. We, therefore, accept the submissions that there was no pre-existing dispute between the Respondent/Corporate Debtor and the Applicant/Operational Creditor.

16. Having considered the facts and circumstances of the case, we are of the considered view that the Operational Creditor has established that the debt is due and there is a default committed by the Corporate Debtor and therefore we are of the view that the present application under Section 9 of the IBC, 2016 ought to be **admitted**.
17. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fulfills the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -
  - a) The Application bearing **IB-366/ND/2021** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted**.
  - b) We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
    - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- c) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- d) The Operational Creditor has proposed the name of Mr. Anil Kumar Mittal, as the Insolvency Resolution Professional (IRP) of the Corporate Debtor. The registration number of the IRP



is IBBI/IPA-002/IP-N00742/2018-2019/12263, the address of the IRP is 5/99, Sector-2, Rajender Nagar, Sahibabad, Ghaziabad, Uttar Pradesh-201005 and the e-mail id of the IRP is [mittalanil.ubi@gmail.com](mailto:mittalanil.ubi@gmail.com).

The Operational Creditor filed a copy of the Consent Issued by Mr. Anil Kumar Mittal in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Anil Kumar Mittal is appointed as IRP.

- e) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.



- i) 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 the approval of the Committee of Creditors (“CoC”).
- j) In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- k) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

No order as to costs.

18. **IA-4239/2022**

- i. The present Application has been filed by M/s. Drive India Enterprise Solutions Limited, the Applicant/Operational Creditor under Rule 11 of the National Company Law Tribunal Rules, 2016 to bring on record additional documents.
- ii. The present Application has been filed by the Operational Creditor to place on record the additional documents filed are taken on record. Accordingly, the **IA-4239/2022** stands **dismissed**.

**-SD-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-SD-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**

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