

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Company Petition (IB) No. - 512(PB)/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

IN THE MATTER OF:

M/s Radius Infratel Private Limited

... Operational Creditor / Applicant

Vs.

M/s. Nextra Teleservices Private Limited

.... Corporate Debtor / Respondent

ORDER PRONOUNCED ON: 19.11.2024

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the OC : Mr. Abhishek Devgan, Advocate
For the CD : Mr. Rishabh Govila, Advocate

ORDER

1. This Application has been filed by M/s Radius Infratel Private Limited, **(the Applicant/Operational Creditor)** on 06.08.2024 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**) for **M/s Nextra Teleservices Private Limited, (the Respondent/Corporate Debtor)** on the ground that the Respondent has failed to pay the outstanding payment due to the Applicant of **INR 1,51,89,603.19/- (Rupees One Crore, Fifty-One Lacs, Eighty-Nine Thousand, Six Hundred and Three only)** which is the principal amount outstanding as on date.

2. The Applicant, M/s Radius Infratel Private Limited is a company incorporated on 13.05.2008. The Applicant company was admitted to CIRP vide an order dated 23.07.2018 and into liquidation vide order dated 31.05.2021 of this Adjudicating Authority in CP(IB)-59(PB)/2018.
3. The Respondent, M/s **Nextra Teleservices Private Limited** is a company incorporated under the Companies Act, 1956 on 24.06.2006 having registered office at 83, Chilla Village (near Fraser Suites Hotel), Mayur Vihar Phase -1, New Delhi - 110091. Therefore, this Adjudicating Authority has the jurisdiction to deal with this Application.

SUBMISSIONS BY THE APPLICANT / OPERATIONAL CREDITOR

4. The Operational Creditor (**OC**) registered with Department of Telecommunications (DoT), Government of India as Infrastructure Provider-I vide registration number 241/2009 dated 14 January 2009. By virtue of the aforesaid registration it was engaged, inter alia, in the business of deployment and operation of transmission system/infrastructure as a Neutral Access Network Operation (NANO) which is aimed at facilitating and enabling transmission of voice, video, text and data services on wire-line and wireless, for/on behalf of Service Providers.
5. The Corporate Debtor (**CD**) was authorised to set up and operate telecommunication services through ISP License No. 820-1170111-LR granted by DoT.
6. In 2013, CD approached OC with the request to avail access infrastructure services. A Local Cable Operator Agreement (LCO Agreement) was executed on 15.04.2013 between the parties (**Annexure A-6**). As per this



agreement CD would pay provisioning charges, fixed monthly recurring charges and monthly revenue share in terms of the LCO agreement, on a monthly basis in lieu of access infrastructure to be provided by OC to CD.

7. OC was admitted to CIRP on 23.07.2018 and Mr. Arvind Garg was appointed as Resolution Professional. During the CIRP, various invoices were raised upon CD from 20.01.2020 till 14.10.2020 in terms of LCO Agreement. These invoices were required to be honoured within 30 days. The management of OC wrote an email dated 24.02.2021 (Annexure A-9) to the CD to clear outstanding dues.
8. In the meanwhile, OC was admitted to liquidation vide order dated 31.05.2021. Again, an email dated 17.09.2021 (Annexure A-9) was written to CD to clear outstanding dues.
9. The CD had made certain payments towards outstanding dues between 05.06.2020 to 31.03.2022. Despite the same, dues to the tune of INR 1,51,89,603.19/- (Rupees One Crore, Fifty-One Lacs, Eighty-Nine Thousand, Six Hundred and Three only) has remained outstanding and unpaid.
10. Details of the Invoices raised (Annexure A-8) and payments made by the CD is detailed below:

Invoice No.	Invoice Date	Billing amount
Opening Balance		7,199.19
RIPL1920SPDL119	1/20/2020	58,57,577.00
RIPL1920SPDL120	1/20/2020	49,03,611.00
RIPL1920SPDL121	1/20/2020	43,59,014.00
RIPL1920SPDL122	1/20/2020	39,43,117.00
RIPL1920SPDL123	1/20/2020	36,82,112.00
RIPL1920SPDL124	1/20/2020	11,87,416.00
RIPL1920SPDL132	3/6/2020	35,66,707.00
RIPL2021DL054	9/1/2020	24,26,072.00
RIPL2021DL073	10/14/2020	10,66,696.00
Total		3,09,99,521.19
Amount Paid by Nextra along with adjustments for the period from 04.07.2019 to 31.03.2022		1,58,09,918.00
Outstanding		1,51,89,603.19

11. The details of default occurred as against multiple invoices that remained unpaid is detailed below:

Date on which the default occurred

Multiple invoices have been raised by RIPL which are provided hereunder:-

Invoice No.	Invoice Date	Billing amount
RIPL1920SPDL119	1/20/2020	58,57,577.00
RIPL1920SPDL120	1/20/2020	49,03,611.00
RIPL1920SPDL121	1/20/2020	43,59,014.00
RIPL1920SPDL122	1/20/2020	39,43,117.00
RIPL1920SPDL123	1/20/2020	36,82,112.00
RIPL1920SPDL124	1/20/2020	11,87,416.00
RIPL1920SPDL132	3/6/2020	35,66,707.00
RIPL2021DL054	9/1/2020	24,26,072.00
RIPL2021DL073	10/14/2020	10,66,696.00

Though Nextra has made payment of Rs. 1,58,09,918.00 on different dates from 04.07.2019 to 31.03.2022 but as on date a sum of Rs. 1,51,89,603.19 is outstanding against Nextra towards Principal amount.

12. The OC issued demand notice in Form -3 (Annexure A-11) on 03.05.2024 under section 8 of the Code, seeking payment of outstanding dues of INR 1,51,89,603.19/- from the CD and the same was delivered on 04.05.2024. However, no payment towards the said outstanding dues were made within 10 days. Hence, Applicant has chosen to file instant Application, CP(IB)-512/(PB)/2024 seeking initiation of CIRP for the CD.
13. It has been also submitted that with respect to OC a process document for the sale as a going concern through e-auction has been issued to Mr. Mohit Goyal and Mr. Naresh Verma who were declared as the Successful Bidder and consequently sale certificate for the sale of Operational Creditor was issued to them on 22.07.2023. The said persons have also been subsequently inducted as the Directors of the OC.

SUBMISSIONS BY RESPONDENT / CORPORATE DEBTOR

14. The CD has contended that commencement of CIRP and subsequent liquidation of the OC had significantly affected the services rendered under the LCO Agreement, and the Resolution Professional (RP) and later the Liquidator failed to ensure the quality of services promised in the Agreement.



15. There were undue delays in raising invoices by the Resolution Professional for OC herein, who also failed to ensure consistent and reliable access infrastructure services, which were central to the Corporate Debtor's operations. The invoices raised between 20.01.2020 and 14.10.2020 by the RP were delayed and inaccurately reflected the actual services provided.
16. Further due to *Force Majeure* i.e., Covid-19, the performance of obligations under the LCO Agreement were rendered commercially impracticable. The CD faced insurmountable obstacles in continuing its operations and ensuring timely payments under the LCO Agreement. The Corporate Debtor's ability, to fulfil its financial obligations was significantly hampered by these external, unforeseeable factors.
17. Furthermore, the present application is barred by limitation. The invoices in question were raised between 20.01.2020 and 14.10.2020 and the petition is filed in 2024 i.e. well outside the three-year limitation period.
18. The Corporate Debtor has always acted in good faith. Payments were made periodically, as and when the financial condition allowed, including between 05.06.2020 and 31.03.2022. The CD has never evaded its responsibilities, and the delay in payments, if any, was purely due to circumstances beyond its control.
19. The Corporate Debtor further submits that it is a solvent and financially stable company with the capacity to repay its legitimate creditors. The present insolvency petition is an attempt to exert undue pressure on the Corporate Debtor. The OC is trying to convert a contractual dispute into an insolvency matter. The insolvency proceedings cannot be initiated merely as a pressure tactic to recover dues in the absence of the debtor's actual insolvency.


ANALYSIS & FINDING

20. We have heard Ld. counsel for the OC and CD and perused the averments and relevant documents on record.



21. The CD has not disputed the Local Cable Operator Agreement dated 15.04.2013 between the OC and CD. Further perusal of terms of this Agreement itself confirms that Agreement would remain in force for fifteen years, meaning thereby OC during its CIRP was under an obligation to provide services, as defined under clause 4 of this Agreement to the CD.
22. Further, no dispute has been raised against the invoices claimed to have been issued upon the CD under the said LCO Agreement. In fact, it is the case of CD that RP and Liquidator for the OC failed to keep up with the quality of services as required under the LCO Agreement. With this acknowledgement by the CD, at this stage there is no doubt that the services under the LCO agreement were duly rendered even during the times when OC entered into CIRP and Liquidation subsequently. The CD has further stated that that there was delay in invoices generation, which is another acknowledgment towards that not only services were being continued by the OC but also invoices were generated for these services.
23. The OC has further, in addition to invoices, relied upon Bank Statements and Ledger to claim that there are outstanding dues to the tune of INR 1,51,89,603.19/- as against these invoices, which has not been specifically denied by the CD anywhere in the Reply.
24. The only contentions raised by the CD are as follows:
 - a. Quality of services was compromised and services were not delivered on terms as promised in the LCO agreement;
 - b. Application is barred by Limitation; and
 - c. CD is a solvent entity and CIRP cannot be initiated for ulterior motives, as there are contractual disputes.
25. With respect to first issue, we see that that nothing in support like email correspondence or any letter raising this issue of inferior / compromised quality with the Resolution Professional / Liquidator of the OC has been shown to us. This contention, being a mere statement with no evidence in support is a failed attempt to raise pre-existing dispute. Further, this is a settled position of law that the pre-existing dispute in order to be validly raised shall not be a mere moonshine or feeble legal argument but should be real one, while in the present case, CD has not produced anything in

support to show that the dispute as to quality was raised at the relevant time. Hence, this contention is negated.

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26. Secondly, the contention with respect to limitation is concerned, we see that last invoice in question is dated 14.10.2020, while this Application seeking initiation of CIRP has been done 06.08.2024. On this we take note of the orders of Hon'ble Supreme Court in Suo Moto (W.P.) 03 of 2020 that period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of limitation and in the event, balance period of limitation remains as on 28.02.2022, the same shall be available with effect from 01.03.2022, if the same is greater than 90 days. In the present case, the entire limitation period of three years would take effect only from 01.03.2022 i.e., until February 2025, as last invoice dated 14.10.2020 falls in time when the order of the Hon'ble Supreme Court relaxing limitation with effect from 15.03.2020 was already in force.
27. Even otherwise, the OC has said that the CD has made payments towards outstanding dues until 31.03.2022, which has not been specifically denied by the CD in reply. The claim of part payment by CD towards outstanding dues until 31.03.2022 is substantiated from the ledger (Annexure A-7) and not denied by the CD. It is no more *res integra* that part payment towards outstanding dues amount to acknowledgment of debt and extends limitation period. Thus the limitation period stands extended until February 2025.
28. Hence, we are of the view that this Application filed under section 9 is well within its limitation and thus contention of the CD stands negated.
29. Moving to the third issue that CD is a solvent entity, we note that in the present case, both the debt and default is established and no pre-existing dispute has been successfully raised by the CD as discussed above. Further, CD in reply itself has acknowledged that because of Covid -19, it was unable to maintain financially, leading up to defaults. The CD has not raised any question with respect to quantum of debt claimed nor has it otherwise established that debt claimed is not due as against the invoices (details given above), which fairly amounts to an admission of debt and default by the CD itself. Furthermore, since no plausible pre-existing



dispute either as to quantum of debt or quality of services in question has been raised with some reliable material, the Application has to be admitted.

30. In addition to discussion above, even if we consider default committed during period covered under section 10A, which begins from 25.03.2020 until 25.03.2021, we see that in this case default was committed by the CD prior to beginning of this period, which thus is fairly hit by explanation to section 10A, which reads as *“For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020”*. The Hon’ble NCLAT also in the matter of *Narayan Mangal vs Vatsalya Builders & Developers Pvt. Ltd.* Company Appeal (AT) (Ins.) No. 294 of 2023, has held that *If the default is committed prior to Section 10A period and continues in the Section 10 A period the initiation of proceeding is not barred*. Hence, no benefit of section 10A can be made available to the CD.
31. The OC pursuant to default has duly issued demand notice on 03.05.2024 under section 8 upon the CD, to which neither any reply has been shown to have been made nor any payment made to settle the dues by the CD.
32. We thus find that there is an ‘Operational Debt’ payable by the CD / Respondent to the OC / Applicant. There is no valid pre-existing dispute to the debt claimed. In view of the reasons discussed above, we are inclined to the admit the Respondent M/s Nextra Teleservices Private Limited into CIRP.
33. In view of the above findings, we are satisfied that the present application fulfils the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -
- a. The Application bearing no. **C.P.(IB)-512(PB)/2024** filed under section 9 of the Insolvency and Bankruptcy Code 2016 for initiation of ‘Corporate Insolvency Resolution Process’ is **ADMITTED**.



- b. We declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code 2016. The necessary consequences of imposing the moratorium shall follow.
- c. The Applicant has proposed the name of Mr. Pawan Kumar Singal having Registration No. IBBI/IPA-001/IP-P01172/2018-2019/12229 to be appointed as the Interim Resolution Professional (**IRP**). We have verified that the said proposed IRP has valid AFA from 12.03.2024 to 30.06.2025. Therefore, this Adjudicating Authority appoints **Mr. Pawan Kumar Singal** having Registration No. **IBBI/IPA-001/IP-P01172/2018-2019/12229** email id pawansingal50@gmail.com and address at MP-114, Pitampura, New Delhi – 110034 as an Interim Resolution Professional of the Corporate Debtor.
- d. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP or RP, 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 from the date of appointment as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. During the CIRP period, the management of the Corporate Debtor shall vest in the Interim Resolution Professional (IRP)/ Resolution Professional (RP), as the case may be, 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.
- f. 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 Adjudicating Authority hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- g. 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 Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of INR 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 the approval of the Committee of Creditors (CoC).
- i. In terms of the Insolvency and Bankruptcy Code 2016, 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 its website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- j. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

RP to report on **21.01.2025**

Sd/-
RAMALINGAM SUDHAKAR
PRESIDENT

Sd/-
AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)