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

CP(IB)/109(CHE)/2021

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating Authority], Rules, 2016)

In the matter of ***M/s. Millennium Soft-Tech (India) Private Limited***

Posiflex Technology India Private Limited
7/3, 3rd floor, Jeet Dynasty
Swami Vivekannanda Road, Nagavarapalya
Bangalore - 560093

...Operational Creditor

-Vs-

Millennium Soft-Tech (India) Private Limited
2nd Floor, No.G-19, II Main Road,
Industrial Estate,
Ambattur,
Chennai – 600 058

... Corporate Debtor

Order pronounced on 14th December 2021

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor : Haripriya, Advocate
For Corporate Debtor : None present

ORDER

Per: **R. SUCHARITHA, MEMBER (JUDICIAL)**

Under Consideration is an Application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to as IBC, 2016") by **Posiflex Technology India Private Limited** *(hereinafter called as "Operational Creditors")* for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against **Millennium Soft-Tech (India) Private Limited** *(hereinafter called as "Corporate Debtor").*

2. Part – I of the Application discloses the fact that the Operational Creditor herein 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:U22219TN2002PTC048248 which was incorporated on 02.01.2002 and that its Authorized Share Capital and Paid up Capital are Rs. 5,00,00,000/- and Rs. 5,00,00,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 2nd Floor, No.G-19, II Main Road, Industrial Estate, Ambattur, Chennai – 600 058. Part – III of the Application discloses the fact that the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same from the list furnished by the Insolvency and Bankruptcy Board of India.

3. From Part-IV of the Application it is seen that the applicant has stated that the Operational Creditor is involved in the manufacturing / trading of computer peripheral equipments and

was approached by the Corporate Debtor for supply of certain computer peripheral materials. It was submitted that pursuant to an agreement between the parties, certain purchase orders were raised by the Corporate Debtor and the goods were supplied by the Operational Creditor to the Corporate Debtor. It is averred that the terms of the Purchase Order stipulate payment to be made 45 days from the date of receipt of the materials. Further, it is averred that the Corporate Debtor has made some payments, however payments are pending towards 43 invoices and several reminders and letters requesting payment of the dues were sent to the Corporate Debtor, however no payment was made.

4. The Learned Counsel for the Operational Creditor submitted that a sum of Rs.2,01,23,650/-, including interest is due and payable by the Corporate Debtor as on 30.04.2021 and the date of default as per Part – IV of the Application is mentioned as 20.12.2018. The present Application has been filed before this Tribunal on 01.06.2021.

5. Part V of the Application shows that the applicant has attached few relevant documents in order to prove the existence of the Operational debt and the amount in default;

i. Purchase orders raised by M/s. Millennium Soft-Tech (India) Pvt. Ltd. on M/s. Posiflex Technology India Pvt. Ltd.

ii. Forty – Three (43) Invoices raised by M/s. Posiflex Technology India Pvt. Ltd.

iii. Email correspondence between M/s. Posiflex Technology India Pvt. Ltd. and M/s. Millennium Soft-Tech (India) Pvt. Ltd. including acknowledgment of dues dated 15.11.2019 sent by M/s. Millennium Soft-Tech (India) Pvt. Ltd. to M/s. Posiflex Technology India Pvt. Ltd.

iv. Statement of Accounts of M/s. Posiflex Technology India Pvt. Ltd. for the year 2017 – 2018

6. It is seen from the records that the Operational Creditor has sent a Demand Notice as stipulated under Section 8 of IBC, 2016 to the Corporate Debtor on 31.08.2020, which was received by the Corporate Debtor on 02.09.2020 and the proof of the same is also filed by way of a memo by the Operational Creditor. Further, the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 wherein it has been stated that the Corporate Debtor has failed to repay the unpaid operational debt within a period of 10 days and has also not brought to the notice of the Operational Creditor of any existence of a dispute by way of a reply.

7. In relation to the Corporate Debtor it is seen from the record of proceedings that there was no representation on behalf of the Corporate Debtor and hence fresh notice was issued by the Registry of this Tribunal and also by the Operational Creditor. Further, during the hearing held on 06.08.2021, this Tribunal permitted the Applicant to cause a paper publication in "Indian Express" and "Dinamalar" and accordingly the Operational Creditor has effected paper publication on 24.08.2021 and has also filed Affidavit of Service in this regard. Inspite of same, there was no representation on behalf of the Corporate Debtor. Hence, the Corporate Debtor was set ex-parte by this Tribunal vide its order dated 16.09.2021.

8. We have heard the submissions made by the Learned Counsel for the Operational Creditor. Upon perusal of the typed set filed along with the Application it is seen that the Operational Creditor has filed the list of purchase orders, invoices and the proof of dispatch of the same to the Corporate Debtor. Also the Operational Creditor has filed the email confirmation dated 15.11.2019 issued on behalf of the Corporate Debtor acknowledging their dues. Further, it is seen that the Corporate Debtor even after receipt of the Invoices have not raised any dispute in relation to the services provided by the Operational Creditor, however has failed to pay the sum to the Operational

Creditor which is due and payable. Thus, the Operational Creditor has proved that there is an 'operational debt' and 'default' which has been committed on the part of the Corporate Debtor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016.

9. 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 applicable for the period between July 2021 – December 2021 appoints **S. POOSAIDURAI,** *with Reg:- IBBI/IPA-001/IP-P01965/2019-2020/12995 (email id:- poosaidurai@gmail.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. The IRP appointed shall take in this regard such other and further steps as

are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

10. 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.

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 or a similar grant or right during moratorium period;

11. 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 mange 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

(a) such transactions, agreements or other arrangement as may be notified by the Central

Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

12. 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.

13. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-***(Rupees Two Lakh 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.

14. 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, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond