NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. C.P.(IB)-2507(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **18.01.2022**

NAME OF THE PARTIES: Hertz Technologies Pvt Ltd. & Ors

V/s

Netizen Engineering Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Operational Creditor, Mr. Rajesh and Counsel for the Corporate Debtor, Mr. Nitin Shah are present through virtual hearing.

Order pronounced vide separate order. In the result, CP 2507/2019 is dismissed.

Sd/-	Sd/-
CHANDRA BHAN SINGH	H.V. SUBBA RAO
Member (Technical)	Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 2507/IBC/MB/2019

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

In the matter of

HERTS TECHNOLOGIES PVT. LTD.
KIRAN BABAN CHAVAN, DIRECTOR
(CIN: U72900MH2007PTC174258)
52, B Wing, 72 Tenament, Peru Compound, Gas Company Lane, Lalbaug, Mumbai-400012

…**Operational Creditor**

Vs

NETIZEN ENGINEERING PRIVATE LIMITED (ERSTWHILE RELIANCE INFOCOM ENGINEERING LTD.)
(CIN: U72900MH2000PTC127631)
Having registered office at: Manek Mahal, Flat No. 19 & 20, 6th Floor, 90 Veer Nariman Road, Churchgate, Mumbai MH 400020

…….Corporate Debtor

Order delivered on: 18.01.2022

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Kiran Chavan, Director of the Operational Creditor, Mr. Rajesh Dharap, counsel for the Operational Creditor

For the Respondent: Mr. Sarosh E. Bharucha, counsel for the Corporate Debtor

Per: Shri H.V. Subba Rao, Member (Judicial)

1. This Company petition is filed by *Hertz Technologies Pvt. Ltd.* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Netizen Engineering Private Limited (Erstwhile Reliance Infocom Engineering Ltd* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an unresolved operational debt of Rs. 53,59,952.62/- payable to the Operational Creditor by the Corporate Debtor for various electrical and utility works carried on by the Operational Creditor from 17.08.2019 to 22.01.2015 and awarded by the Corporate Debtor.
2. The Corporate Debtor filed affidavit in reply through its authorized representative Ms. Pallavi S. Mane opposing the admission of the above Company Petition on the following grounds:
    i. The present Company Petition is incomplete
    ii. The Operational Creditor is not entitled to monies claimed as they are barred by law of limitation
    iii. The present Company Petition is bad for misjoinder of cause of action
    iv. The Operational Creditor has claimed interest contrary to provisions of the Work Orders
    v. The Petition is an abuse of provisions of the Code.
3. In the light of the above contention raised by the Corporate Debtor, the core issue that needs to be decided in the above Company Petition is:

Whether the Company Petition is within limitation?

4. In order to decide the above issue, it is important to mention here that the Operational Creditor himself in part IV of the Company Petition mentioned that the dates of default are from 17.08.2009 to 22.01.2015. The above Company Petition is filed on 26.04.2019. The Operational Creditor carried on the works of the Corporate Debtor from 17.08.2009 to 22.01.2015. The last date of payment was made by the Corporate Debtor on 11.03.2016. The Operational Creditor issued demand notice under Section 8 of the Code on 18.06.2018.

5. The contention of the Operational Creditor during the course of the arguments as well as through their written submissions is that the limitation for filing the above Company Petition under Article 137 of the Limitation Act comes into picture from the date of issuing Section 8 notice dated 18.06.2018 and therefore the above Company Petition being filed on 23.04.2019 is well within the limitation. The alternative contention of the Operational Creditor is that the last payment was made by the Corporate Debtor on 11.03.2016 and the above Company Petition was filed on 23.04.2019 and therefore at best there is a negligible delay of 44 days in filing the above Company Petition which can be condoned by this Tribunal by exercising its discretion even without any formal application to condone the delay.

6. Both the above contentions of the Operational Creditor are not only unsustainable in law but also an absurdity since the date of default starts from the due date. In this connection, it is important to mention here that as rightly contended by the Corporate Debtor the Operational Creditor carried out works

from 17.08.2009 to 22.01.2015. By the time the alleged payment was made on 11.03.2016, most of the claims of the Operational Creditor preceeding 3 years prior to 11.03.2016 have become time barred. Even though the Operational Creditor contends that it is a running account, the Operational Creditor has not placed any proof before this Bench to prove that it is a running account and there are either payments or acknowledgement of debts from the Corporate Debtor for every 3 years. If an acknowledgement of debt is made under Section 18 of the Limitation Act before expiration of prescribed period of limitation a fresh period of limitation shall be computed from the time of acceptance of part payment made or the acknowledgement was executed. In the present case on hand as stated above, most of the claims have been barred by limitation by the time the alleged last payment was made.

7. A contract of debt which is time barred would revive under Section 25(3) of Contract Act only if promisor acknowledges time barred debt and also specifically promises in writing to pay such time barred debt. Implied promise to pay contained in all acknowledgement of debts or payment does not attract provision of Section 25(3) of the Contract Act to constitute a fresh contract. The above proposition of law is well settled in catena of judgments of the Hon'ble Supreme Court as well as various High Courts.

8. Even as per Article 137 of the Limitation Act, a suit for recovery of money has to be filed within 3 years from the date cause of action arises. The various work orders filed by the Operational Creditor contains a clause as follows:

"Payment Terms: See Page Inside"

Admittedly the Operational Creditor has not filed the inside page that contains the payment terms and therefore an adverse inference has to be drawn against the Operational Creditor since most of the payments in commercial transactions have to be paid immediately on completion of service or upon raising the invoices minus the grace period if any provided in the invoice or contract. In any event, the last payment of Rs. 5,40,242.65/- was made on 11.03.2016 which corelates to the last invoice dated 22.01.2015 at serial non. 299 at page 22 of the Company Petition. The second last invoice at serial no. 298 of page 22 of the Petition was raised on 12.12.2011. It is very clear that at the time when the Operational Creditor raised the above invoice on 22.01.2015 and at the time when it was paid on 11.03.2016 all the earlier invoices raised by the Operational Creditor were already time barred.

Thus, viewing from any angle, this Bench has no hesitation in holding that the claims of the Operational Creditor in the above Company Petition are hopelessly barred by limitation and the Company Petition deserves to be dismissed in limine. Since this Bench is inclined to dismiss the above Company Petition on the sole ground of limitation, the other contentions raised by the Corporate Debtor need not be decided.

9. Accordingly, the above Company Petition is dismissed.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)