

In the National Company Law Tribunal  
Mumbai Bench.

CP (IB)-1604/(MB)/2017

Under Section 9 Insolvency & Bankruptcy Code 2016

In the matter of

Drive India Enterprises Solutions Ltd. : Petitioner

V/s

The Mobile Store Services Ltd. : Respondent

Order delivered on: 20.03.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s): : 1. Mr. Rajen Mehta, Practicing Chartered Accountant,  
2. Mr. Sameer Pandit, Advocate a/w  
3. Ms. Sarrah Khambatt, Advocate, i/b  
M/s. Wadia Ghandy & Co.

For the Respondent(s): : 1. Mr. Mayur Shetty,  
2. Mr. Archan Shah,  
3. Ms. Gitika Makhija, Advocates.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. A Petition was filed by the Operational Creditor/Petitioner M/s. Drive India Enterprises Solutions Ltd., Registered Office at 58, Eldams Road, Teynampet, Chennai, Tamilnadu-600018 through its Corporate Office at 7<sup>th</sup> Floor, Kamla Executive Park, Off: Andheri-Kurla Road, Near Vazir Glass Factory, Andheri (East), Mumbai – 400059, to initiate Corporate Insolvency Resolution Process against Corporate Debtor/Respondent The Mobile Store Services Limited, Registered Office : Equinox Business Park, Building-B, 1<sup>st</sup> Floor, Old Swan Mills Compound, L.B.S. Marg, Kurla (West), Mumbai-400070, to claim an outstanding Operational Debt amount of ₹6,50,26,151/-.

2. The brief history of the matter is as follows:-

2.1 The Petitioner, in Form No.5, has stated in Part-IV of the Form that the outstanding Debt amount of ₹6,50,26,151/- has arisen due to non-payment of the Invoices against the supplies made to the Corporate Debtor such as goods/products (being Mobiles of Gionee and Oppo) pursuant to **(a)** the initial Terms of Trade for Gionee ("TOT-1")



exchanged by email dated 9<sup>th</sup> April, 2015 by and between the Corporate Debtor and the Operational Creditor; **(b)** the initial Terms of Trade for Oppo ("TOT-2") exchanged by email dated 11<sup>th</sup> September, 2014 by the Operational Creditor and confirmed by the Corporate Debtor by email dated 23<sup>rd</sup> September, 2014 which was further revised by email dated 29<sup>th</sup> April, 2015 between the parties and **(c)** various Purchase Orders raised by the Corporate Debtor from time to time, at his various sites. The Operational Creditor had also informed the Corporate Debtor about the Revision in TOT-2 relating to the revised payment terms on 'Payment Basis' with effect from 01.05.2015. According to the Petitioner, the Debt amount is outstanding from 09<sup>th</sup> April, 2016 to 07<sup>th</sup> February, 2017.

2.2 The Operational Creditor has pursued the matter with the Corporate Debtor for making the payment by way of several emails between the period May, 2017 to August, 2017, however, the Corporate Debtor has never 'denied' or 'disputed' the alleged outstanding dues. The Corporate Debtor had also made few payments between April 2016 to October 2017 towards certain specified Invoices which were adjusted towards the then outstanding due of certain specific invoices.

2.3 The total amount of Debt claimed to be in default on account of supply/delivery of goods/products is as follows:-

(a) mobiles of Geonee brand for a sum of INR 3,57,48,143/- and

(b) mobiles of Oppo brand for a sum of INR 2,92,78,008/-, aggregating to INR 6,50,26,151/-, out of which the Debt of ₹6,49,57,484/- is undisputedly admitted by the Corporate Debtor. The balance amount of ₹68,667/- (6,50,26,151 minus 6,49,57,484 = 68,667) is still to be reconciled by the Corporate Debtor. Based on the understanding exchanged between the Operational Creditor and Corporate Debtor, the payment was required to be made within 30 days for Geonee and within 45 days for Oppo, both on 'payment basis', from the date of delivery of the products/goods.

3. The Operational Creditor has served the necessary Demand Notice on the Debtor under section 8 of The Code on 25.09.2017 demanding payment of the unpaid Operational Debt. The Notice is stated to be delivered to the Corporate Debtor on 27.09.2017. A scanned copy of the Demand Notice was also sent on 29.09.2017. Despite



this, no 'dispute' was ever raised by the Debtor nor made payment of the outstanding amount.

4. A Bank Certificate dated 17.10.2017 from ICICI Bank, MIDC Branch, certifying Bank Statement is also placed on record.

5. The post-dated cheques issued to the Operational Creditor were also not honoured as it was reportedly 'stopped by the drawer'. The Operational Creditor therefore filed a complaint u/s 138 r/w 141 of the Negotiable Instrument Act, 1881 before the Learned Metropolitan Magistrate 48<sup>th</sup> Court at Andheri, Mumbai, which is pending against the Company and its Directors.

### **FINDINGS**

6. Merits of the Petition under consideration filed by the "Operational Creditor" has duly been considered, according to which, the Debtor Company Viz. M/s. The Mobile Store Services Ltd. is an "Operational Debtor" having a liability of Debt amount of ₹6,50,26,151/- as indicated in Part-IV of Form No.5. Necessary Demand Notice under section 8 of The Code has also been served upon the Corporate Debtor on 25.09.2017.

7. On perusal of all the documents I came to conclusion that, the Operational Creditor has supplied the goods as ordered by the Corporate Debtor and raised the invoices to that effect. I have further observed that the Debtor had made few payments between April 2016 and October 2017 towards certain specified Invoices which were adjusted towards the then outstanding due, meaning thereby that the Debtor had acknowledged the supply of the goods and as a consequence also admitted the Trade Liability. The inaction on the part of the Corporate Debtor even after receipt of the Demand Notice proves that he is not interested to settle the claim of the Operational Creditor/Petitioner.

8. Considering the voluminous evidences establishing the outstanding Debt and totality of the facts and circumstances, this Petition now under consideration deserves to be "Admitted".

9. The Petitioner has proposed the name of the Interim Resolution Professional Mr. Harshal Anilkant Shah, Address: B-3/18, Scindia Society, Off Sir M.V. Road, Andheri



(East), Mumbai – 400 069, email : [Harshul1979@gmail.com](mailto:Harshul1979@gmail.com) Reg. No. IBBI/IPA-002/IP-N00131/2017-18/10347. The so appointed Insolvency Professional has furnished the requisite Certificate on Form No.2 dated 17.10.2017 that no Disciplinary Proceeding is pending against him. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

10. The appointed IRP shall perform the duties as defined under section 18 of the Code. He shall also submit the resolution plan for approval as prescribed under section 31 of the Code. Having considered the totality of the circumstances and the Petition for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed *supra*, it is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

11. Accordingly, this **CP 1604/I & BP/NCLT/MAH/2017** stood Admitted.

12. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-

**M.K. SHRAWAT**  
Member (Judicial)

Date : 20.03.2018.  
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