

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**C.P. No. 1557/IBC/NCLT/MB/MAH/2017**

**Under Section 9 of IBC, 2016**

**In the matter of**

M/s. F1 Info Solutions Private Limited

...Applicant/Operational Creditor

**V/s.**

Appsdaily Solutions Private Limited

...Respondent/Corporate Debtor

Order delivered on 23.10.2018

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Shri Hara Kara, Adv ; Vrinda Tanna Adv. i/b. Interjuris

For the Respondent: Shri. T.J Pandian Adv., Pandian & Associates

*Per Ravikumar Duraisamy, Member*

**ORDER**

1. M/s F1 Info Solutions & Services Pvt. Ltd (Operational Creditor) submitted an Application to initiate Corporate Insolvency Resolution Process (CIRP) against Appsdaily Solutions Pvt. Ltd. (Corporate Debtor) for failure to pay outstanding dues.
2. F1 Info Solutions & Services Pvt. Ltd, was incorporated under the provisions of the Companies Act, 1956, having its registered Office at B-3, Ground Floor, Ashok Guruprasad CHS, Hanuman Road, Vile

Parle (E), Mumbai – 400057 with Identification Number CIN: U72300MH2012PTC231222.

3. Appsdaily Solutions Private Limited (Corporate Debtor) with Identification Number CIN: U64200MH2008PTC187859 is involved in the business of manufacturing and marketing of mobile phones and applications through various retailers across India.
4. As per the demand notice dated 23.05.2017 issued by the Operational Creditor under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, total amount of debt was ₹1,00,11,945/- (Rupees One Crore Eleven Thousand Nine Hundred Forty Five only) out of which unpaid invoice amount was ₹ 81,18,164 and short payment to be paid was ₹ 18,93,781 along with interest @ 24 % per annum on the amount of Rs.1,00,11,945/- till the date of actual realization. The date from which the debt fell due was from the month of April 2015.
5. Operational Creditor submitted the following list of documents along with this application in order to prove the existence of operational debt and the amount in default:-
  - i. Statements of unpaid invoices and short-payment of invoices (Annexure E1- Page Nos. 71-144)
  - ii. Copies of unpaid invoices raised by the Operational Creditor to Corporate Debtor (Annexure F-Page Nos. 145 to-763)
  - iii. Copies of the email communication between the Operational creditor and corporate debtor including admission of its liability by the Corporate Debtor.

- iv. Copy of Bank statement of Operational creditor in relation to the Corporate Debtor for the period 01.04.2015 to 30.11.2016 evidencing receipt of payments/ part-payment of invoices.
  - v. Copy of the letter dated 18<sup>th</sup> January, 2016 demanding payment of outstanding dues.
  - vi. Copy of the Statutory Notice dated 23.05.2017.
6. The claim of the Operational Creditor is within time limit and not barred under the laws of Limitation.
7. The Operational Creditor is engaged in the field of providing services, servicing of multi-brand mobile handsets including repairing damaged mobile handsets. The Operational Creditor states that in the year 2014, the Corporate Debtor had approached the Operational Creditor and expressed a wish to avail the services of the Operational Creditor for providing service of multi-brand mobile handsets including repairing of damaged mobile handsets of various makes like Apple iPhone, Samsung and Sony and assisting customers of Corporate Debtor in initiating the insurance process for the same. The Corporate Debtor came up with a business model wherein while selling the mobile handset to its customers, it was also selling insurance policy covering damage of handsets, hence needed service of Operational Creditor or rendering services towards damaged mobile handsets to its customers.
8. The Operational Creditor states that the agreed process of providing services to customers of the Corporate Debtor by the Operational Creditor was that when the customer carrying the damaged mobile handset would walk in to the service centre of Operational Creditor, the staff of service centre of operational creditor after verifying the credentials of the customer of Corporate Debtor would accept the

damaged handset along with other documents like the purchase invoice, filled up insurance claim form, etc. and would then enter the details of the same in the AppsDaily portal provided by the Corporate Debtor and after the approval of the repair work to be carried on the handset by Corporate Debtor, the service centers of Operational Creditor carried out the service for such handset and invoices were raised by Operational Creditor to the Corporate Debtor for each such case of customer service provided by the Operational Creditor. It was agreed between the parties that the Operational Creditor through its service centers across India shall render aforesaid service to the customers of Corporate Debtor and shall raise invoice w.r.t the service provided to the customers of Corporate Debtor.

9. The Operational Creditor states that on the basis of negotiations and discussions, the Operational Creditor agreed to provide services to the Corporate Debtor and on the basis of that, the Corporate Debtor inducted the Operational Creditor as a vendor and thereafter the Operational Creditor continued to provide service to the Corporate Debtor based on customer service cases logged in on the portal of Operational creditor from the year 2014 to 2016 and accordingly raised invoices to Corporate Debtor.
10. The Corporate Debtor made payments from time to time based on invoices of Operational Creditor until March 2015, but thereafter the payments were irregular and there were a lot of pending cases to be cleared for payments by Corporate Debtor as well as short payments were received for several of the invoices. Hereto annexed and marked as “Annexure E”, “Annexure E-1” and “Annexure F-Colly” are statements of the pending invoices and deficit payment (short payment) invoices along with copies of unpaid invoices raised by the Operational Creditor to Corporate Debtor respectively.

11. The Operational Creditor states that as mentioned hereinabove the Operational Creditor has raised numerous invoices for the services rendered by it to the Corporate Debtor. The Operational Creditor further states that even after repeated reminders and several follow ups on its part, the Corporate Debtor cleared only a part of the invoices raised by the Operational Creditor and a major chunk of the invoices are still outstanding. The Operational Creditor, time and again requested the Corporate Debtor to clear its outstanding dues at the earlier as non-payment thereof was affecting the Operational Creditor's cash flows.
12. The Operational Creditor states that inspite of repeated reminders and requests from its side for timely repayment of its dues, the Corporate Debtor, turned a blind eye to the Operational Creditor's requests which substantiate the fact that the Corporate Debtor is unable to pay their legitimate crystallized debt. The Operational Creditor states that, thereafter it issued a letter dated 18<sup>th</sup> January, 2016 addressed to the Corporate Debtor thereby highlighting the fact that an amount of Rs 81,18,164/- (Rupees Eighty One Lacs Eighteen Thousand One Hundred and Sixty Four Only) was appearing as outstanding in the books of the Operational Creditor and once again requested the Corporate Debtor to release the outstanding payment at the earliest.
13. The Operational Creditor states that inspite of issuing the letter dated 18<sup>th</sup> January, 2016 as also numerous emails and telephonic follow ups as stated hereinabove, the Corporate Debtor neither provided any suitable reply with respect to the reasons of delay in releasing the payments nor made any attempt to clear the balance payments of the Operational Creditor including the short payments of invoices, rather kept making empty promises without adhering to its words. The Operational Creditor further states that thereafter pursuant to the Insolvency & Bankruptcy Code, 2016 and Rules and Regulations there

under, the Operational Creditor, through its Advocates, M/s. Das Associates, Advocates & Legal Consultants, issued a Demand Notice/Invoice demanding payment under the Insolvency & Bankruptcy Code, 2016 dated 23<sup>rd</sup> May, 2017 thereby calling upon the Corporate Debtor to pay the Operational Debt aggregating to Rs.1,00,11,945/- (Rupees One Crore Eleven Thousand Nine Hundred Forty Five only) within 10(Ten) days from the receipt of the letter failing which the Operational Creditor shall initiate a corporate insolvency resolution process against the Corporate Debtor.

14.The Operational Creditor states that the Corporate Debtor after receipt of statutory notice has not bothered to reply nor has made any payment as demanded under the statutory notice dated 23.05.2017.

15.A statement of Bank Account where deposits are made or credits received normally by the Operational Creditor in respect of the debt of the Corporate Debtor, Bank Statement of Operational Creditor where credits are normally received from the Corporate Debtor was submitted. Kotak Mahindra Bank vide its letter dated 02.11.2017 confirmed that Customer F1 Info Solutions & Services Pvt. Ltd. holding a current account with us since 21.06.2012. In the said account number 4311205062 there has been no receipts of fund transfer from Apps Daily Solutions Pvt. Ltd (APPSDSOL) from 01.10.2016 till 02.11.2017.

16.The matter was posted before the Bench for the first time on 04.12.2017 and subsequently posted on various dates viz 12.12.2017, 03.01.2018, 23.01.2018, 19.02.2018, 08.03.2018, 02.04.2018, 03.04.2018. The respondent/counsel for the Corporate Debtor did not appear for any of the hearings and no reply was submitted by the respondent/corporate debtor. During the hearing held on 08.03.2018,

the operational creditor submitted that the notice sent to the corporate debtor was returned undelivered with an endorsement “left”. Since the Applicant’s counsel has come forward to initiate substituted service by giving public notice in Newspaper, the Applicant was permitted to publish notice in two daily newspapers one in English language and another in vernacular language having wide circulation where the registered office of the company is situated and the Applicant shall file affidavit to this effect within one week before the next date of hearing.

17. The counsel for the operation creditor submitted an affidavit of substituted service confirming that a publication was issued in “The Free Press Journal” in English and in Navshakti in (Marathi) on 16.03.2018 intimating the date of hearing fixed before NCLT as 22.03.2018 and the same have been taken on record. Further, the counsel for the financial creditor submitted an affidavit of substituted service dated 30.07.2018, confirming that the financial creditor published the notice intimating about the next date of hearing in the matter in “The Free Press Journal” in English and in Navshakti in (Marathi) on 14.07.2018 intimating the date of hearing as 03.08.2018 and the same have been taken on record.
18. Subsequent to the substituted service, the corporate debtor has subsequently appointed an advocate and appeared for the first time, filed an undated Vakalatnama and Board Resolution, the same was taken on record.
19. During the hearing held on 09.10.2018, the counsel for both the parties appeared. The counsel for the corporate debtor candidly admitted that it could not pay the outstanding dues to the financial creditor because of its financial difficulties being faced by the corporate debtor. The counsel also submitted that no dispute in relation to the debt amount

claimed and did not wish to file any reply to the notice issued under IBC and agreed to initiate the CIRP process against the corporate debtor.

20. Operational Creditor has subsequently recommended Mr. Dilip Kumar Natvarlal Jagad as Interim Resolution Professional and the proposed IRP has also submitted his consent in Form No 2 dated 26.06.2018 having Registration No IBBI/IPA-001/IP-P00233/2017-18/10462, having Address at 803,304, Ashok Heights, Opp. Saraswati Apartments, Old Nagardas X Road, Gundavali, Andheri- East, Mumbai 400069, Email :- [dilipjagad@hotmail.com](mailto:dilipjagad@hotmail.com) and Phone No- 09821142587.

21. In view of the reasons mentioned above and the counsel for the corporate debtor himself admitted to initiate CIRP against the corporate debtor, we are satisfied that the Corporate Debtor has failed to pay its dues to Operational Creditor, debt & default exists and no dispute raised by the Corporate Debtor with regard to the debt amount and therefore it is a fit case for admission U/s 9 of I & B Code, therefore we admit this case by declaring moratorium U/s 14 of the Code with the following directions:

- I(a) that this Bench hereby prohibits 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 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.
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 23.10.2018 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

22. We also hereby appoint Mr. Dilip Kumar Natvarlal Jagad as Interim Resolution Professional.

23. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

24.The Registry is hereby directed to communicate this order to both the parties and the IRP immediately even by way of email/whatsapp.

Sd/-

**RAVIKUMAR DURAISAMY**  
**MEMBER (TECHNICAL)**

Sd/-

**V.P. SINGH**  
**MEMBER (JUDICIAL)**

Sec (PS)