

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 202
(IB)-142/ND/2023

IN THE MATTER OF:

Prama Hikvision India Pvt. Ltd.

Reg. Office at: 2nd Floor, Siddhivinayak Arcade,
Akurli Cross Road No.1, Near Kandivali Station,
Kandivali East, Mumbai 400101, Maharashtra

**... Applicant/
Operational Creditor**

Versus

PMS-COM-PRO (India) Pvt. Ltd.

Reg. Office at: 39, Second Floor, Shahpurjat,
Near Khel Gaon, New Delhi- 110049

**... Respondent/
Corporate Debtor**

Under Section: 9 of the IBC, 2016

Order delivered on: 29.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Liquidator :

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

It is the case of the Applicant espoused in the captioned application filed under Section 9 of IBC, 2016, between June, 2019 to February 2020, the Corporate Debtor placed various purchase orders on the Applicant for supply of Security Surveillance Products. Between 29.06.2019 to 29.02.2020, the Operational Creditor raised various invoices on Corporate Debtor for different amounts, as consideration for the supply of goods. When the payment was

not made, between 05.12.2020 to 17.01.2022, the Applicant sent emails to the Corporate Debtor asking him for clearance of the outstanding receivables from them. On 03.02.2022, the Applicant sent a legal notice to the Corporate Debtor demanding the outstanding amount of operational debt i.e. Rs. 1,29,61,996/-. Thereafter, a Demand Notice in Form 3, prescribed under Rule 5(1)(a) of the I&B (Application to Adjudicating Authority) Rules, 2016 was served by the Applicant upon the Corporate Debtor. Subsequently, the Operational Creditor i.e. Applicant received part payment of Rs. 8,00,000/- from the Corporate Debtor, by way of transfer into its Bank Account. Later, on 29.07.2022 the Operational Creditor i.e. Applicant adjusted Rs. 12,54,588/- by way of issue of credit note to the Corporate Debtor. Finally, on 20.12.2022, the Corporate Debtor issued some cheque in favor of the Applicant.

2. That the Corporate Debtor/Respondent has defaulted to pay an amount of Rs. 1,09,08,588/- to OC, which is beyond the threshold limit of Rs. 1 crore stipulated in Section 4 of IBC, 2016 and no reply to the demand notice has been given by the Corporate Debtor. Part IV of the application reads thus:

PARTICULARS OF OPERATIONAL DEBT		
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due:	(a) Total amount of debt: Rs.1,09,08,588/- (Rupees One Crore Nine Lacs Eight Thousand Five Hundred and Eighty-Eight Only). (b) The Corporate Debtor had approached the Operational Creditor for purchase of various types of security surveillance products such as camera, DVR, etc. (Hereinafter referred to as "Security Surveillance Products") from the

Operational Creditor (in relation to the total amount of debt due) and placed various purchase orders on the Operational Creditor.

(c) Pursuant to the above said purchase orders, the agreed Security Surveillance Products were supplied by the Operational Creditor to the Corporate Debtor which were accepted without any demur as to the price or quantity or quality thereof.

(d) The Operational Creditor has supplied the Security Surveillance Products to the Corporate Debtor against which default is made by the Corporate Debtor in due payment of amount in



respect of invoices raised from June 29, 2019 to February 29, 2020.

(e) The total amount outstanding against the invoices raised on the Corporate Debtor amounted to Rs.1,29,61,996/- (Rupees One Crore Twenty-Nine Lacs Sixty-One Thousand Nine Hundred and Ninety-Six Only) as on 11th March, 2022 and the Operational Creditor has received/adjustment of part payment of Rs.20,54,588/- from the Corporate Debtor comprising of Rs.8,00,000/- by way of transfer into the bank account of the Operational Creditor and Rs.12,54,588/- by way of issue of credit note

by the Operational Creditor to the Corporate Debtor. Further, the Corporate Debtor has given the cheques for further part payment which were dishonoured subsequently, thereby, the Bank charges of Rs.1,180 also became due from the Corporate Debtor, thereby the outstanding amount due and payable from the Corporate Debtor amounts to Rs.1,09,08,588/- as on date. The Invoices raised by the Operational Creditor on the Corporate Debtor are produced herewith as “Annexure-4 Series”.

(f) The Operational Creditor after submission of the aforesaid Invoices to the Corporate Debtor sent E-mails to the Corporate Debtor on 5th December

2020, 18th January 2021 and 17th January 2022 requesting for the outstanding receivables from them. The E-mails and correspondences are produced herewith as “Annexure-5 Series”.


(g) Thereafter, the Operational Creditor was constrained to issue a Demand Notice in Form No. 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor demanding payment under the Insolvency and Bankruptcy Code, 2016 for the outstanding dues of Rs.1,29,61,996/- (Rupees One Crore Twenty-Nine Lacs Sixty-One Thousand Nine Hundred




and Ninety-Six Only). The Demand Notice in Form No.3 along with Form of Notice in Form No.4 dated 11th March 2022 were sent by Registered Post Acknowledgement Due (RPAD) / Speed Post on 15th March 2022 and were delivered on or about 19th March 2022. The Operational Creditor had also sent a Legal Notice dated 3rd February 2022 by Registered Post Acknowledgement Due (RPAD) on 5th February 2022 to the Corporate Debtor and was delivered on or about 7th February 2022. The copies of the Demand Notice and the Legal Notice are collectively produced herewith as “Annexure-6 Series”.



(h) In response to the above said E-mails and the Demand Notice / Legal Notice, the Operational Creditor has received/adjustment of part payment of Rs.20,54,588/- from the Corporate Debtor comprising of Rs.8,00,000/- by way of transfer into the bank account of the Operational Creditor and Rs.12,54,588/- by way of issue of credit note by the Operational Creditor to the Corporate Debtor. Further, the Corporate Debtor has given the cheques for further part payment which were dishonoured subsequently, thereby, Bank charges of Rs.1,180 also became due from the Corporate Debtor, thereby the outstanding

		<p>amount due and payable from the Corporate Debtor amounts to Rs.1,09,08,588/ as on date.</p> <p>(i) The Corporate Debtor after making of the above said partial payments/adjustments has again failed to pay the balance amount of Rs. 1,09,08,588/- (Rupees One Crore Nine Lacs Eight Thousand Five Hundred and Eighty-Eight Only) and neglected to do so.</p> <p>(j) The Corporate Debtor has failed to make the payments of the outstanding dues of Rs.1,09,08,588/- despite having served Demand Notice to them and thus debt fell due on account of non-payment of invoices (“Annexure-4</p>
		<p>Series”) raised by PRAMA HIKVISION INDIA PRIVATE LIMITED for supply of Security Surveillance Products.</p> <p>(k) The first invoice out of said debt fell due on 29th July 2019 onwards.</p>
2.	<p>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of</p>	<p>(a) The total amount claimed to be in default is Rs. 1,58,30,827/- (Rupees One Crore Fifty-Eight Lacs Thirty Thousand Eight Hundred and Twenty Seven Only) comprising of;</p> <p>(i) Interest of Rs.49,22,239/- (Rupees Forty Nine Lacs Twenty Two Thousand Two</p>

<p>default in tabular form)</p>	<p>Hundred and Thirty Nine Only) calculated at 12% p.a. on Rs.1.09.08,588/- being the total outstanding amount under various invoices (“Annexure-4 Series”) from the date on which each invoice become due to 31st December 2022;</p> <p>(ii) Pending and outstanding principal amount due of Rs. 1,09,08,588/- (Rupees One Crore Nine Lacs Eight Thousand Five Hundred and Eighty-Eight Only).</p> <p>(b) The amount claimed in default under the aforementioned Invoices first invoice fell due on 29th July 2019 onwards.</p>
	<p>(c) The working for computation of default / amount due and the dates of default in tabular form is produced herewith as “Annexure-7”.</p>

3. The reading of Section 9(5) of IBC, 2016 would reveal that if it is found by this Tribunal that the Operational Creditor could raise invoices demanding the operational debt, and a demand notice is found to be served by it and the application is complete, in the event of there being no disciplinary action pending against the RP suggested by the Operational Creditor, this Tribunal may admit the application. Section 9(5) of IBC, 2016 reads thus:

“9. Application for initiation of corporate insolvency resolution process by operational creditor. –

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no 3[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if -

(a) the application made under sub-section (2) is incomplete;

(b) there has been 4[payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility;

or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.”

4. In the present case, as is apparent from Part IV of the application, the amount of debt is above 1 crore, the demand notice served by the Applicant upon the Corporate Debtor is enclosed as Annexure 6 to the Application and the Copies of Invoices raised by the Applicant on the Corporate Debtor are there available on record as Annexure 4 (page 36 to 97). As the CD did not file any reply either to demand notice or to this application, there is no material before us to suggest any pre-existing dispute between the parties. The Resolution passed by the Board qua the Applicant regarding filing of the

present application is there on record as Annexure 3 to the Application. Regarding the status of RP, the Applicant has not suggested the name of any IP to be appointed as IRP. In terms of the provisions of Section 16 of IBC, 2016, when the Applicant (Creditor) has not suggested the name of any IP to be appointed as IRP, this Tribunal may ask the IBBI to nominate some IP for the purpose. Nevertheless, the IBBI has made a panel of IPs available to this Tribunal, from which any IP may be appointed as IRP qua the CIRP order to be commenced in respect of the Debtor (Operational/Financial).

5. Since the requirement of section 9 (5) as also that of Regulation 2 (3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is satisfied, **we are left with no option but to admit the present petition.**

Ordered accordingly.

6. **In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (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.

7. Mr. Mohd Nazim Khan, having Registration No. IBBI/IPA-002/IP-N00076/2017-18/10207 with (e-mail id-nazim@mnkassociates.com) is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that Mr. Mohd Nazim Khan shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

8. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

9. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

10. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)