

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
[Through Physical hearing/VC Mode (Hybrid)]

CP (IB) No.43/BB/2023
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s. K L Hi-Tech Secure Print Limited

Plot No.23, Anrich Industrial Estates,
IDA Bollaram, Sangareddy Dist, Telangana – 502325

... Operational Creditor

Versus

M/s. G A Software Technologies Private Limited

#74, 3rd Floor, Prestige Ferozes Buildings
Cunningham Road, Vasant Nagar,
Bangalore- 560052

... Corporate Debtor

Order delivered on: 30/04/2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Tushar Tyagi, Ms Punthi Shah
For the Respondent : Ms Karishma N, Ms Suja Surendran

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 23/11/2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **M/s KL Hi-Tech Secure Print Limited** (for

brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Professional Process against **M/s. GA Software Technologies Private Limited** (hereinafter referred as 'Corporate Debtor'/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 1,83,54,579/-. The date of default mentioned in the Part IV of Form 5 is 26/02/2019. which is also there in the Record of Default in Form D issued by NESL. Affidavit U/s 9(3) (b) was placed at page 125 of CP, while Demand Notice under Section 8(1), Form 3 was attached at Page 75 onwards.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
 - i. The Operational Creditor entered into an OMR Based Offline Examination Agreement with the Corporate Debtor on 25/01/2019 for the work pertaining to the offline examination project for Maharashtra State Council wherein Operational Creditor was responsible for printing black OMR and attendance sheet along with its scanning, packaging delivery and transportation.
 - ii. Thereafter, the Corporate Debtor defaulted on payment with respect to three purchase orders made by the Corporate Debtor upon the Operational Creditors on 26/02/2019. The Operational Creditor on several occasions through emails from 11/05/2022 to 17/07/2023 requested for payment of the said Invoices, however the Corporate Debtor did not heed to the requests of the Operational Creditor.
 - iii. Demand Notice sent by OC is annexed as Annexure A-12 Page 75-97 of Petition. The Demand Notice was sent twice through RPAD and both times the Demand Notice was undelivered through RPAD with an acknowledgement on returned postal cover reflecting "LEFT" (First Postal Reciept dated 12/04/2022 at Page 98, First Returned Postal Cover dated 16/04/2022 at Page 100-101 Petition, Second Postal Receipt dated 22/04/2022 at

Page 102, Second Returned Postal Cover dated 25/04/2022 at Page 102-104). Demand Notice was served vide e-mail dated 12/04/2022 to the director of the Corporate Debtor. Thus in terms of Rule 5(2)(b) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 the Demand Notice can be served on the e-mail ID of the director of the Corporate Debtor, which is complied herein.

- 3.** On 11/07/2023, the Respondent filed its statement of objection, vide Diary No: 1032 and contended as under:
- i. It is the claim of the Corporate Debtor that there was grave insufficiency of service by the Operational Creditor, due to which the Corporate Debtor has suffered grave loss to the Company and damages to the reputation of the Corporate Debtor. The Deficiency in services were disruptive and grave enough that MSCE time and again complaint to the Corporate Debtor vide its letter dated 11/03/2019 and imposed heavy penalties further blacklisted the Corporate Debtor from all existing projects on 01/06/2020.
 - ii. In total a sum of Rs 1,40,74,454/- was suffered by the Corporate Debtor, solely due to the sub-par services provided by the Operational Creditor. In light of the invocation of Clause C of the Agreement, the Corporate Debtor saw it fit to not fully clear the invoice raised by the Operational Creditor.
 - iii. The Respondent had notified the Petitioner of the fact of the issues raised by the MSCE, and issued an email dated 16/03/2019. It is notable at this juncture that the subsequent invoices raised by the Petitioner to the Respondent dated 17/05/2019, 22/08/2019, 02/08/2019 were all cleared without any demur.
 - iv. Further, it is submitted that since the issue related to the above dispute was still going on, the Debtor abided to the statutory regulations as per the advise of the auditors and entered the ongoing claim by the Operational Creditor and declared the

amount of Rs 1,83,54,579/- as 'payable' to the Creditor in the Balance Sheet. Therefore, the facts and circumstances in the present case clearly indicate that there was no intention by the Respondent-Debtor of admitting the amount of Rs 1,83,54,579/- as legally admissible debt within their books. Hence, the balance sheet entry referred cannot be considered as an admission of debt, for the purposes of extending limitation. The Corporate Debtor has relied on the judgement of *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal AIR 2021 SC 5249*.

- v. The Operational Creditor has also attempted to subvert the mechanism of Arbitration contained within Clause 3B of the Agreement dated 25/01/2019. Instead of travelling down the set path of dispute resolution, the Operational Creditor has chosen to inappropriately and unfairly approach this Hon'ble Tribunal, despite the existence of the operational debt itself being contested.
4. The Ld Counsel for the Respondent has filed the email dated 16/07/2019 and MSCE letter vide Affidavit bearing Diary No.5792 dated 17/11/2023 and the same was taken on record.
5. The Learned Counsel for the Petitioner filed its rejoinder vide Diary No:3989 dated 31/07/2023 and written submission vide Diary No: 653 dated 30/01/2024 and contents as under:
 - i. Till the time of filing of this Petition, the Petitioner had not been made aware of any issue pertaining to the service of the Letter dated 16/02/2019 from the Maharashtra State Council, addressing certain issues. It is crucial to note that the Respondent never communicated this letter to the Petitioner.
 - ii. The Petitioner has relied on the Agreement dated 25/01/2019, in 'Clause 1b', which explicitly states that any defects in the service shall be remunerated by the Respondent. Further as per 'Clause B' & 'Clause D' any disputed had to be communicated through written Notice, the Respondent neither furnished any written notice nor allowed any opportunity to rectify such issues.

Further, the 'Clause C' (*) clearly stipulates that any penalty shall be mutually discussed between the parties based on the MSCE norms. However, in the present case the Respondent unilaterally imposed penalty of Rs 1,40,74,454/-

- iii. The Respondent has failed to provide any evidence to show existence of quality concerns or even to show that there were to communications between the parties regarding the issue of quality of service. In this regard the Petitioner have relied on the judgments of NCLT Jaipur in the matter of *Ankit Traders v. Super Shine Agrofoods Private Limited CP No. (IB) 17/9/JPR/2022*, order dated 01/06/2023 and *Indofil Industries Limited v. Welfare Infrastructure Private Limited CP(IB)-28/9/JPR/2020*.
- iv. The Petitioner has been classified as a sundry creditor in the copy of the account statement of the Respondent for the financial year 2019-2020 in their objections, which in itself is as acknowledgment of debt.
- v. Further, the outstanding amounts encompassing all invoices, an outstanding principal amount of Rs 1,83,54,579/- and an interest amounting to Rs 1,44,64.535/- remains unpaid. The partial payment received can be attributed to the overall outstanding dues, and there exists no basis for the Respondent to assert the specific invoices against which these payments were allocated.
- vi. Petitioner herein denies for want of knowledge that the Respondent had deposited an amount of Rs 60,00,000/- (Rupees Sixty Lakhs Only) as performance guarantee with MSCE, owing to the negligence of the Petitioner.
- vii. Further, it is the contention of the Petitioner that he has successfully demonstrated the presence of the debt and default, as well as the absence of pre-existing dispute as required by the relevant Code. Reliance is placed on the judgement of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, wherein it was held that the grounds for rejection of a Section 9

petition are exclusively limited to situation where the application is incomplete, there is an absence of debt or default or a pre-existing dispute. Further, reliance is placed on *Drip Capital Inc v. Concord Creations(India) (P.) Ltd SCC OnLine NCLAT 3681*, wherein the Hon'ble Appellate Tribunal had clearly pointed out that the mere fact that corporate debtor was solvent isn't a sufficient ground alone to reject a CIRP plea and the Hon'ble Appellate Tribunal overturned the decision of the Hon'ble Adjudicating Authority.

6. The Counsel for Petitioner vide Diary No 3668 & 572 dated 11/07/2023 & 29/01/2024 respectively, has filed memo in compliance with Order dated 30/05/2023 to satisfy the Limitation and the same is taken on record.
7. The Counsel for the Respondents have filed Written Submissions vide Diary No. 975 dated 13/02/2024, wherein it is reiterated that there were several issues with the quality of service which was communicated by the MSCE through two letters dated 11/03/2019 and 14/03/2019. The same was communicated to the Operational Creditor vide email letter dated 16/03/2019. Hence owing to the above dispute, the invoice dated 26/02/2019 was cleared and it is clear that the Petitioner is not entitled to receive the amount arising out of the invoice dated 26/02/2019. Moreover, the present petition is liable to be dismissed due to limitation, as the reliance of Balance Sheet for the FY.2019-20, wherein it the name of the Financial Creditor herein reflects as sundry debtor is not liable to be admitted as such entry in balance sheet was only due to accounting purposes, and since the dispute is yet to be resolved the same cannot be considered as an admission extending the limitation under Section 18 of the Limitation Act. Further, it is contested by the Respondent that the Corporate Debtor is healthy, with several employees on its payroll and several ongoing contracts and sufficient income and assets to repay its debts cannot possibly be termed as 'insolvent.' The Operational Creditor herein has filed the instant petition as a tool of recovery mechanism which would

fundamentally defeat the very purpose of the implementation and enforceability of the IBC, 2016.

8. We have pursued the records available and also heard Learned Counsels based on which we observe the following:
9. The main contention of the Respondent herein is the existence of dispute. On perusal of Letter by MSCE dated 11/03/2019 and 14/03/2019, it is evident that there was clear lack of service provided to the MSCE, following which MSCE has cancelled the services of the Corporate Debtor and imposed various penalties vide its Order dated 01/06/2020. However, in the present case it is observed that the Corporate Debtor herein has failed to provide details/documents evidencing any communication conveyed to the Operational Creditor informing about the lack of service. The email dated 16/03/2019 does not reflect any details of Operational Creditor or related persons as the recipient of the said mail and hence the same cannot be considered as a valid communication. Reliance is placed on the judgement of *Writers and Publishers Pvt. Ltd. Vs. M/s Oriental Coal Corporation, (2022) ibclaw.in 1040 NCLAT*, wherein it was held that, “*Dispute, if any, has to be in existence prior to the issue of demand notice and should have been brought to the notice of the Operational Creditor which has clearly not happened in the instant case. This lends credulity to the stand taken by the Learned Counsel for Respondent No.1 that had genuine disputes been in existence, the Respondent No.2 would have articulated these disputes by responding to the demand notice and not remained silent.*” Thus, it is not a disputed fact that the Demand Notice was issued by Operational Creditor herein on 12/04/2022, even so the Corporate Debtor did not reply to the Demand Notice or bring it to the notice of the Petitioner regarding the claims of MSCE. Further, there are no documents brought on record to show that the services supplied by the Operational Creditor were of substandard quality and such an issue was not raised by the Corporate Debtor prior to the issue of demand notice under section 8 (1) of the IBC.

Accordingly, the claim of there being a pre-existing dispute in the case is not tenable.

10. Further, it is the contention of the Corporate Debtor that there were 4 invoices that were issued, however only the invoice of 26/02/2019 is not cleared to the effect of Rs 1,83,54,579 i.e the Default amount, due to the disputed claim. It is true that the Corporate Debtor has made various payments on various dates till 13/01/2021, however no documents/records have been produced to show that the payments made were towards a particular invoice and not towards the invoice dated 26/02/2019. Hence this contention of the Corporate Debtor is rejected. Therefore the threshold requirement of Rs. 1 Crore at the time of filing of Petition is fulfilled. This Tribunal has perused the invoices, record of default Form 'D' and the statement of accounts which has been attached along with the petition and the debt is established in this regard.
11. The Petition has been filed on 23/11/2022, considering the date of Default as 26/02/2019, mentioned in Form No. 5 and the part payment done by the Operational Creditor as on 13/01/2021, such part payment amounts to an acknowledgment of debt in view of the judgement dated 04.08.2021 of the Hon'ble Apex Court in the case of *Dena Bank Vs. C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 of 2020*. Since the part payment was made on 13/01/2021, the period of limitation allowable will be three years from the date of this part payment in accordance with the Section 18 of the Limitation Act, 1963. Since this Petition has been filed on 23/11/2022, therefore, it is within the period of Limitation.
12. Accordingly, this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing **CP (IB) No. 43/BB/2023 is admitted against** the Corporate Debtor GA Software Technologies Pvt Ltd and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, 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 Project of Corporate Debtor including execution of any judgment, decree or order in
- b. any court of law, tribunal, arbitration panel or other authority;
- c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- d. 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;
- e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- g. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

13. This bench appoints Mr. Ramamoorthi Srinivasan, Registration No IBBI/IPA-001/IP-P01163/2018-2019/11916, having registered

address: E 902, Mantri Tranquil, Off Kananakapura Road, ,Gubbalala ,Bangalore,Karnataka, 560061, .Contact No: 9888004981, e-mail: Usne902@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.

14. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
15. The Interim Resolution Professional shall after collation of all the claims received against GA Software Technologies Pvt Ltd of the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
16. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

(K.BISWAL)
MEMBER (JUDICIAL)