

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III

C.P. No. IB-761/(ND)/2018

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

SONY PICTURES NETWORKS INDIA PVT. LTD.

Registered office at:

4th Floor, Interface Building No. 7,
Off Malad Link Road, Malad West,
Mumbai – 400064.

...Applicant

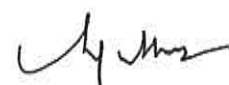
VERSUS

ORTEL COMMUNICATIONS LTD.

Registered office at:

B-7/122A, Safdarjung Enclave,
New Delhi – 110029.

...Respondent



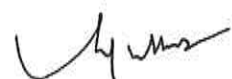
Coram:

**R.VARADHARAJAN,
HON'BLE MEMBER (JUDICIAL)**

**DR. V.K. SUBBURAJ,
HON'BLE MEMBER (TECHNICAL)**

Counsel for the Petitioners: Mr. Kunal Tandon, Advocate

Counsel for the Respondent: Mr. Virender Ganda, Mr. Pawan, Mr. Anuj,
Mr. Ayandeep Mishra, Advocates



ORDER

Date:27.11.2018

1. The above application has been filed under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (“the Code”) by Sony Pictures Network India Pvt. Ltd. (“Applicant”) against Ortel Communications Ltd. (“Respondent”). The transaction leading to filing of the present application as reflected in the application is stated to be as under:

- a. The Respondent is a Multi System Operator and is engaged in the business of retransmitting signals of TV channels supplied to it by the Operational Creditor and other broadcasters in the areas of Odisha, Telangana, Andhra Pradesh, Madhya Pradesh and Chhattisgarh authorized by the broadcaster i.e. the Applicant.
- b. For the purpose of the above transaction the parties entered into multiple Subscription Agreements for various areas for different time periods - 01.04.2017 to 31.03.2018 and 01.07.2017 to 31.03.2018.
- c. The Applicant issued a number of disconnection notices to the Respondent in 2017 as well as 2018 under Regulation 6(1) and 6(5)

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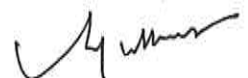


of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Systems) Regulations, 2012, inter-alia for non-payment of the subscription fee due to the Applicant.

- d. In March 2018 the Respondent issued 52 cheques to the Applicant but 50 of those cheques were dishonored, after which the Applicant issued a notice on 04.05.2018 under Section 138 of the Negotiable Instruments Act, 1882.
- e. Thereafter, a demand notice under Section 8 of the Code was issued by the Applicant to the Respondent on 10.05.2018.
- f. The present Respondent i.e. Ortel Communications filed petition bearing no. 190 of 2018 before the Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") on 11.05.2018 but the TDSAT refused to grant interim protection against the notice of disconnection to the Respondent on 15.05.2018.
- g. On 19.05.2018 the Respondent replied to the Section 138 notice dated 04.05.2018 and on 25.05.2018 the Respondent replied to the Section 8 notice dated 10.05.2018.
- h. On 26.05.2018 the Applicant disconnected the Respondent's signals.



- i. The Applicant filed a complaint case under the Negotiable Instruments Act, 1882 on 07.06.2018.
 - j. Thereafter, the Applicant filed the present application claiming Rs.11,94,85,181 as the amount in default.
2. The Ld. Counsel for the Respondent, on 10.09.2018, submitted that the Respondent is not in the position to pay the due amount and that the Corporate Insolvency Resolution Process (“CIRP”) of the Respondent may be initiated. On 13.09.2018 the Respondent filed an affidavit through its President and Chief Executive Officer stating that the due to low margin, fall in customer base and high interest cost, the Respondent is facing financial difficulties due to which the Respondent has defaulted in making payment of Rs. 11.94 crores to the Applicant and that the Respondent consents to the initiation of CIRP. A board resolution supporting the affidavit has also been filed by the Respondent.
3. Subsequently on 25.09.2018 the Respondent filed another affidavit stating that in addition to the items prescribed under Section 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (“CIRP Regulations”) i.e.



electricity, water, telecommunication services and information technology services, the services of pay channels, conditional access systems, video links and internet bandwidth and its links are also essential services which should not be terminated or suspended or interrupted during the moratorium period under Section 14(2) of the Code so that the Respondent remains a going concern during the moratorium period.

4. In light of the specific admission of the Respondent regarding the default and consent to the initiation of the CIRP, the only question which survives for adjudication of the present application is whether pay channels, conditional access systems, video links and internet bandwidth and its links are essential services in terms of Section 14(2) of the Code and Regulation 32 of the CIRP Regulations and should the Tribunal issue directions in relation to supply of these services to the Respondent.
5. The Respondent submits that broadcasting services, conditional access system and video links are the key inputs for providing digital cable television services as the Respondent receives signals of television channels from the broadcasters, encrypts it through conditional access systems, carries it to different locations through video links and distributes to customers through its network and Set Top Boxes. The internet

bandwidth and point to point links are key essential inputs for providing broadband services, as the customers connected to the Respondent's network access to internet through these services.

6. The Respondent submits that the supply of the above services is important to maintain the Respondent as a going concern. It has been further submitted that during the quarter ending 30.06.2018 the Respondent has generated total revenue of Rs.31.70 crores and incurred total expenditure of Rs. 30.20 crores resulting in operational surplus of Rs.1.50 crores. This indicates that the Respondent's current level of income is sufficient to meet all operational expenses and as the operation will improve the Respondent is expected to generate some surplus and continue as a going concern capable of meeting all its operational expenses.
7. The Respondent also relied on two orders – *Canara Bank vs. Deccan Chronicle Holdings Limited*, C.P. No. IB/41/7/HDB/2017 and *Uttarakhand Power Corporation Ltd. vs. M/s ANG Industries Ltd.*, Company Appeal (AT) (Insolvency) No. 298 of 2017.
8. In *Deccan Chronicle* the Tribunal concluded that printing ink, printing plates, printing blankets, solvents etc are also covered under Section 14(2) and their supply will also be exempted under the provision. In *ANG*

Industries Ltd. electricity was treated as a service important for maintaining the corporate debtor as a going concern.

9. The Applicant objects to the Respondent's request on the ground that Reg. 32 of the CIRP Regulations postulates only those services as "essential supplies" that are not the direct input to the output produced or supplied by the corporate debtor. In other words, the services which are direct input to the out produced or supplied shall not form part of the term "essential services". For this purpose, the Applicant has placed reliance on an order of the present Tribunal namely *Parmod Yadav & Ors. vs. Divine Infracon Pvt. Ltd.* wherein it was observed that the term 'goods and services' used in the definition of operational debt must relate to direct input to the output produced or supplied of the corporate debtor.
10. We are inclined to agree with the Applicant's submission that essential goods and services referred to in Section 14(2) of the Code does not include goods and services which are direct input to the output produced by the corporate debtor. This is apparent from the plain language of Regulation 32 which classifies electricity, water, telecommunication and information technology services as essential only to the extent these are not direct inputs to the output produced. In view of the plain mandate of



the legislature, there does not appear a need to consider the orders passed by other benches of this Tribunal. Thus, the Respondent's plea that directions be passed in terms of Section 14(2) in relation to supply of pay channels, conditional access systems, video links and internet bandwidth and its links is rejected.

11. In the circumstances mentioned above this Tribunal is of the considered view that this application requires to be admitted and that Corporate Insolvency Resolution Process is required to be initiated against the Respondent.

12. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Anil Bhatia, with registration number IBBI/IPA-001/IP-P00587/2017-18/11027 (email – anilbhatia815@gmail.com, Mobile No. 9899224476) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such IRP named, specific consent is filed in Form 2 of the Rules in relation to specifically the Respondent and the Operational Creditor herein, and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016



are made within a period of one week from the date of this order. As a consequence of the application being admitted in terms of Section 9(5) of the Code moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Respondent:

- (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.

13. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

14. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code, reproduced below:

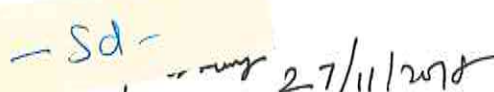
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

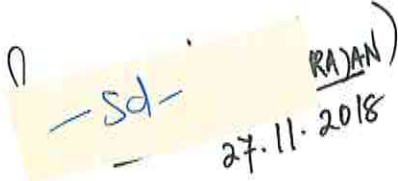
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of respondent under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

15. The Applicant is directed to pay a sum of Rupees Two Lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



16. Based on the above terms, the application stands admitted in terms of Section 9(5) of the Code and the moratorium shall come in to effect as of this date. A copy of the order shall be issued to the Operational Creditor as well as to the Respondent above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.


(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

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