

BENCH-II

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P NO.340/KB/2017

CORAM: Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 26th July, 2017, 10.30 A.M

Name of the Company	Progility Technologies Pvt Ltd -Vs- Ohio Cardiology Associates (India) Pvt Ltd		
Under Section	9 IBC		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1) Rahul Auddy, Advocate

{ Operational Creditor }

for R. Auddy
Rahul Auddy
26/7/17

Advocate on behalf of Operational Creditor is present.

C.P. No. 340/KB/2017 is admitted vide order passed on separate sheets

Sell-
(MANORAMA KUMARI)
MEMBER (J)

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

C.P.(I.B.)No.340/KB/2017

CORAM : Ms. Manorama Kumari, Hon'ble Member (J)

In the matter of

The Companies Act, 1956 and the Companies
Act, 2013.

And

In the matter of:

Section 9 of Insolvency and Bankruptcy Code, 2016.

And

In the matter of :

Progility Technologies Pvt. Ltd..... Petitioner

Vs.

OHIO Cardiology Associates India Pvt. Ltd.....Respondents

Judgement/Ordered delivered on: 26.07.2017

CORAM : MS. MANORAMA KUMARI, MEMBER (JUDICIAL)

For the Petitioners/Applicants:

Mr. Rahul Auddy, Advocate.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Ms. Manorama Kumari

Hon'ble Member (J)

Company Petition No.340/KB/2017

In the Matter of :

An application for initiating corporate insolvency resolution process by the operational creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016; against the Corporate Debtor.

In the Matter of :

1. PROGILITY TECHNOLOGIES PRIVATE LIMITED *formerly known as* Siemens Enterprise Communications Private Limited, Registered Office at 601, 6th Floor, 247 Park, Tower 'B', L.B.S. Marg, Vikhroli (W) Mumbai 400 083 and its Regional Corporate Office at Stesalit Tower, Block EP & GP, 5th Floor, Sector V, Salt Lake, Kolkata 700 091.

.....
APPLICANT COMPANY/OPERATIONAL
CREDITOR

Versus

2. OHIO CARDIOLOGY ASSOCIATES INDIA (P) LTD., a private limited company though incorporated under the provisions of the Companies Act, 1956, having its address at 59, Ballygunge Circular Road, Unit V, 7th Floor, Kolkata 700 019.

.... RESPONDENT COMPANY/OPERATIONAL CREDITOR.

ORDER

The petitioner, operational creditor namely company in the name and style of M/s Progility Technologies Pvt. Ltd. has filed an application Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code 2016 for (hereinafter called as "Code") initiating Insolvency Resolution Process against the respondent Company/ Corporate Debtor M/s Ohio Cardiology Associates India Private Limited, claiming that the petitioner is an Operational Creditor within the meaning of Section 5 (20) of the Code and the respondent owes operational debt to the petitioner within the meaning of Section 5 (21) of the Code. It has also been claimed that the respondent is a defaulter in making the payment of operational debt and the claim is within the period of limitation.

The Petitioner/Operational Creditor submitted that the respondent/Corporate Debtor had initially placed purchase order dated 25th June, 2013 to Siemens Enterprise Communications Pvt. Ltd. for supply and installation of data, voice, PA system and CCTV systems at its super speciality hospital site at DG-6, New Town, Rajarhat, Kolkata 700 156 for a total consideration amount of Rs.60,00,000/- inclusive of all taxes. The terms and conditions of the purchase order have been set out in the purchase order marked as 'Annexure-A'.

The name of Siemens Enterprise Communications Private Limited was changed to Unify Enterprise Communications Private Limited on 18th October 2013 and thereafter, the name of Unify Enterprise Communications Private Limited was further changed to M/s Progility technologies Private Limited (hereinafter called the Operational Creditor) on 10th February 2015.

2. On placing of purchase order as aforesaid corporate debtor made an advance payment to the tune of 15% as against total amount. The Operational Creditor duly commenced procurement of the said goods ordered by the Corporate Debtor. The Operational Creditor delivered the same to the Corporate Debtor which was duly received by him to his satisfaction without any objection. Thereafter, installation work in terms of purchase order was also completed to the satisfaction of the corporate debtor. In the month of May 2015 operational creditor and the corporate debtor conducted a joint inspection and both of them signed the installation and commission cum warranty certificate which is marked as Annexure 'D'.

3. The petitioner/operational creditor at the end of the installation on completion of the project, raised 12 invoices amounting to Rs.46,70,899.73 which were accepted by the respondent/ corporate debtor without any protest. Operational Creditor has further submitted that the difference in the total invoices value and the contract value is due to the reason of certain equipments which were not required at the time of final installation. Photostat Copy of 12 invoices are annexed and marked as **Annexure É'**.

4. Upon receipt of the invoices totalling Rs.46,70,899.73, the respondent / corporate debtor paid a sum of Rs.36,50,000/- to the Applicant / operational creditor in a phased manner and the last payment was made on 20.02.2016 and as such a sum of Rs.10,20,889.73 remained outstanding amount from the corporate debtor payable to the operational creditor.

5. Operational Creditor made several demand by way of e-mails and reminders, verbal as well as written to the corporate debtor. Thereafter, the corporate debtor vide e-mail dated 26.11.2015 raised some issues with one UTM Cybercomm system supplied and requested the operational creditor to resolve the issue with intimation to collect the cheque for a sum of Rs.5,00,000/- which is ready. In reply, the operational creditor vide e-mail on 27.11.2015 called upon the corporate debtor to confirm the schedule / plan of releasing the balance payment. Copies of the said e-mails is annexed and marked as Annexure-'F'. However, the corporate debtor vide email dated 07.12.2015 acknowledged the total outstanding dues and assured the operational creditor that the balance payment is in the process of disbursement at the earliest with a request to get the issue of UTM Cybercomm System is resolved and marked as **Annexure 'G'**.

6. Owing to non-payment of outstanding amount of a sum of Rs.10,20,889.73 by the corporate debtor, the operational creditor through advocate Rahul Auddy & Company issued a demand notice vide their letter dated 4th April 2016 demanding inter alia from the corporate debtor for the payment of the aforesaid amount of Rs.10,20,899.73 along with interest calculated thereon @ 15% per annum from 20th February 2016 till final payment from corporate debtor.

7. The advocate of the corporate debtor responded to the demand notice vide letter dated 26.12.2015 (correct date unknown) as reflected in the petition, whereby the corporate debtor denied claim of the operational creditor by raising frivolous issues which was refuted by the operational creditor vide its letter dated 11.05.2016. With a view to settle the dispute with the operational creditor and corporate debtor, several

rounds of discussion took place between the officials of both the companies. However, discussion/settlement could not be reached to the logical conclusion.

8. Since the settlement could not be reached to the finality, the operational creditor sent a notice dated 24th February 2017 under Section 8 (1) of the Insolvency and Bankruptcy Code, 2016 to the corporate debtor which was duly received by him on 25th February 2017. Despite receipt of notice, under the aforementioned section, the corporate debtor neither made payment of the outstanding sum nor replied to the said notice, bringing on record the existence of dispute, if any, and / or pendency of any suit or arbitration proceeding filed before the receipt of the such notice or invoice as contemplated under of Section 8 (2)(a) of the Insolvency and Bankruptcy Code, 2016.

9. Since no action on the part of the respondent / corporate debtor was made, the Applicant / operational creditor has no option left except to approach to the Tribunal to initiate the Corporate Insolvency Resolution process against the respondent / corporate debtor under Section 9 of the Insolvency and Bankruptcy Code 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. The details of outstanding amount / particulars of claim are as follows:

PARTICULARS OF CLAIM (ANNEXURE-I)

Sl.No.	Invoice Number and Date	Invoice Amount	Contractually Due Amount and Contractually Due Date	Outstanding Amount	Due dates for making payment
1	9920300127 dt.27.08.2013.	420787.50	252.472.50 26/09/2013 126.236.25 28/05/2015 42.078.75 28/11/2015	0.00	
2	9920300128 dt. 28.08.2013	1124287.50	674.572.50 27/09/2013 337.286.25 28/05/2015 112.428.75 28/11/2015	0.00	
3	9920300175 Dt.18.10.2013	96466.25	57,879.75 7/11/2013 28.939.88 28/05/2015	0.00	

			9,646.63 28/11/2015		
4	9920300203 28.11.2013	dt. 451371.35	270.822.81 28/12/2013 135,411.41 28/05/2015 45,137.142 28/11/2015	0.00	
5	9920300228 Dt.30.12.2013	577500.00	346,500.00 29/01/2014 173,250.00 28/05/2015 57,750.00 28/11/2015	227500.00	169750.00 28/05/2015 57,750.00 28/11/2015
6	9920300302 Dt.18.03.2014	891022.62	534,613.57 17/04/2014 267,306.79 28/05/2015 89,102.26 28/11/2015	283935.22	194832.96 28/05/2015 89,102.26 28/11/2015
7	9920300328 Dt.31.03.2014	92552.25	55,531.35 30/04/2014 27,765.68 28/05/2015 9,255.23	92552.25	55,531.3530/04/2014
8	9920400036 Dt.22.05.2014	448738.50	269,243.10 21/06/2014 134,621.552 28/05/2015 44,873.85 28/11/2015	14116.95	14116.95 28/11/2015
9	9920400101 Dt.30.08.2014	47250.00	28,350.00 29/09/2014 14,175.00 28/05/2015 4,725.00 28/11/2015	0.00	
10	9920500003	51805.15	31,038.69	51806.15	31,083.69

	Dt.29.04.2015		29/05/2015 15,541.85 28/05/2015 5,180.62 28/11/2015		29/05/2015 15,541.85 28/05/2015 5,180.62 28/11/2015
11	UECPL/OHIO/23912/RA1 Dt.31.12.2013	132396.04	119,156.44 30/01/2014 13,239.60 28/11/2015	50411.55	37171.95 30/01/2014 13,239.60 28/11/2015
12	UECPL/OHIO//RA2 Dt.10.02.2015	336721.57	303,049.41 12/03/2015 33,672.16 28/11/2015	300577.61	266905.45 12/03/2015 33,672.16 28/11/2015
		Rs. 4670899.73		Rs. 1020899.73	

The Applicant / operational creditor has prayed for the following reliefs:

1. To allow and admit the present application in order to initiate the Corporate Insolvency Resolution process against the respondent / corporate debtor i.e. OHIO CARDIOLOGY ASSOCIATES INDIA (P) LTD., having its address at 59, Ballygunge Circular Road, Unit V, 7th Floor, Kolkata 700 019.
 2. To appoint Mr. Partha Kamal Sen, an Interim Resolution Professional, having Registration No.IBBI/IPA-002/IP-N00022/2016-17/10049.
10. The petitioner has proposed the name of Shri Partha Kamal Sen as Interim Resolution Professional whose registration number and Email ID as mentioned is given as under:

Address: Flat 8C1, Brool To

Wer, Hiland Park, 1925, Chak Garia,

Kolkata 700 094

E-mail: Partha_kamal@yahoo.com

Registration Number: IBBI/IPA-002/IP-N00022/2016-17/10049

The Applicant has also certified that Shri Partha Kamal Sen is fully qualified and permitted to act as Interim Resolution Professional. The proposed IRP, Shri Partha Kamal Sen has also

given his consent letter in form No.2 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and he has also certified that no disciplinary proceeding is pending against him with the Board of Indian Institute of Insolvency Professional of ICAI, Insolvency Professional Agency as specified in Section 9(5)(i) of IBC Code 2016.

On perusal of the records it reflects that the applicant / operational creditor has delivered demand notice of unpaid operational debt/copy of Invoices on 24.02.2017 to Corporate Debtor in prescribed manner as specified in Rule 5(2) of Insolvency and Bankruptcy Code 2016 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 which is Annexure - R. The demand notice was duly received by Corporate Debtor on 25.02.2017 which is at Annexure - R. The respondent / corporate debtor is required to reply within 10 days of the receipt of copy of notice but he neither raised any dispute nor he discharged his obligation to repay the operational debt.

Since the reply has not been received from the corporate debtor within the stipulated time, the operational creditor has filed an application before this Tribunal for initiating Corporate Insolvency Regulation Process Under Section 9 (1) which documents as specified in Section 9 (3) of the Insolvency Code.

Operational Creditor has proposed the name of Resolution Professional Mr. Partha Kamal Sen to be appointed as Interim Resolution Professional in terms of Section 9(4) of the Insolvency Code.

The applicant operational creditor certified that no disciplinary proceeding is pending against the proposed Resolution Professional under Section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016.

11. Under the facts and circumstances as aforesaid, it is evident that corporate debtor committed default by not making payment of outstanding dues amounting to Rs.10,20,889.73 along with interest to operational creditor, despite receipt of demand notice, which is not disputed.

This Bench admits this Petition u/s.9 of the Code declaring moratorium for the purposes referred to in section 14 of the Code with following directions:

- (i) That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate

debtor any of its assets or any legal right or beneficial interest therein; 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and 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) 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 27.07.2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.
- (v) That his Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.
- (vi) That this Bench hereby appoints Mr. Partha Kamal Sen enrolled with IPA – ICSI Insolvency Professional Agency as Interim Resolution Professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.
- (vii) That this Bench hereby directs the Registry of NCLT, Kolkata to communicate this order to the Petitioner i.e., Operational Creditor and the Corporate debtor.
- (viii) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

Accordingly, this Petition is admitted.

This order be communicated to the Financial Creditor as well as Corporate Debtor in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016.

List on 28.08.2017 for submission of progress report by the Interim Resolution Professional.

sd/-
(MANORAMA KUMARI)
MEMBER (JUDICIAL)