

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD
BENCH

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH,
ALLAHABAD
(In Company Petition (IB) No. 127/Ald/2017)

Dated 23.10.2017

Quorum: Mr. H. P. Chaturvedi, Member-Judicial

IN THE MATTER 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

IN THE MATTER OF:

JBB Enterprises

.....Petitioner

Versus

YMS Mobitech Private Limited

.....Respondent / Debtor

Judgement delivered on

Coram: Shri H.P. Chaturvedi, Member (J)

For the Petitioner:

Shri Pawan Jaiswal PCMA,
MS. Nidhi Singh, Advocate

For the Corporate Debtor: Shri Amitabh Agarwal, Advocate

JUDGEMENT

(Per Shri H.P. Chaturvedi)

JBB Enterprises Operational Creditor filed present application under Section 9 of the Insolvency and Bankruptcy read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process in the case of YMS Mobitech Private Limited (Corporate Debtor) .

In compliance of Section 8(1) of the Code Operational Creditor has delivered the Demand Notice in Form -3 and an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt also annexed.

In part III of the instant Application Prabhatjit Singh Soni, registration no. IBBI/IPA- 002/IP-N00065/2017-18/10143, Address: GG-1/144/C, Vikas Puri Near PVR, New Delhi- 11001;

Email Address: psgurleensoni@yahoo.com ; Mobile No. 9810262298 was named as the proposed Interim Resolution Professional. The applicant company has obtained a written communication in Form-2 from the Insolvency professional for appointment as in IRP as required under rule 9 of the Rules.

In part IV of the instant Application PARTICULARS OF OPERATIONAL DEBT are given:

Total Amount of Debt is Rs.1,88,86,429/- (Rupees One Crore Eighty-Eight Lakhs Eighty-Six Thousand Four Hundred Twenty-Nine One), details of Transactions on account of which Debt Fell Due, And the date from which such Debt Fell due are given in Annexure-VIII.

Amount claimed to be in default is **Rs.1,88,86,429/-** (Rupees One Crore Eighty-Eight Lakhs Eighty-Six Thousand Four Hundred Twenty-Nine One).

In part V of application Particulars of Operational Debt (Documents, Records and Evidence of Default) is also given.

Further, Advocate of the Corporate Debtor Mr. Amitabh Agarwal filed Memo of No Objection for appointment of IRP in the present matter, which is stated as under:

“That this Hon’ble Tribunal has been pleased to direct the applicant to submit his objection with regard to the application under Section 9 of Insolvency and Bankruptcy code filed by the Applicant. In this regard the answering respondent respectfully submits that under the present circumstances it is practically impossible for the Company to make any payment to the Applicant as the company is suffering from financial crunch. The Company has no objection in appointment of an Insolvency Resolution Professional in this regard by this Hon’ble Tribunal. There is no objection regarding the proposed Insolvency Resolution Professional by the Applicant. The Company has passed a Resolution dated 12.10.2017 with regard to the present matter which is being enclosed herewith for kind perusal of this Hon’ble Tribunal.”

The provisions of Insolvency & Bankruptcy Code, 2016 have been notified by the Central Govt. on 01.12.2016 for the objects as can be gleaned from the Statement of Objects and Reasons as given below:

“An act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith of incidental thereto”.

A perusal of the above object discloses that the provisions of IBC, 2016 have predominantly been brought into force for the re-organisation and insolvency resolution of corporate persons and that too in a time bound manner for the maximization of value of assets of such persons to promote entrepreneurship and balance the interest of all stake holders involved in relation to the insolvent.

The scheme of the Act provides for triggering the insolvency resolution process by three categories of persons, namely,

- a. Financial Creditor
- b. Operational Creditor, and
- c. By the Corporate Debtor itself.

The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the Corporate Debtor is delineated under Section 9 of Code, wherein the Corporate Debtor is required to furnish information in accordance with Form-5 of the Rules.

From the detailed examination of the Petition and the submission made by the learned Counsel, we are of the view that the petitioner had disclosed all the details required by Section 9 of the Code read with Rule-6 of Rules. The name of the Interim Resolution Process has also been proposed.

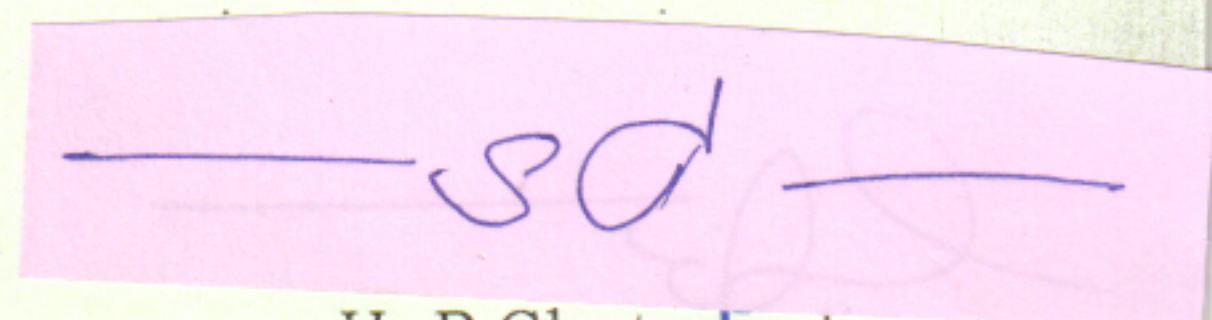
With regard to the present Petition filed by the Operational Creditor, and by perusal of the documents annexed with the petition it is evident

that the Corporate Debtor commits default in making payment of its debts as stated above, therefore the present petition filed under sections 8 & 9 are found as complete.

Hence, this Bench hereby admits this petition declaring Moratorium with the directions as mentioned below:

- I. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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 SARFESI Act, 2002; 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 corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
- III. That the provisions of Section 14 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. An authentic copy of this order be issued to parties including Interim Resolution Professional after the completion of necessary formalities.

In view of the above, the Application is allowed and accordingly stands disposed of.



H. P Chaturvedi
Member (J)

Dated: 23.10.2017