

**In the National Company Law Tribunal
Single Bench, Chennai**

TCP/100/ (IB)/CB/2017

Under Section 433(e) and (f) 434(i) (a) and 439(i) and (b) of the
Companies Act, 1956

In the matter of

Infogix INC
V/s
Megasoft Limited

Order delivered on: 27.11.2017

For the Petitioner/OC : Shri P.H Arvind Pandian, Sr. Advocate,
Shri P.Giridharan, Advocate

For the Respondent/CD: Shri T.V Suresh Kumar, Advocate
Shri N.A Srinivasan, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Infogix INC (in short, '**Petitioners/Operational Creditors**') against Megasoft Limited (in short, '**Respondent/Corporate Debtor**') under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon'ble Madras High Court which has been transferred to this Tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government Notification Number GSR 119(E) dated 07.12.2017, this petition needs determination as per the provisions of the

Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The petitioner submitted that 1st respondent Company was not able to repay its debts and the prayer was made to appoint Official Liquidator to take charge of the assets of the Company including the books of accounts etc. It was also prayed to grant Interim Injunction restraining the respondent from selling, transferring, alienating and/or creating any third party interest in its immovable properties.
4. The Hon'ble High Court of Madras vide order dated 09.08.2016 issued notice to the respondents returnable in four weeks and also allowed private notice to be served on the respondents. It is on record that the Hon'ble High Court heard the Company Petition and an order came to be passed on 27th of July, 2016, on 22nd of September, 2016 and on 29th of November, 2016.
5. The case has been transferred to this Bench and matter was fixed for hearing on 25th September, 2017. A query was raised that since the Hon'ble High Court is already seized of the

matter then as to why this petition has been transferred to this Bench. The counsel for the petitioner referred to an order passed in a similar matter, by the division Bench of NCLT Chennai in **M/s. Global Communication Services Holdings Ltd Vs. Siva Industries and Holdings Limited** wherein reference was made to an order passed by Hon'ble High Court of Madras in CP Nos. 14/2015,239/2015,242/2015,94/2016 and 364/2016 on 11th January, 2017 by Hon'ble Justice T.S. Sivagnanam, J, under which the interpretation of Rule 26 and Rule 96 of the Company Court Rules 1959 read with Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 was made. In the High Court order, after elaborate discussion, the Learned Single Judge of the Hon'ble High Court of Madras has concluded that reference to Rule 26 of the Company Court Rules 1959 should definitely mean the notice on admission and not a pre-admission notice as no such procedure is contemplated under the statute. It has been laid down that all Company Petitions which have not been admitted and where notice has not been served on the respondent under Rule 26 have to be necessarily transferred. The gist of the order is as follows:

5. Accordingly, it is held that all company petitions filed for winding up under Section 433 (e) of the Companies Act, 1956 in which pre-admission notices have been served, unserved or in the process of service are to be transferred to NCLT. All company petitions which have been admitted and notice has not been served on the respondent as required under Rule 26 of the Company Court Rules, 1959 shall also be transferred to NCLT. The above direction is complied with by the Registry expeditiously.

6. In view of the above and record placed on file it appears that the Hon'ble High Court is already seized of the matter and has passed an order on 09.08.2016 as mentioned above. Therefore, the petition under reference is returned to the Registry of the Hon'ble High Court of Madras for necessary action at their end.



K. ANANTHA PADMANABHA SWAMY
MEMBER (J)

TJS