

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 1817/MB/C-I/2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Raman Enterprises

Proprietary concern of Mr. Ashok Shah

42&84, Universal Industrial Estate, B. Patel Road,
Goregaon (East), Mumbai-400063.

... Operational Creditor/Applicant

Versus

Mediaman Infotech Private Limited

[CIN: U72200MH1996PTC103900]

A-234, 2nd Floor, Antop Hill, Warehousing Complex,
Vidyalankar, College Marg, Wadala(East), Mumbai –
400037.

...Corporate Debtor/Respondent

Order Delivered on 18.11.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Ms. Vineetha Khandelwal, Advocate.
For the Corporate Debtor : Mr. Vivek Kantawala a/w. Shanay Bafna, Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Raman Enterprises ("the Operational Creditor hereafter referred to as Petitioner")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Mediaman Infotech Private Limited ("the Corporate Debtor hereafter referred to as Respondent")**.
2. The Respondent was incorporated on 11.11.1996 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U72200MH1996PTC103900. Its registered office is at A-234, 2nd Floor, Antop Hill, Warehousing Complex, Vidyalkar, College Marg, Wadala (East), Mumbai – 400037. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Submissions made by the Petitioner:

3. The Petitioner purchased from the Respondent 50,000 quantity of digital secure anti-virus in December 2016 against payment of Rs.50,00,000/- (Rupees Fifty Lakh only). The Petitioner paid the aforesaid amount vide cheque bearing numbers 001582 and 001596 amounting to Rs. 11,00,000/- and Rs.39,00,000/- respectively.

4. The Petitioner submits since the nature of goods were digital in nature, the Respondent transferred codes/digital access keys to the 50,000 antiviruses via their email dated 10.01.2017. Further, it is submitted that since the Petitioner failed to sell these items and based on their mutual consent the Petitioner will sell the items back to the Respondent. Accordingly, on 26.05.2017 vide invoice no.43/2017-2018, the Petitioner sold the entire 50,000 quantity/units to the Respondent for a gross value (including VAT) of Rs.50,00,000/- (Rupees Fifty Lakh only). The invoice was sent to the Respondent by the Petitioner vide email dated 27.05.2017.
5. The Petitioner submits that since the products were digital in nature and the Respondent was aware about the access codes/keys, constructive delivery of goods took place on raising of the invoice.
6. The Petitioner submits that the Respondent paid through RTGS a sum of Rs.10,00,000/- (Rupees Ten Lakh only).

Sr. No.	RTGS Date	Amount (in Rs.)
i.	30.05.2017	5,00,000
ii.	05.06.2017	3,00,000
iii.	06.06.2017	2,00,000

7. The Petitioner submits that the Respondent further made a part payment vide cheques bearing no. 000822 and 00823 drawn on HDFC bank of Rs. 2,00,000/- each.
8. Further, the Petitioner submits that the Respondent issued various cheques to the Petitioner which were not honoured, either due to insufficient funds in the bank account or payment stopped by drawer remark.
9. The Respondent made a part payment of Rs.14,00,000/- (Rupees Fourteen Lakh only) against invoice raised. The payment is confirmed by Bank of Baroda Goregaon Branch through its letter dated 07.01.2019. The letter is placed as Annexure-I of the Petition.
10. The Petitioner submits that act of making part payments towards the outstanding dues and issuances of post-dated cheques tantamount to admission of liability.
11. The Petitioner submits that after setting off the amounts paid by the Respondent, Invoice No. MUM/52/2017-18 and netting off the opening debit balance of Rs.1135/- with the Respondent on account of other previous transactions. Therefore, net amount of Rs. 33,03,363/- remained unpaid and unsettled till date.
12. The Petitioner has placed on record copy of the ledger account and computation of claim.
13. The date of default stated to be in Part- IV of the Petition is 25.06.2017 computed thirty days after issuance of invoice dated 27.05.2017.

14. In view of the aforesaid circumstances, the Petitioner issued a Demand Notice dated 14.03.2019 under Section 8 of the Code. The Corporate Debtor has replied to the demand notice vide letter dated 25.03.2019.

Submissions made by the Respondent:

15. The Respondent at the outset, admits the fact that the Petitioner had purchased from the Respondent 50,000 units of digital anti-virus and consequently made payment of Rs. 50,00,000/- to the Respondent. The Respondent however denies the fact that was a mutual understanding between the parties with respect to buy back of the digital anti-virus.
16. The Respondent further denies the fact that the Petitioner has sold 50,000 units of anti-virus to the Respondent vide invoice no.43/2017-18 dated 26.05.2017. The Respondent further, states that the invoice was sent to one Mr. Dignant Mehta, who is not a director of the Respondent.
17. The Respondent was not aware about the cheques issued against the aforesaid invoices. Moreover, on the issue of pre-existing dispute the Respondent submits that he has raised dispute vide its letter dated 03.12.2018 which was addressed by the Respondent in reply to the Petitioner's letter dated 06.11.2018. The Letter is placed as Exhibit B at Page 13 of the Reply. The primary contention of the Respondent in the aforesaid letter is that the Petitioner has acted in collusion with Mr. Dignant Mehta in order to defraud the Respondent.

Submissions made by the Petitioner by way of Affidavit in Rejoinder:

18. The Petitioner submits that initially the Respondent has emailed the invoices to the Petitioner from Mr. Dignant Mehta's email id. The Petitioner submits that the Digital Anti-virus was purchased by the

Petitioner with an oral agreement that the Respondent will purchase back the anti-virus in event of failure to sell within a period of six months. Therefore, on 26.05.2017 the tax invoice was generated and communicated with the Respondent via the email address used by the Respondent previously.

19. On the issue of pre-existing dispute, the Petitioner submits that the Respondent has manufactured the dispute. The Respondent has filed written complaint with Dharavi Police Station, however there is no proof as to whether the same has been registered as FIR or not.
20. The Petitioner submits that the contention of the Respondent that Mr. Dushyant Mehta is not aware of the mode, terms and conditions with respect to buy back of 50,000 units is misconceived as Mr. Dushyant Mehta was aware about the same.

Findings

21. We have heard the submissions of both sides and perused the records.
22. From the record, it is observed that the Corporate Debtor has transferred the amount towards the debt owed to the Petitioner. However, for the outstanding unpaid sum the Corporate Debtor had issued various cheques detailed hereinabove out of which two were realised and the others cheques were returned under the caption of 'payment stopped by drawer'.
23. Considering the above facts and circumstances, the debt and default stands established.
24. Further, on the issue of pre-existing dispute, we hold that the defence raised by the Corporate Debtor in letter dated 03.12.2018 is de void of

merits as there is nothing on record to show that there is a genuine dispute with respect to the quality, quantity of the goods.

25. The primary contention taken by the Corporate Debtor is the fact that a fraud was committed by one Mr. Dignant Mehta, who has acted in collusion with the Operational Creditor in order to defraud the Corporate Debtor. It is pertinent to note that the invoice issued by the Petitioner was in favour of Mediaman Infotech Private Limited i.e. the Corporate Debtor which is separate legal entity. Therefore, the Petitioner cannot be forced to bear the brunt of the inter disputes amongst the management of the Corporate Debtor.
26. In the backdrop of above facts and circumstances, we are of the view that the Respondent has defaulted in the payment of the outstanding debt.
27. The application made by the Petitioner is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
28. The Petition bearing CP (IB) 1817/MB/C-I/2019 filed by **Raman Enterprises**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against Mediaman Infotech Private**

Limited [CIN: U72200MH1996PTC103900], the Corporate Debtor, is admitted.

29. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
30. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
31. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves

the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

32. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
33. Mr. Satish Anand Sharma, Registration No.IBBI/IPA-002/IP-N00604/2018-2019/11961, Email Id:advsas@gmail.com, registered mobile no-7303393336 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
34. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
35. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh 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 (CoC).

36. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
37. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.
38. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

18.11.2022

Priyal

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)