

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

(5)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 08/12/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : CP/625/(IB)/2017
NAME OF THE PETITIONER(S) : MAHESH MADHAVAN
NAME OF THE RESPONDENT(S) : BLACK N GREEN MOBILE SOLUTIONS PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
REPRESENTATION BY WHOM			

1. A.G SATHYANARAYANA
(For A.K.MYSAMY & ASSOCIATES)

For Operational Creditor A.G Sathyanarayana

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SIGNLE BENCH, CHENNAI

CP/625/(IB)/CB/2017

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

Mahesh Madhavan.

Vs.

M/s. Black N Green Mobile Solutions Pvt. Ltd.

Order delivered on 8th of December, 2017

CORAM :


CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Operational Creditor(s) : Mr. A.G. Sathyanarayana
For A. K. Mylsamy & Associates

For Corporate Debtor (s) : remained *exparte*

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is CP/625/(IB)/CB/2017 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w the Insolvency & 

Bankruptcy (Application to Adjudicating Authority Rules, 2016). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Counsel for the Operational Creditor has filed copy of e-mail communications which are taken on file. Heard Counsel for the Operational Creditor and perused the record. As seen from the Order of this Bench dated 24.11.2017, the Corporate Debtor has been set *exparte*.

3. The case of the Operational Creditor is that the premises situated at 2nd Floor of the commercial complex Gee Gee Universal, No.2, Mc. Nichols Road, Chetpet, Chennai – 600 031, measuring 8942 sq. ft., was let out on lease by the Operational Creditor under Lease Agreement dated 03.12.2012 originally. The Lease Agreement was renewed from time to time. The

Lessee had sub-let 4471 sq. ft. to the Corporate Debtor with the consent of the Operational Creditor. As agreed by the parties, the Corporate Debtor, as a sub-lessee, paid the Lease Rent directly to the Operational Creditor from January, 2014 to September, 2014, as per their understanding. The Lease Rent for the sub-let premises is due to the Operational Creditor from the Corporate Debtor for the period from 05.10.2014 to 05.05.2015 vide bill Nos. 14, 16, 18, 20, 22, 24, 02 and 04, which are placed at pages 46 to 53 of the typed set filed with the Application.

The Operational Creditor issued Demand Notice dated 14.09.2017 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of Lease Rent due and payable by the Corporate Debtor in respect of unpaid operational debt due to it, i.e. Rs.28,04,553/- with interest @ 18% p.a. The copy of the said Demand Notice dated 14.09.2017 is placed at page 17 of the typed set filed with the Application.

4. After the receipt of the Demand Notice sent by the Operational Creditor, the Corporate Debtor sent Reply

dated 27.09.2017, wherein it has been stated that the lease was entered into between one M/s. Universal Power Systems Private Limited and the Operational Creditor. There is no agreement between the Corporate Debtor and the Operational Creditor. Therefore, the claim made against the Corporate Debtor is wrong and the Corporate Debtor is not liable to pay any amount. But, the said assertion is contrary to the record placed on the file, therefore, cannot be relied upon.

5. In connection with the above, the Counsel for the Operational Creditor has filed e-mail communications, and Form 26AS [TDSs] for the years 2013-14, 2014-15 and 2015 to 16, which are placed at pages 69, 68, 67 respectively of the typed set filed with the Application. The said documents are evidencing that there has been clear understanding between the Operational Creditor and the Corporate Debtor with regard to their relations as landlord and tenant. So, under the *principle of estoppel*, the Corporate Debtor is estopped from pleading that there was no agreement between them.

6. The Counsel for the Operational Creditor has complied with Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing Affidavit and Bank certificate which are

placed at pages 13 and 22 respectively of the typed set filed with the Application. Under para 4 of the Affidavit, it has been stated that the Corporate Debtor has failed to bring to notice of the Operational Creditor, the existence of a dispute or a pendency of a suit or arbitration proceedings filed before the service of the Demand Notice.

7. The Operational Creditor has fulfilled all the requirements of law for admission of the Application and has also proposed the name of IRP after obtaining the written consent in Form-2, which is placed at page 16 of the typed set filed with the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, CP/625/(IB)/CB/2017 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

8. Mr. A. Mohan Kumar is appointed as IRP, as has been proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

9. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit all of the following, namely :-

- (a) 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;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 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 (54 of 2002);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person

associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the I&B Code, 2016.

12. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

13. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

The address details of the IRP are as follows: -

Mr. A. Mohan Kumar,
Regn No: (IBBI/IPA-002/IP-N00377/2017-18/11120)
31 B, Enfield Avenue, II Street,
Madipakkam, Chennai – 600 091
Email: needamohan@gmail.com


[CH.MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P.ATHISTAMANI