

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI**

IB-1683/(ND)/2018

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

**Crayon Software Experts India Pvt. Ltd,
Unit No.706, Jay Antariksh,
13/14, Marol Makwana RD,
Office Andheri Kurla Road,
Maharashgtra-400059**

.....Operational Creditor

VERSUS

**Vas Data Services Pvt. Ltd.
Level 1, Red Fort Capital Parsvnath Towers,
Bhai Veer Singh Marg,
Gole Market, Near CP,
New Delhi – 110001.**

.....Corporate Debtor

Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

DEEPA KRISHAN,

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IBNo.1683/(ND)/2018

Crayon Software Experts India Pvt. Ltd. V. Vas Data Services Pvt. Ltd.



Hon'ble Member(TECHNICAL)

Counsel for the Petitioners: Mr. Varun Kumar Chopra, Mr. Gurtej Singh,
Advocates

Counsel for the Respondent: Mr. Gaurav Singh, Advocate

Delivered on: 09.04.2019

ORDER

An application has been preferred by the Operational Creditor (OC) namely, Crayon Software Experts India Pvt. Ltd., against the Corporate Debtor (CD) namely, Vas Data Services Pvt. Ltd. for initiation of Corporate Insolvency Resolution Process (CIRP) under the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016). Perusal of the application filed by the OC in the prescribed form, namely, Form 5 under Rule 6 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 for brevity called 'AAA Rules' shows that the CD is having Identification No.U72300DL2008PTC173847 and that the Company was incorporated on 08.02.2008 with a nominal share capital of Rs.120,500,000/- and the paid up share capital of Rs.69,518,088/-.The address of the CD is stated to be Level 1, Red Fort Capital Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, Near CP, New

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Crayon Software Experts India Pvt. Ltd. V. Vas Data Services Pvt. Ltd.



Delhi – 110001. It is also seen from Part III of the prescribed form that no Interim Resolution Professional has been proposed by the OC. The transaction leading to the filing of the claim before this Tribunal in a sum of Rs.80,41,269.76 is stated to be as the CD is in the business of operating an online retailing brand known as "YEPME". The CD has placed purchase orders dated 18.11.2015, 01.12.2015 and 17.12.2015 for the purchase of software as detailed in the said purchase orders. Pursuant to the same, it is averred in the application that licenses were provided to the CD and subsequently invoices were also raised from time to time in relation to the licenses as shown. The aggregate amount raised by way of invoices is to the extent of Rs.1,48,14,795.76 against which a sum of Rs.67,73,526.00 was paid by the CD and there is a balance outstanding amount of Rs.80,41,269.76 In addition, a sum of Rs.12,21,195 has been claimed as interest payable for the outstanding amount due from the CD @ 24% per annum. It is also averred that towards payment of outstanding amount, CD had given post dated cheque for Rs.65,66,354/-. However, when the said cheque was submitted for encashment on 25.04.2018 the same bounced due to insufficiency of funds on 26.04.2018. Even though subsequently on 15.5.2018, 23.5.2018, 13.6.2018 and 20.6.2018, the Director of the CD vide above emails had promised to pay the amount due to the OC but, however, as of today the assurances had not been adhered to and in the



circumstances the OC sent a Demand Notice dated 5.10.2018 in Form 3 of 'AAA Rules, 2016' in terms of Section 8 of IBC,2016 seeking for the payment of Rs.80,41,269.76/- along with interest in a sum of Rs.12,21,195/-. A copy of the Demand Notice it is averred was also sent to the email ID of CD, namely, vasdatagurgaon@gmail.com on 16.10.2018. However, no response has been received nor any payment has been made by the CD within the prescribed period of 10 days from the date of the receipt of Demand Notice. The present application has been filed seeking initiation of CIRP against the CD for the recovery of principal amount of Rs.80,41,269.76/- along with interest amount of Rs.12,21,195/-.

2. In addition to the advance notice sent by the OC to the CD, this Tribunal ordered notice to the CD vide order dated 6.12.2018 to show cause as to why the application to initiate CIRP should not be admitted against the CD. Process dasti was also ordered. Pursuant to the service of notices on the next date of hearing dated 8.1.2019 appearance on behalf of the CD was entered and upon the representation of Ld. Counsel of CD time was afforded to file reply and thereafter rejoinder to the petitioner.

3. When the matter was called on 20.2.2019, it has been observed that respondent has not filed reply for which time was granted by this



Tribunal on 8.1.2019 and in the circumstances this Tribunal was constrained to close the right to file the reply.

4. On 8.3.2019, it is evident from the record of proceedings that time was sought for and on behalf of the CD and under the circumstances stated therein, the matter was posted on 26.3.2019.

5. On 26.3.2019, again request was made on behalf of the CD for adjournment which this Tribunal was not inclined to grant and directed the parties to argue the matter. Ld. Counsel for the petitioner made submissions and took this Tribunal through the documents filed in support of the petition and upon a perusal of the master data annexed as Annexure A-3, shows that the company is active and has filed last balance sheet for the year ending 31.03.2016 and that the date of last AGM held on 4.11.2016. Also names of two Directors of the CD have been reflected as Mr. Sandeep Sharma and Mr. Vivek Gaur. It is further seen that purchase orders were placed by the CD upon OC as Annexue-4(colly) dated 18.11.2015, 17.12.2015 and 1.12.2016 and copy of invoices as per Annexure A-5(colly) and the copy of Ledger of CD maintained by the OC is available at Annexure A-7. The e-mail correspondence as exchanged between the parties is annexed as Annexure A-6 emanating from one of the

Directors of the CD which shows that CD had made an assurance for payment upon the remittance of amount from its customers. It is also seen that the Demand Notice had been served upon the email ID of the CD as disclosed in the Master Data. The person who has signed the petition on behalf of the OC is duly authorized by a Board Resolution dated 5.10.2018 annexed as Annexure A 11.

6. It is seen that CD owes a sum in excess of Rs.1.00 lakh to the OC. It is also seen from the documents as produced before this Tribunal, as referred to above, that the CD has committed a default in relation to the operational debt as defined under the provisions of Section 5(21) of IBC,2016 to the OC and there being no dispute by way of a Notice of Dispute, as contemplated under the provisions of Section 8 of IBC,2016 prior to the filing of application seeking for initiation of CIRP, clearly disclose that the CD does not have any dispute in relation to the amount it owes to OC. In the circumstances, this Tribunal is constrained to admit this petition filed against the CD to initiate the CIRP with the following consequences:

7. As the OC has not chosen to propose any name who is to act as Interim Resolution Professional(IRP), Mrs. Kavita Rani, registered with IBBI having registration number IBBI/IPA-001/IP-P00921/2017-

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2018/11528, email: kavita.kamboj@gmail.com is appointed as the Interim Resolution Professional (IRP). The Applicant is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of IBC, 2016, to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in relation to which amount suitable account shall be maintained of any expenditure incurred.

8. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

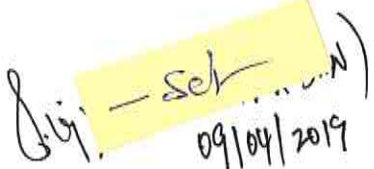
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating

Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

9. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5)(i) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IRP named above for commencing the action as contemplated under IBC,2016 and to IBBI for its records.


(DEEPA KRISHAN)
MEMBER(TECHNICAL)


09/04/2019
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

U.D.Mehta
09.04.2019