



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 331/MB/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Rutu Computer Services

912, Techno IT Park, Link Road, Borivali West,
Mumbai Suburban - 400092, (Maharashtra)

...Petitioner/Operational Creditor

Vs

ITSource Technologies Limited

Unit 403, 4th Floor, Skyline Icon, Chimatpada
Marol, Andheri-Kurla Road,
Mumbai - 400059, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 06.09.2024

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Aniruth Purusothaman (PH)

For the Respondent: Adv. Vidit Divya Kumat (VC)



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ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by **Rutu Computer Services** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on 21.02.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against **ITSource Technologies Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 1,06,52,517/- and the date of default being 25.10.2023.**

2. **Facts of the Operational Creditor-**

- I. The Operational Creditor is engaged in the business of manufacturing and retail sale of computers and computer peripherals. The Corporate Debtor placed several orders with the Operational Creditor for the supply of computer peripherals, to be sold and delivered at the Corporate Debtor’s site located in Andheri East, Mumbai. The details of the said orders are as follows-

Date	E-way Bill Number	Place of Delivery
23.10.2023	251666062804	Andheri East, Maharashtra-4000093



23.10.2023	201666073559	Andheri East, Maharashtra-4000093
28.11.2023	271682223580	Andheri East, Maharashtra-4000093
30.11.2023	201683403177	Andheri East, Maharashtra-4000093
09.01.2024	201702074557	Andheri East, Maharashtra-4000093
09.01.2024	271702075605	Andheri East, Maharashtra-4000093

II. As submitted by the Operational Creditor, pursuant to the said orders, the goods were sold and supplied to the Corporate Debtor from the year 2021 to the full satisfaction of the Corporate Debtor and the Operational Creditor, thus, raised the following invoices:

Date	Invoice No.	Amount (Rs.)
24.08.2023	RUT23240801	14,15,937/-
24.08.2023	RUT23240802	25,82,058/-
25.08.2023	RUT23240803	13,98,705/-
29.08.2023	RUT23240804	32,90,180/-
30.08.2023	RUT23240805	2,91,614/-



27.09.2023	RUT23240901	15,91,295/-
29.09.2023	RUT23240902	3,35,640/-
29.08.2023	RUT23240903	68,77,257/-
23.10.2023	RUT23241001	14,21,473/-
23.10.2023	RUT23241002	58,96,161/-
31.10.2023	RUT23241005	2,33,489/-
28.11.2023	RUT23241101	23,64,537/-
30.11.2023	RUT23241102	58,372/-
09.01.2024	RUT232401001	14,75,478/-
09.01.2023	RUT232401002	3,21,047/-
Total		2,95,50,243/-

III. The Operational Creditor further submitted that the Corporate Debtor, after the receipt of the invoices, released the payments towards the outstanding debts from time to time. The case of the Operational Creditor is that after adjusting the payments received, an amount of Rs.1,06,52,517/- is still due towards the invoices already sent to the Corporate Debtor. Despite numerous requests and reminders sent by the Operational Creditor, the Corporate Debtor failed to discharge his liability with respect to the outstanding amount due towards the Operational Creditor.



- IV.** As submitted, the officers of the Operational Creditor followed up with the Corporate Debtor on a regular basis and also made various requests and sent reminders through phone calls and personal meetings pertaining to the payment of outstanding dues. However, the Corporate Debtor purposely avoided meeting with the executives of the Operational Creditor or even responding to their calls. The Corporate Debtor, even after receiving the goods from the Operational Creditor, failed and neglected to make payment for the invoices raised. The Operational Creditor further contended that the Corporate Debtor is unable to pay the dues and discharge its obligations towards the Operational Creditor. Further, the Corporate Debtor has not raised any dispute regarding the goods supplied by the Operational Creditor till date.
- V.** The Operational Creditor further submitted that vide E-mail dated 11.01.2024, the officer of the Operational Creditor informed the Corporate Debtor regarding the non-payment of dues and requested to pay the amount due at the earliest. However, the Corporate Debtor purposely neglected to do the same and rather sought time to pay the outstanding amount within six months. As alleged by the Operational creditor, till date the Corporate Debtor has failed to discharge its obligations towards the operational creditor.
- VI.** After several follow-ups and intimations for re-payment, the Operational Creditor issued a Demand Notice dated 25/01/2024 on the Corporate



Debtor, for an amount of Rs. 1,06,52,517/-. The said Demand Notice was sent to the registered office of the Corporate Debtor on 06/02/2024, which was duly delivered to the office of the Corporate Debtor on 08/02/2024. The said Demand Notice was also delivered via email on 03/02/2024. As stated by the Operational Creditor, despite having received the statutory Demand Notice, the Corporate Debtor failed to reply to the Demand Notice. Thus, after waiting for the statutory period the Operational Creditor filed the present petition before the Hon'ble Tribunal claiming an amount of Rs.1,06,52,517/- from the Corporate Debtor, and the date of default is stated to be 25/10/2023.

3. Submissions of the Corporate Debtor-

- I.** The Corporate Debtor is engaged in the business of providing computer-related services, that is, maintenance of websites of other firms and creation of multimedia presentations for other firms, etc. The Corporate Debtor, at the outset, denied all contentions of the Petitioner.
- II.** The Corporate Debtor stated that since the year 2021, it has been placing various orders with the Operational Creditor for supplying computer peripherals at its registered address in Andheri East, to carry out the day-to-day affairs of the company. The Operational Creditor, in accordance with the orders placed, delivered the said goods timely to the registered office of the Corporate Debtor and issued invoices thereof up till the period of 2024.



- III. The Corporate Debtor further stated that due to unforeseen circumstances, particularly the strain of undue payments and the downfall in providing services during and post Covid-19 period, the business of the Corporate Debtor was hampered and was further badly hit.
- IV. The Corporate Debtor submitted that its business as a whole suffered irreversible losses and subsequently, the account of the Corporate Debtor turned NPA in the month of May 2024, which in turn stalled many of its business networks. Thus, no cash flow could be generated towards paying off its Creditors, including the Operational Creditor.
- V. The Corporate Debtor contended that despite all efforts to pay off the amount of debt to the Operational Creditor for the supply of computer peripherals, it has been unable to meet its commitments and therefore sought further time upon receipt of the Demand Notice issued by the Operational Creditor.
- VI. The Corporate Debtor also emphasized that it is an ongoing concern and the management is doing its best to maintain solvency. It was also submitted that the Corporate Debtor intends to repay the complete loan advanced by the Financial Creditor but will require some time to repay the entire debt.
- VII. Further, the Corporate Debtor placed reliance on the judgment of the Hon'ble Supreme Court, in the matter of **Vidarbha Industries Power Limited vs Axis Bank (Civil Appeal No.4633 of 2021)**, which states that



“the Legislature intended Section 9(5)(a) of the Code to be mandatory and Section 7(5)(a) of the Code to be discretionary and therefore the Adjudicating Authority has to consider the grounds made out by the Corporate Debtor against admission, of an Application under Section 7 of the Code, on its own merit.” Relevant paragraphs of the aforementioned judgments were reproduced by the Corporate Debtor in its reply.

- VIII.** The Corporate Debtor submitted that it tried to pay off its debts to the Operational Creditor but due to its inability to source funds, defaulted on the payment of the same. As stated, the Corporate Debtor is making every effort to source funds to revive its business and pay off the Operational Creditors.
- IX.** Thus, in light of the abovementioned submissions, the Corporate Debtor prayed before the Hon'ble Tribunal to grant a reasonable time to clear its liability to the Operational Creditor, or alternatively, for the dismissal of the present Petition.

4. Findings-

- I.** In view of the submissions made by the Learned Counsel of both the parties and on the strength of documents and pleadings placed on record, it is evident that an amount of Rs. Rs.1,06,52,517/- is pending towards the Corporate Debtor and thus, the present Petition has been preferred by the Operational Creditor before the Hon'ble Tribunal.



II. On perusal of the reply submitted by the Respondent and also in view of the arguments advanced, it is evident that there is no denial and dispute concerning the outstanding amount due and payable to the Operational Creditor. As far as the liability of the Corporate Debtor is concerned, the same stands admitted in the reply of the Corporate Debtor filed on record. In the said reply, it has been admitted that the Operational Creditor, in accordance with the orders placed, delivered the said goods timely to the registered office of the Corporate Debtor and then issued invoices thereof up till the period of 2024. An attempt has been made on the part of the Corporate Debtor to justify the non-payment of the outstanding amount by stating that the business of the Corporate Debtor was severely affected due to the Covid-19 period and in view of the same, there was a decline in the cash flow and the profit earned had to be utilized towards the payment of interest. Further, despite all the efforts put in by the Corporate Debtor to pay off the amount due to the Operational Creditor for the supply of computer peripherals but was unable to meet the said commitments and therefore sought time upon receipt of the Demand Notice issued by the Operational Creditor. The case of the Corporate Debtor further is that it is a going concern and is ready and willing to discharge his obligations by repaying the Operational Creditor in due course of time. However, it is pertinent to note that no specific time frame was either pleaded in the reply



or even during the course of arguments for the said repayment of pending dues.

- III. Further, upon close examination of the documents available on record, it has come to light that the Corporate Debtor, by virtue of the email dated 20/01/2024, has duly acknowledged its liability towards the debt owed to the Operational Creditor. The said email dated 20/01/2024 is reproduced as under-

From: Amol Patil [mailto:amolp@itsourceindia.com]
Sent: 20 January 2024 15:04
To: 'Sandeep Patil'; dhirajp@itsourceindia.com
Cc: rutucomputerservices@gmail.com; pradeepb@itsourceindia.com; sales@ritucomputerservices.com
Subject: RE: Outstanding Payment
Importance: High

Exhibit H

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Dear Sandeepji,

As had multiple discussion on the below and we had asked some time to get back to you, after carefully taking stock of our fund situation we will be able to pay your outstanding within 2 quarter or latest by June 24, currently we are facing huge fund issue & request your support for the same.

Best Regards,
Amol Patil | GM-Accounts & Finance

ITSource Technologies Limited
ISO 9001, 27001, 20000 Certified Company

IT Services | BPO | IT Training
ITSource Technologies Ltd. | Board: +91.22.42223600 | Fax: +91.22.42223601 | Cell: +91.9920052006
www.itsourcetechnologies.co.in

- IV. Thus, given the above-stated facts, the debt and default on the part of the Corporate Debtor stand established.
- V. Further, the Corporate Debtor has placed reliance on the landmark Judgment of the Hon'ble Supreme Court in the matter of **Vidarbha Industries Power Limited vs Axis Bank [Civil Appeal No.4633 of 2021]** where it has been held that the Legislature intended Section 9(5)(a) of the



Code to be mandatory and Section 7(5)(a) of the Code to be discretionary and therefore the Adjudicating Authority has to consider the grounds made out by the Corporate Debtor against admission, of an Application under Section 7 of the Code, on its own merit. So far as this aforesaid contention raised by the Corporate Debtor is concerned, it is to be noted that the principle laid down by the Hon'ble Supreme Court in the matter of **Vidarbha Industries Power Limited vs Axis Bank** is only applicable on Applications filed by Financial Creditors under Section 7 of the Code, and the instant case has been filed by the Operational Creditor under section 9 of the Code. Thus, the contention raised by the Corporate Debtor that the Adjudicating Authority has to consider the grounds made out by the Corporate Debtor against admission of the application, lacks merit.

- VI.** Keeping in view of the totality of the circumstances of the present case and in view of the fact that there is an admitted debt due towards the Operational Creditor and admittedly there is a default duly acknowledged by the Corporate Debtor, with no pre-existing dispute in question and the fact that the present Petition has been filed by the Operational Creditor well within the limitation period, it is a fit case for admission. Furthermore, the amounts stated to be due in this case is above the threshold limit as stipulated under Section 4 (1) of IBC and in view of the settled law wherein the Hon'ble NCLAT has been pleased to hold in the matter of ***Naresh Choudhary vs. Sterling***



Enamelled Wires Pvt. Ltd Company Appeal (AT)(Insolvency) No. 39 of 2023 & I.A. No.137 of 2023

“17. We have no hesitation in observing that in the present case, all requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled with operational debt having been acknowledged and default committed thereto and there being no real pre-existing disputes discernible from given facts. For the foregoing reasons, we are of the view that the Adjudicating Authority has rightly admitted the application of the Operational Creditor filed under Section 9 of IBC.”

VII. Thus, present company petition is hereby **admitted** to CIRP by passing the following order:

ORDER

- a.** The above Company Petition No.331/IBC/MB/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **ITSource Technologies Limited.**
- b.** The Petitioner has proposed the name of **Mr. Kailash Thanmal Shah**, bearing IP Code IBBI/IPA-001/IP-P00267/2017-2018/10511, with the address 505, 21st Century Business Center, Near World Trade Center, Ring Road, Surat- 395002, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution



Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest 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.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate



insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- f.** That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g.** That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h.** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i.** During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j.** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k.** Accordingly, C.P. No. 331/IBC/MB/2024 is **admitted**.
- l.** The Registry is hereby directed to communicate this order to both the parties



and to IRP immediately.

SD/-

MADHU SINHA

Member (Technical)

/Jhanvi/

SD/-

REETA KOHLI

Member (Judicial)