



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

**IB-663/(ND)/2023**

*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 -**

**M/s Vision Communications (Sole Proprietorship)**

Office at: -

Shop No. 16A, IN 13/27 G/F

WEA Karol Bagh

New Delhi-110005.

**...Applicant/Operational Creditor**

**Versus**

**M/s Delhi Mobile Mate Private Limited**

Office At: -

Plot No. -68, III Rd, Floor,

Block No. -5,

Naiwala, Karol Bagh,

North Delhi- 110005.

**...Respondent/Corporate Debtor**

**CORAM:**

**SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**



**PRESENT**

**Counsel for the Petitioner** : Mr. A Mishra, Advocate

**Counsel for the Corporate Debtor** : Adv Rakesh Kumar, Adv Preeti Kashyap, Adv Ankit Sharma, Adv Yash Dhawan.

**ORDER**

**PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**Date: 10.09.2024**

1. The present application has been filed by the Petitioner i.e., M/s Vision Communications (hereinafter referred to as the Operational Creditor) to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent i.e., M/s Delhi Mobile Mate Private Limited (hereinafter referred to as the Corporate Debtor) for the alleged default on the part of the Respondent in clearing the debt of Rs. 22,05,77,744.65/- (Rupees Twenty Two Crore Five Lakhs Seventy Seven Thousand Seven Hundred and Forty Four and Sixty Five Paisa Only) which includes Rs. 16,18,12,984/- (Rupees Sixteen Crore Eighteen Lakh Twelve Thousand Nine Hundred Eighty Four Only) as basic amount and Rs. 5,87,64,760.65/- (Five Crore Eighty Seven Lakh Sixty Four Thousand Seven Hundred Sixty and Sixty Five Paisa Only) as interest charges.
2. The particulars of transactions leading to the filing of the present application as averred by the Applicant/Operational Creditor are as under –



- i. The Operational Creditor is engaged in the business of procurement and trading of mobile handsets. The Corporate Debtor on the basis of purchase order(s) issued by the Corporate Debtor supplied the mobile handsets to the Corporate Debtor on regular basis.
- ii. The Operational Creditor raised invoices against material supplied from time to time.
- iii. The Operational Creditor also maintains a running ledger account of the Corporate Debtor and the ledger account reflects a debit balance of Rs. 16,18,12,984/- (Rupees Sixteen Crore Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty-Four Only) as on 01st October 2022 which is duly acknowledged by the Corporate Debtor.
- iv. The amount of Rs. 16,18,12,984/- (Rupees Sixteen Crore Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only) is due and payable by the Corporate Debtor along with an interest of 18% from the due date till disbursement of complete dues to the Operational Creditor.
- v. The Total Amount claimed to be in default is Rs. 22,05,77,744.65/- (Rupees Twenty-Two Crore Five Lakhs Seventy-Seven Thousand Seven Hundred and Forty-Four and Sixty Five Paisa Only) along with interest calculated at the rate of 18% from date on which the debt fell due.



- vi. The Operational Creditor had issued Form 3 and Form 4 Demand Notice(s), under clause (a) of sub-rule (1) of rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, both dated 28.03.2023, in the name of the Corporate Debtor, vide an email dated 15.05.2023 and a courier dated 04.05.2023. The courier was not delivered due to "company/person shifted", as per the tracking report, but the email was acknowledged by the Corporate Debtor on 15.05.2023.
- vii. The ledger account for the period dated 01.04.2017 to 31.03.2018 maintained by the Operational Creditor reflects a debit balance of Rs. 16,18,12,984/- (Rupees Sixteen Crore Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty-Four Only) pending with Corporate Debtor towards Operational Creditor. That it is pertinent to mention that the Operational Creditor is maintaining a running ledger account of the Corporate Debtor, reflecting a debit balance owed by the Corporate Debtor to Operating Creditor as on 01.10.2022, which was duly acknowledged by the Corporate Debtor. The Operational Creditor on the elapse of 10 days from the date of said Demand Notice was entitled to initiate a Corporate Insolvency Resolution Process in respect of the Corporate Debtor. There has been no repayment of the unpaid Operational Debt till date. There is no dispute of unpaid Operational Debt pending between the Operational Creditor and Corporate Debtor before the issue of



Demand Notice as per the Insolvency and Bankruptcy Code, 2016 in any court of law or authorities as on date. The Operational Creditor/ Applicant has not received any reply to its Demand Notice from the Corporate Debtor.

viii. The date on which the debt fell due is 01.10.2022 and the default is still continuing as a cause of action.

3. The Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor as below: -

- i. The Corporate Debtor admits to the said debt due towards the Operational Creditor and undertakes to pay the same in due course of time.
- ii. The Corporate Debtor, undertakes to pay an amount under the default of Rs.16,18,12,984 (Rupees Sixteen Crores Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only) to the Operational Creditor in the near future in easy money instalments.
- iii. The Corporate Debtor submits that, the Corporate Debtor has been facing certain financial distress due to the sudden economical impact created after COVID-19 in the country. Due to the aforesaid reason, the business of the Corporate Debtor is not operating to its 100% potential.
- iv. The Corporate Debtor, has no intentions to shy away or evade from paying the debt due to the Operational Creditor to the tune of Rs.



16,18,12,984 (Rupees Sixteen Crores Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only).

- v. The Corporate Debtor only craves for grant of time in order to settle the debt amount to the amount of Rs.16,18,12,984 (Rupees Sixteen Crores Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only) with the Operational Creditor.
- vi. The Corporate Debtor with all bonafide motives and there are no ill-intentions in any manner with regard to the clearing of the debt due towards the Operational Creditor the amount of Rs. 16,18,12,984 (Rupees Sixteen Crores Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only).

**ANALYSIS AND FINDINGS:-**

- 4. We have perused the documents filed by the Operational Creditor as well as Corporate Debtor and have heard the arguments made by the counsels appearing for both the parties.
- 5. The Operational Creditor has established that he has supplied the goods/material to the Corporate Debtor, raised proper invoices along with the running ledger account and the Corporate Debtor has failed to make the payments due to the Operational Creditor.
- 6. The Corporate Debtor has not denied the receipt of the goods supplied by the Operational Creditor and the invoices raised thereto. The Corporate Debtors has clearly admitted to the debt and the default in payment of the



same by him. However the Corporate Debtor has stated that he has no intentions to evade from paying the debt due to the Operational Creditor to the tune of Rs. 16,18,12,984 (Rupees Sixteen Crores Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only). The Corporate Debtor has only craved for grant of time in order to settle the debt amount.

7. The Corporate Debtor has defaulted on debt of Rs. 16,18,12,984 (Rupees Sixteen Crores Eighteen Lakhs Twelve Thousand Nine Hundred and Eighty Four Only).
8. In view of the aforesaid position, it is clear that there is an admission by the Corporate Debtor with regard to the default committed by it.
9. It is further noted that vide order dated 20.02.2024, the parties were directed to file an affidavit stating clearly that the present application is not a collusive one and in compliance of the said order both the parties have filed the affidavits stating that the present application is not a collusive application.
10. The Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited** reported in (2018) 1 SCC 353 has held that the Adjudicating Authority, when examining an application under Section 9 of the Act will have to determine:
  - a) *Whether there is an "operational debt" as defined exceeding Rs 1 lakh?*



- b) *Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?*
- c) *Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?"*

The Hon'ble Supreme Court had further held that if any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the Adjudicating Authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Code, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

- 11. In our considered view, all the conditions required for initiating CIRP under Section -9 of IBC, 2016 and the parameters as laid down by the Hon'ble Supreme Court in the case of ***Mobilox Innovations (Supra)*** have been fully met. Further, the Corporate Debtor has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective.
- 12. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -





- I. The Application bearing IB-663/ND/2023, filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
  
- II. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
  - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law



for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

III. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

IV. The Operational Creditor has not proposed any name for the Interim Resolution Professional (“IRP”) and requested this Adjudicating Authority to appoint an IRP. Therefore, we appoint name Mrs. Dikshita Sharma as



Interim Resolution Professional (“IRP”). Her Email id is ca.dikshasharma@gmail.com and Contact No. is 99110-57600. Her registration number is IBBI/IPA-001/IP-P-02226/2020-2021/13408. The IRP is directed to file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- V. In pursuance of Section 13(2) of the Code, we direct the IRP, to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VI. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.



- VII. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- VIII. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP, and shall be paid back to the Operational Creditor.
- IX. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.



X. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

XI. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

**-SD/-**  
**(Rahul Bhatnagar)**  
**Member (T)**

**-SD/-**  
**(Mahendra Khandelwal)**  
**Member (J)**