**(2021) 07 NCLT CK 0038**

**In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi**

**Case No :** Petition No. IB-2553/Nd/2019

Infocare Private Limited And Ors — APPELLANT

Vs

Superkisan E-Commerce Private Limited And Ors — RESPONDENT

**Date of Decision :** 23-07-2021

**Acts Referred:**

Insolvency and Bankruptcy Code, 2016 — Section 8, 8(2), 9, 9(3)(b), 9(5), 14(1), 14(2), 14(3), 14(4)
Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 — Rule 6
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 — Regulation 6

**Citation :** (2021) 07 NCLT CK 0038

**Hon'ble Judges :** Dr. Deepti Mukesh Member (J), Sumita Purkayastha Member (T)

**Bench :** Division Bench

## Judgement

Dr. Deepti Mukesh, Member (Judicial)

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity â??code') read with Rules 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules"") by Umbrella Infocare private limited(for brevity

'Applicant'), through Mr.Narendra Kumar Thakur , being the Accounts office of applicant company authorized vide board resolution dated

07.08.2019, with a prayer to initiate the Corporate Insolvency process against Superkisan E-Commerce Pvt. Ltd. (for brevity Corporate Debtor').

2. The Applicant is a private limited company incorporated on 09.11.2012 under the provision of Companies Act 1956, bearing CIN NO.

U72200DL2012PTC244715, having registered office at 72, Taimoor Nagar, New Friends colony, New Delhi DL-110065 IN. The applicant is engaged in the business of providing software maintenance and allied services.

3. The Corporate Debtor is a private limited company incorporated on 30.10.2018 under the provisions of Companies Act, 2013 bearing CIN No.

U74999DL2018PTC341332 having its registered office at M-3, LGF, Green Park Extension, New Delhi, South Delhi DL-110016 IN. The corporate

debtor was initially incorporated in the name and style of â??Kharihaan E- Market Private Limitedâ? the name of Company was changed to ""Super

E-Commerce Private Limitedâ? on 27.12.2018. The certificate of incorporation for name of change is annexed. The corporate debtor is engaged in

the business of developing websites, mobile and desktop based applications focusing on e commerce platform.

4. The applicant submits that the parties executed an agreement on 01.11.2018, as per the agreement the applicant provided software support services

to the corporate debtor. The corporate debtor never disputed the services of the applicant. The applicant raised invoices of which and the corporate

debtor made regular payments till January 2019. Thereafter the corporate debtor delayed in making payments, therefore the applicant sent reminders.

However, no payment was made by the corporate debtor. The agreement dated 01.11.2018 along with invoices raised and emails are annexed.

5. Consequently, the applicant served a demand notice dated 03.09.2019 under Section 8 of the code calling upon the corporate debtor to make a

payment of Rs.33,70,178/- (including interest @ 18%). The said notice was delivered at the registered office of the corporate debtor as reflected in

the MCA master data on 06.09.2019. The copy of track report showing delivery at the registered office is annexed. The corporate debtor never

replied to the said notice neither any notice of dispute under Section 8(2) has been received by the applicant.

6. The Applicant filed the present Application under section 9 of IBC, 2016 As per Form 5 Part IV, the total debt outstanding is Rs.32,17,458/-

(Rupees Thirty Two Lakhs Seventeen Thousand Four hundred and Fifty Eight only) including interest calculated upto 2nd September 2019. A copy of

this application was duly delivered to the Corporate Debtor as per service affidavit through speed post and email. The corporate debtor in spite of

service has not appeared neither filed reply. Hence, the corporate debtor has been proceeded ex-parte vide order dated 03.12.2019 of this Bench.

7. The corporate debtor defaulted in payment of invoices raised from Nov 2018 to May 2019 and the present application is filed on 09.10.2019. Hence

the application is not time barred and filed within the period of limitation.

8. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

9. The Applicant has filed an affidavit in compliance of section 9(3)(b). The present application is filed on the Performa prescribed under Rule 6 of the

Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the

code and is complete.

10. Considering the submission made and documents on record the applicant is entitled to claim its dues, establishing the default in payment of the

operational debt. Moreover, the contentions of the applicant have remained uncontroverted and undisputed by the corporate debtor proving the debt

becoming due. Hence, the application is admitted.

11.As a consequence of application being admitted and name of IRP not proposed by the applicant, this Bench appoints, Mr Apoorv Sarvaria having

email id: sarvaria@gmail.com and registration no. [BBI/IPA-002/IP N01073/2020-2021/13444 as the Interim Resolution Professional, subject to the

condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board

of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate

Persons) Regulation 2016, within a period of one week from this order.

12. The application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow

in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of

Section 14(2) to 14(4) of the Code shall come in force.

13.We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr Apoorv Sarvaria to meet out the

expenses and perform the functions assigned to him in accordance with regulation 6 of 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 applicant. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall

be paid back to the applicant.

14. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to

the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book

with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the

Master Data. ROC shall send compliance report to the Registrar, NCLT.