

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-1936/ (ND) /2019

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:

BSE Limited
25th floor, P.J. Towers,
Dalal Street, Fort,
Mumbai- 400001

...Applicant

Versus

MFS Intercorp Limited
Omaxe Square,
Ground Floor- 18, Jasola,
Delhi -110025

...Respondent

Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr.Abhishek Puri, V. Siddharth, Yasharth Mishra,
Surjit Gupta, Manan Gambhir, Advocates
Counsel for Respondent:

C.P. IB-1936/ND/2019
BSE Limited vs. MFS Intercorp Limited.



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8/11/2020

ORDER

Per DR. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 07.01.2020

1. This is an application filed by BSE Limited to initiate corporate insolvency resolution process ("CIRP") against M/s MFS Intercorp Limited under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 8,27,559 /- including interest and applicable taxes towards the Annual Listing Fees ("ALF") paid to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant is a recognized stock exchange under the provisions of the Securities Contracts (Regulation) Act, 1956 (SCRA). The Applicant is constituted to provide a platform for the purpose of assisting in the business of buying, selling or dealing in securities of the companies which have been granted listing permission by the applicant.
- ii. The applicant states that the Respondent was incorporated in the month of January 1986 and is engaged in the Ferro Alloys Industries. The applicant further stated that the Respondent is a listed company within the scope and meaning of section 2(52)



of the Companies Act, 2013. The Securities of the Respondent are listed on the platform provided by the Applicant.

- iii. Pursuant to section 21 of the SCRA and as per mandatory requirement of the applicant, a listing agreement was executed between the applicant and the Respondent dated 13.02.1995, pursuant to which the securities of the Respondent were allowed to be listed and consequently traded on the platform provided by the applicant. The said listing Agreement as per clause 38 provided that the Respondent would pay an Annual Listing Fee on or before 30th April in each year. The said ALF would be computed on the basis of the capital of the company as on 31st March and worked as provided in the schedule II.

Section 21 of the SCRA provides for "Conditions for Listing- Where securities are listed on the application of any person in any recognized stock exchange such person shall comply with the conditions of the listing agreement with that stock exchange.

- iv. Subsequently, a uniform listing agreement was executed between the applicant and the Respondent on 08.04.2016, in accordance with the new Securities and Exchange Board of India (Listing Obligations and Disclosure requirements) Regulations, 2015 pursuant to circular No.



CIR/CFD/CMD/6/2015 notified by Securities and Exchange Board of India (SEBI) on 13.10.2015. Under the uniform listing agreement for admission and continued admission of the securities to dealings on the platform of the applicant, the Respondent in terms of clause 3 was obligated to pay listing fees as may be specified/levied by the applicant from time to time within the prescribed period. In this matter, the circular No. DCS/LISTOPS/25/2016-17 dated 01.03.2017 and DCS/COMP/13/2014-15 dated 27.02.2015 issued by the applicant are relevant.

- v. The applicant submitted that the present application is being filed in respect of an operational debt of Rs. 8,27,559/- as on 20.12.2018, which accrued on 01.04.2015 and continued to accrue till the date of the issuance of the demand notice. The Applicant also issued a consolidated invoice dated 03.04.2018 which included ALF for the financial year 2015-16, 2016-17, 2017-18, and 2018-19 along with the interest on delayed payment in accordance with the invoices that has been issued to the Respondent from time to time. The applicant further submitted that the default first occurred when the Respondent failed to pay the operational debt to the applicant on 01.04.2015 and continued till the issuance of demand notice.



- vi. The applicant submits that the Respondent had made payments of the ALF till financial year 2014-2015, the last payment was received on 14.03.2018 for an amount of Rs. 2,27,453/- and thereafter the Respondent has failed to pay any further amount. The applicant raised the aforementioned invoice dated 03.04.2018 containing the ALF for the FY 2018-19 along with the arrears upto FY 2018-19.
- vii. The applicant served a demand notice dated 20.12.2018 under section 8(1) of the Insolvency and Bankruptcy code, 2016 upon the Respondent at its registered office. The notice was returned to the applicant as undelivered with the endorsement "unclaimed". The applicant also sent an email dated 21.12.2018 at its registered email address as provided by the Respondent to the applicant.
- viii. The Applicant has submitted that till date no reply has been received by the applicant. The Respondent has, therefore not brought to the notice of the applicant the existence of a pending dispute before the receipt of the notice, within the statutory timeline of 10 days under section 8(2) of the code.

2. Since the application filed by the Applicant fulfilled all the conditions required under Section 9 of the Code, this Tribunal ordered issue of



notice to the Respondent by all modes. However, the Applicant during the hearing on 24.09.2019 has contended that the affidavit of service has been filed and also e-service has been made, No one has represented on behalf of the Respondent. However, despite service of notice by all modes, none appeared on behalf of the Respondent and as a result the Respondent was proceeded ex-parte on 24.09.2019.

3. The Respondent was absent even on the hearing on 17.12.2019 and was set ex-parte. We heard the arguments made by the counsel for the operational creditor and perused the documents filed by him. The Applicant has established the existence of debt and default on the part of the Respondent and the Respondent has not availed the opportunities provided by this Tribunal to defend the arguments made by the Applicant. In view of the above situation, this Tribunal admits this petition and initiates CIRP on the Respondent with immediate effect.

4. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent 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.

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

5. The interim resolution professional (“IRP”) proposed by the Applicant is Ms. Dipti Mehta, Address: 201-206, Shiv Smriti Chambers, 2nd floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai-400018. (Email – dipti@mehta-mehta.com), Reg. No: IBBI/IPA-002/IP-N00134/2017-18/10350 and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

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(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

- s d -

(DR. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003