CMA Sunil Kumar Agarwal
M.Com, FCMA, Insolvency Professional

In the matter of
M/s ECS Biztech Limited
Regd. Office: ECS House, 12 Garden View, Opp Auda Garden, Pakwan Circle, Sindhu Bhavan Road, Off SG Highway, Bodakdev Ahmedabad GJ 380059

INTIMATION OF INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESSTO REGULATORY AUTHORITIES

Date: 20-12-2019

To,
Bombay Stock Exchange Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai - 400001

Dear Sir/Madam,

Subject: Intimation of initiation of Corporate Insolvency Resolution Process (CIRP) and appointment of Interim Resolution Professional of ***M/s. ECS Biztech Limited*** *on 16/12/2019*

Reference: C.P. (I.B) No. 26/9/NCLT/AHM/2018

With this communication I hereby intimate your good office that CIRP has been initiated in respect of (M/s ECS Biztech Limited) ("Corporate Debtor") under the provisions of Insolvency and Bankruptcy Code, 2016 ('Code') by order of National Company Law Tribunal ('NCLT") with effect from 16-12-2019.

As per section 17 of the Code the powers of the Board of Directors of M/s. ECS Biztech Limited (In CIRP) shall stand suspended and such powers shall now be vested with the undersigned.

It may further be noted that in consonance with the stipulations contained in Section 14 of the Code, a moratorium under section 13(1)(a) of the code, has been declared vide the aforesaid order passed by NCLT, whereby, inter alia, the following shall be prohibited:-

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

CMA SUNIL KUMAR AGARWAL Reg. No.: IBBI/IPA-001/IP-P01390/2018-19/12178

Office Address: 202, Sakar III, Sattar Taluka Society, Near Old High Court, Ahmedabad 380014
Regd Address with IBBI: Tower 6/603, Devnandan Heights, Near Podar School, New CG Road, Chandkheda, Ahmedabad-382424
Mob: 9586644998 E-Mail: ANIL91111@HOTMAIL.COM

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. Again, the provisions of sub section 1 of section 14 of the code shall not apply to such transactions as may be notified by the central government in consultation with any financial sector regulator.

The order of moratorium shall be in force from the date of the order of the Hon'ble NCLT, i.e. from 16-12-2019 as stated in the Honble NCLT, Ahmedabad Order till the completion of CIRP, subject to proviso under subsection 4 of section 14 of the code.

The instant intimation with respect to initiation of CIRP and appointment of Interim Resolution Professional is for your information and record. We request that the receipt of this letter be kindly acknowledged.

Thanking you,

Yours faithfully,

For, M/s. ECS Biztech Limited (In CIRP)

CMA SUNIL KUMAR AGARWAL Reg. No. IBBI/IPA-001/IP-P01390/2018-19/12178

CMA Sunil Kumar Agarwal
Interim Resolution Professional
IP Reg. No: IBBI/IPA-001/IP-P01390/2018-19/12178

Encl: NCLT Order

Office Address: 202, Sakar III, Sattar Taluka Society, Near Old High Court, Ahmedabad 380014
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Mob: 9586644998 E-Mail: ANIL91111@HOTMAIL.COM

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23/12/2019

BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No.26/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.12.2019

Name of the Company: Ingram Micro India Pvt. Ltd.
V/s.
ECS Biztech Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Manish K. Bhatt	Sr. Adv.	Operational creditor	MMBhatt
2.	with Munjaal Bhatt	Adv.		

ORDER

The parties are represented through learned counsels.

The Order is pronounced in the open court vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 16th day of December, 2019

NATIONAL COMPANY LAW TRIBUNAL SA AHMEDABAD

BEFORE ADJUDICATING AUTHORITY (NCLT) AHMEDABAD BENCH

C.P. No.(IB) 26/9/NCLT/AHM/2018

In the matter of:

M/s. Ingram Micro India Private Limited
5th Floor, Block B, Godrej IT Park
Pirojshanagar, LBS Marg
Vikhroli (W)
MUMBAI 400 079 ... **Petitioner**
[Operational Creditor]

Versus

M/s. ECS Biztech Limited
ECS House, 11-12, Garden View
Opp. AUDA Garden
Pakwan Circle
Sindhu Bhavan Road
Off. S.G. Highway
Bodakdev
AHMEDABAD 380 059

And another office at:
Block – 1, Safal Mondel Park
Nr. Iscon Mall & Rajpath Club
Nr. Rangoli Farm,
S.G. Highway
Bodakdev
AHMEDABAD 380 054 ... **Respondent**
[Corporate Debtor]

Order delivered on 16th December, 2019.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Senior Advocate Mr. Manish Bhatt with Advocate Mr. Vineet Sheth and company officials Mr. Nagendra Pal Goel and Ms. Priya Gupta for the applicant.
Senior Advocate Mr. Navin Pahwa with Advocate Mr. Ravi Pahwa for corporate debtor.

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. That, the instant application is filed by Mr. Nagendra Pal Goel, Company Secretary of the applicant/operational

creditor M/s. Ingram Micro India Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to trigger Insolvency Resolution Process against M/s. ECS Biztech Limited (hereinafter called as respondent/corporate debtor).

2. That, the applicant/operational creditor M/s. Ingram Micro India Private Limited, having its registered office at Godrej IT Park, LBS Marg, Vikhroli (W), Mumbai 400 079, is engaged in the business of manufacture and supply of IT Hardware and software products.

3. That, the respondent/corporate debtor M/s. ECS Bizteh Limited is a listed company incorporated under the Companies Act, 1956 on 29.11.2010 and having its registered office at ECS House, Opp. AUDA Garden, Sindhu Bhavan Road, Bodakdev, Ahmedabad 380 059, Gujarat State, having identification No. L30007GJ2010PLC063070. That, authorised share capital of the corporate debtor is Rs. 40,00,000,00/- and paid up share capital is Rs. 20,55,50,470/-.

4. It is submitted by the applicant that it had raised fifteen invoices on the respondent company against the supply of IT hardware and software products supplied to the

respondent during the period from 16th May, 2014 to 13th August, 2014 totally amounting to Rs. 66,21,426.65 (Rupees sixty-six lacs twenty-one thousand four hundred twenty-six and paise sixty-five only) as per annexure "C" placed at page No. 29 to the application. According to the applicant a total sum of **Rs. 1,08,03,864.45 (Rupees one crore eight lacs three thousand eight hundred sixty-four and paise forty-five only)** is outstanding from the respondent which includes Rs. 500/- towards cheque dishonour charges and interest @ 24% amounting to Rs. 41,81,937.80

5. It is further submitted by the applicant that since the respondent company used to place purchase orders regularly with the applicant, the applicant was maintaining running account of the respondent and a copy of ledger accounts maintained by the applicant is annexed to the application. That, the respondent accepted the goods sold and supplied by the applicant without any complaint and received the invoices raised for each transaction but failed to make payment with regard to such invoices. That, applicant for the first time addressed a letter dated 22.09.2014 to the respondent demanding outstanding payment along with interest (page 83). That, respondent vide letter dated 28.09.2014 accepted and acknowledged the said debt (page 85), did not raise any protest and sought time for making payment stating financial difficulties faced by the respondent.

6. The applicant has further stated that the corporate debtor further made assurance vide its letter dated 09.12.2014 and debtor sought more time to make payment of the outstanding amount. That, after stringent follow-up by the applicant, the respondent issued cheque of Rs. 66,21,426/- dated 14.01.2015. On presentation, the said cheque was returned from the bank on 15.01.2015 with remarks "insufficient funds". Therefore, applicant was constrained to file criminal case against the respondent under Section 138 of the Negotiable Instruments Act in the court of CJM, Ahmedabad.

7. The applicant has further submitted that as can be seen from the facts and circumstances set out hereinabove, it is clear that the respondent is unable to pay the outstanding operational debt arising in the usual and ordinary course of business and has become commercially insolvent and, therefore, it is just and equitable and in the interest of justice corporate insolvency resolution process may be initiated against the respondent company. That, despite assurances the respondent company failed to clear the outstanding, applicant was again constrained to issue demand notice dated 11.03.2017 demanding payment of unpaid operational debt due from the respondent. However, the said demand notice was returned with remarks **"LEFT".** That, the applicant again issued notice on 27.03.2017 through Registered A.D. post which was duly served upon the respondent. That, in response to the said demand

notice dated 27.03.2017, the respondent through advocate issued reply dated 10.04.2017 raising disputes. That, the applicant vide its letter dated 17.04.2017 refuted the reply of respondent stating that the disputes raised by the respondent is clearly an afterthought.

8. The petitioner has further submitted that thereafter the advocate for the corporate debtor formally replied to the reply of operational creditor's letter on 26.04.2017, a copy of which is annexed to the application marked Annexure K (Page 152) instead of paying the amount so due. Finding no alternative, the operational creditor again issued demand notice in form No. 3 dated 29.11.2017 as per I & B Code which was duly served on the corporate debtor as reflected from the reply to the demand notice issued by the corporate debtor on 9.12.2017. However, the corporate debtor denied to have any due towards operational creditor and trying to raise dispute. In view of this, it is clear that the corporate debtor has defaulted to make payment within the meaning of 'default' as defined u/s 3(12) of the IB Code. A copy of statement of bank account certifying non-payment of outstanding dues is annexed to the application marked Annexure N.

9. The applicant has submitted copy of the following documents in support of its claim: -

Sr. No.	Particulars	Page Nos.
1	Purchase orders	3-28
2	Relevant outstanding invoices	29-72
3	Ledger account of corporate debtor	73-82
4	Letter of operational creditor dated 22.09.2014 and reply dated 28.09.2014 of corporate debtor	83-86
5	Letter dated 09.12.2014 of corporate debtor	87-87
6	Criminal complaint filed for dishonoured cheques	88-94
7	Demand notice in form No. 3 dated 11.03.2017 & 27.03.2017 along with online tracking record	95-115
8	Reply by advocate of corporate debtor	116-148
9	Reply dated 17.04.2017 of operational creditor to the reply by corporate debtor	149-151
10	Reply dated 26.04.2017 of the corporate debtor	152-154
11	Demand notice dated 29.11.2017 along with online tracking record	155-180
12	Reply dated 09.12.2017 from corporate debtor	181-213
13	Statement of bank account certifying non-payment of outstanding dues	214-219
14	Board resolution of operational creditor	220-220

10. It is further submitted by the applicant that in the facts and circumstances as set out hereinabove, it is clear that the corporate debtor is unable to pay the outstanding operational debt arising in the usual and ordinary course of business and has become commercially insolvent. In such circumstances, it is just and equitable and in the interest of justice, corporate insolvency resolution process be initiated against the corporate debtor.

11. It is also a matter of record that the operational creditor has demanded his dues from time to time by way of issuing notice, but, when corporate debtor failed to pay, the operational creditor has issued Section 8 notice of I & B Code. No doubt the corporate debtor tried to establish the dispute, but all are spurious in as much as the corporate debtor himself has admitted the debt vide its letter dated

28.09.2014 (page 85) and letter dated 09.12.2014 (page 87).

12. The respondent filed affidavit in reply inter alia denying the averments made in the memo of petition. That, the present petition and the demand notice is not filed/issued as per the provisions of the Act, Rules and the forms. That, the Company Secretary of the operational creditor is not competent to issue demand notice or file the present proceedings under the IB Code. The present petition is liable to be rejected as there is no debt and, therefore, there is no default within the meaning of IB Code giving any right in favour of the petitioner to maintain the present proceedings. Besides the respondent has already given notice of dispute.

13. If is further submitted by the respondent that the claims made by the petitioner are also barred by limitation. That, the present proceedings also suffer from delay and latches. That, the present proceedings also suffer from doctrine of resjudicata. That, the present proceedings therefore also are not maintainable and are liable to be summarily rejected. It is stated that the two blank cheques drawn on HDFC Bank which were given by the respondent to the petitioner along with letter dated 01.02.2013 as and by way of security only and the letter dated 01.02.2013 in terms stipulated that the petitioner shall not deposit the two cheques in the bank without prior permission of the

respondent. That, the entire amount due to the petitioner was paid by the respondent during the period between **03.05.2014 and 04.09.2014,** the petitioner was required to return back the two cheques to the respondent. However, instead of returning back the two cheques to the respondent, the petitioner allegedly made material alterations in the said cheques by filling the date as **14.01.2015** and mentioned the amount of **Rs. 66,21,426.65.** That, after making these material alterations, despite having received the entire amount from the respondent and despite clear stipulations contained in the letter dated **01.02.2013**, the operational creditor presented the two cheques in the bank without prior permission of the respondent.

14. It is further submitted by the respondent that along with the reply dated **10.04.2017** the respondent had attached self-attested copy of the statements evidencing payment/ advance payment made by the respondent to the petitioner together with abstract of the bank statement for the relevant period issued by State Bank of India, Industrial Financial Branch, Ahmedabad and ICICI Bank, JMC House, Ahmedabad evidencing payment to the petitioner. That, in reply to the letter of 10.04.2017, petitioner sent a letter dated 17.04.2017, wherein, no dispute has been raised by the corporate debtor regarding the bank statement, however, continued with the statement that the petitioner is entitled to the amount of Rs. 66,21,426.65 from the

respondent. That, the respondent sent yet another reply vide letter dated 26.04.2017 reiterating the contents of reply dated 10.04.2017 and informing that the letter dated 01.02.2013 was received by one Mr. Samir Parikh, an employee of the petitioner company personally on 08.02.2013 as per the endorsement made on the letter. That, despite all developments, the respondent replied demand notice vide letter dated 09.12.2017 enclosing therewith relevant bank statements.

Findings:

15. Heard both the sides at length and perused the documents filed on record.

16. On perusal of the records it is found that the corporate debtor had placed purchase orders in respect of various electronic items which are at page No. 3-28 to the application. That, based on these purchase orders, the operational creditor supplied goods and raised invoices copy of which are also placed at page No. 29-72 to the application. That, amongst other terms and conditions of sale, the delayed payment charge was stated as 24% per annum. It is found that there were regular dealings between the operational creditor and respondent and the ledger account of such dealings are placed at page No. 73-82 to the application from where it can be seen that number

of sales had been effected. That, opening debit balance as on 01.01.2013 was Rs. 34,85,769.10 and the payments made by the corporate debtor have been given credit as and when payments were made.

17. That, as can be seen from page No. 82, on 04.09.2014 after making payment of Rs. 50,000/-, there was debit balance of Rs. 66,46,426.94. That, the operational creditor, thereafter, giving credit to all the payments made, addressed letter dated 22.09.2014 called upon the corporate debtor to make payment of Rs. 66,46,426.65 and in response to said letter, corporate debtor under letter on 28.09.2014 **(page 85 of the application)** admitted the debt and stated that the respondent company was facing many challenges/hurdles and had incurred business losses and was trying to clear all the outstanding as soon as the business stabilises. That, in continuation to the said letter, the corporate debtor also addressed another letter on 09.12.2014 **(page 87 of the application)** reiterating that it had sincere intention to clear the outstanding amount. That, as can be seen from page No. 82 to the application, the corporate debtor made payment of Rs. 25,000/- on 06.01.2015 leaving a balance of Rs. 66,21,426.65. that, the corporate debtor had given a cheque for the balance amount of Rs. 66,21,426.65 which got dishonoured and the same has been **reflected in the ledger at page No. 82** to the application. That, operational creditor has filed a complaint

under section 138 of the Negotiable Instruments Act before the C.J.M., Ahmedabad.

18. On perusal of the record it is found that acknowledging the receipt of demand notice issued by the applicant dated 27.07.2018, the respondent had issued letter dated 08.08.2018 inter alia stating that the material supplied by the petitioner was of inferior quality due to which the respondent had suffered heavy losses. No document is produced by the respondent in support of such claim. On the contrary, the only material available on record is the email communication between the two parties, which shows that the respondent has acknowledged receipt of goods.

19. That, the application is not barred by limitation in view of the fact that on 21st December, 2017 the respondent has acknowledged the debt as reflected in the e-mail. Apart from that the respondent has also paid Rs. 5.00 lacs towards invoice No. 467 as reflected in the e-mail dated 06.05.2017. In the said e-mail petitioner has requested the respondent to clear the old outstanding of Rs. 20.00 lacs which is pending from November, 2015. Thus, the application is not barred by limitation. That apart, the application is found to be complete in all respect as per form No. 5.

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

20. In view of Mobilox case, while examining an application under Section 9 of the Act, will have to determine the following: -

(i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid;
and

(iii) 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?

21. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.

22. That, the Application filed by the Applicant is complete in all respects.

23. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Sunil Kumar Agarwal, Tower 6/603 Devnandan Heights, Near Poddar School, New C.G. Road, Chandkheda, Ahmedabad 382 424 (anil91111@hotmail.com) having registration No. IBBI/IPA-001/IP-P01390/2018-19/12178 to act as an interim resolution professional under Section 13(1)(c) of the Code.

24. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

25. From the above stated discussion and on the basis of material available on record, this Adjudicating Authority is of the considered view that it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

26. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

27. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

28. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

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.

29. This Petition stands disposed of accordingly with no order as to costs.

30. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

Certified to be True Copy of the Original

23/12/19

Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad