

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-II
IB-1232/(ND)/2019**

In the matter of:

AMERICAN EXPRESS BANKING CORPORATION

Registered office at:

**MGF Metropolitan, 7th Floor,
Saket District Centre, and New Delhi-110017**

Also at:

**Cyber City, Tower C,
DLF Building No.8, Sector-25,
DLF City Phase-II,
Gurgaon-122002**

...Applicant

Versus

1. FOURTH DIMENSION SOLUTION LTD.

Registered office at:

**DSM 340 DLF Trade Tower
Shivaji Marg,
New Delhi-110015**

2. MR. AMALENDU MUKHERJEE

Registered office at:

**DSM 340 DLF Trade Tower
Shivaji Marg,
New Delhi-110015**

3. MS. NAMITA MUKHERJEE

Registered office at:

**DSM 340 DLF Trade Tower
Shivaji Marg,
New Delhi-110015**

...Respondent

Order Delivered on:25.07.2019

CORAM:

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C.P. IB-1232/ND/2019

American Express Banking Corporation vs. Fourth Dimension Solutions Ltd.



MS. INA MALHOTRA, MEMBER(JUDICIAL)

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

Counsel for Operational Creditor: Mr. Roopansh Purohit & Mr. Harsh Panwar, Advocates for the Applicant

ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This is an application filed by M/s American Express Banking Corporation ("Applicant") seeking to initiate corporate insolvency resolution process ("CIRP") of M/s Fourth Dimension Solution Limited ("Respondent") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") for the alleged default on the part of the Respondent in settling the dues of Rs.2,20,69,803.39/- for the credit facilities availed by the Respondent. The details of the transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The first card member application dated 18.04.2016 was submitted by the Respondent through its employee Shri Neeraj Anand for availing corporate card facility from the Applicant for exclusive use of the Respondent herein.
- ii. The second card member application dated 18.04.2016 was submitted by the Respondent through its employee Shri Manoj Kumar, for availing corporate card facility from the Applicant for exclusive use of the Respondent herein.

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- iii. The third card member application dated 21.12.2016 was submitted by the Respondent through its employee, Shri Rakesh Kumar Singh for availing corporate card facility from the Applicant for exclusive use of the Respondent herein.
- iv. It was categorically agreed by the Respondent that the Respondent is solely liable for all charges incurred on the corporate card issued by the Applicant and the Respondent shall be bound by the American Express Corporate Card Member Agreement.
- v. The corporate cards along with the American Express Corporate Card Member Agreement were issued by the Applicant for the exclusive use and utilization of the Respondent.
- vi. The Respondent is bound by the terms and conditions of the corporate card member agreement.
- vii. The credit facilities were available by the Respondent from the Applicant under three AEBC Card Nos. 3765-340549-61002, 3765-340798-11000 and 3765-365476-91005.
- viii. The Applicant, by way of the legal notice dated 01.05.2018 called upon the Respondent to pay Rs. 2,57,19,803.39 within 15 days of receipt of thereof, failing which the Applicant shall be constrained to initiate action in the capacity of a financial creditor under section 7 of the Code read with rule 4 of the Insolvency and Bankruptcy



(Application to Adjudicating Authority) Rules, 2016 against the Respondent.

- ix. Instead of complying with said legal notice dated 01.05.2018, the Respondent issued a false and baseless reply dated 22.05.2018.
- x. The Applicants sent a rejoinder dated 04.06.2018 to the reply of the Respondent dated 22.05.2018.
- xi. The Applicant filed an application for initiation of CIRP of the Respondent before this Hon'ble Tribunal with vide Diary Number 4393/2018 dated 06.07.2018.
- xii. The respondent no.2 and 3 above mentioned on behalf of the Respondent approached the Applicant for settlement of the aforesaid liability of Rs. 2,57,19,803.39/- after mutual discussions and deliberations, the Respondent agreed to settle the abovementioned accounts to the tune of Rs. 1,93,92,326.44/- on 09.07.2018. In lieu of the settlement dated 09.07.2018, the Respondent issued the cheques in discharge of his legal liability in favour of the Applicant.
- xiii. In view of settlement dated 09.07.2018 between the parties, the Applicant withdrew its petition having Diary No.4393/2018.
- xiv. All the cheques given by the Respondent against the settlement dated 09.07.2018 were dishonored. The Applicants filed the complaints under the provisions of Negotiable Instrument Act, 1881 against the Respondent



before the Patiala House District Courts, New Delhi, bearing CC Nos. 17882/2018, 17885/2018, 2488/2019, 2489/2019 and 3773/2019.

- xv. As per the corporate card statement of account dated 19.03.2019, Rs. 1,74,33,445.15/- under AEBC Card No.3765-340549-61002 is due and payable by the Respondent to the Applicant.
- xvi. As per the corporate card statement of account dated 24.03.2019, Rs.12,83,653.53/- under AEBC Card No.3765-365476-91005 is due and payable by the Respondent to the Applicant.
- xvii. As per the corporate card statement of account dated 03.04.2019, Rs. 33,52,704.71/- under AEBC Card No.3765-340798-11000 is due and payable by the Respondent to the Applicant.
- xviii. Thus, a total debt amounting to Rs. 2,20,69,803.39/- is due and payable by the Respondent to the Applicant.

2. Notice was issued to the Respondent vide all modes including through the process of the bench on 22.05.2019. The Applicant has filed the service affidavit on 28.05.2019 according to which the petition has been duly served on the Respondent by speed post as well as through email.



3. The Applicant has filed the latest statement of accounts of the company enclosing the details of balance due from the Respondent on 05.07.2019.
4. Despite opportunities given to the Respondent, none was present to represent the Respondent and they were proceeded ex-parte. We heard the arguments made by the counsel of the petitioner company. As per the documents as well as the oral submissions made by the counsel for the petitioner, the debt and the default are clearly established and this Tribunal initiates CIRP on the Respondent.
5. 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.

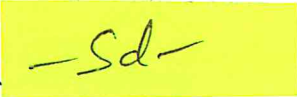
- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation 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.”

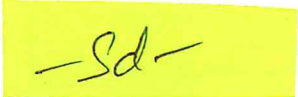
6. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Jaswant Singh (Email – csjaswantsingh@gmail.com, Mobile – 9873606667) and is being confirmed by this Bench. He shall take such other and further



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.

7. Renotify this case for report of the IRP on 01.10.2019.


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


(INA MALHOTRA)
MEMBER (JUDICIAL)

Deepak