

Sr.No. 103/2021

1

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER
SHRI L.N. GUPTA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 158/9/JPR/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016-Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S BALAJI LIFESTYLE TECHNOLOGIES PVT. LTD.

...Applicant/Operational Creditor

Versus

M/S EXCEL TECHNOVATION PVT. LTD.

...Respondent/Corporate Debtor

MEMO OF PARTIES

M/s Balaji Lifestyle Technologies Pvt. Ltd.
CIN: U5260RJ2008PTC025717
S-9, III Floor, Shubham Tower,
Shastri Nagar, Jaipur-302016

...Operational Creditor/ Applicant

VERSUS

CP No. (IB)-158/9/JPR/2020




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National Company Law Tribunal
Jaipur

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44 OCT 2021

Sr. No. 103/2021

M/s Excel Technovation Pvt. Ltd.
 CIN: U72100RJ1996PTCC011349
 101, Sumner Complex, Near Bagaria Bhawan,
 F-174, Gautam Marg, C-Scheme, Jaipur-302001

...Corporate Debtor/ Respondent

For the Operational Creditor : Mudit Manohar, Adv.
 For the Corporate Debtor : None-appeared

Order Pronounced On: - 30.09.2021

ORDER

Per: Shri Ajay Kumar Vatsavayi, Judicial Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Balaji Lifestyle Technologies Private Limited ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s excel Technovation Private Limited ('Respondent' / 'Corporate Debtor').
2. The Applicant is a private limited company, limited by shares, incorporated on 21.01.2008 under the provisions of Companies Act, 1956 with its office at S-9, III Floor, Shubham Tower, Shastri Nagar, Jaipur-302016 (Rajasthan). It is stated that the Applicant is engaged in services of bulk data entry for its vendors.

CP No. (IB)-158/9/JPR/2020





Assistant Registrar
 National Company Law Tribunal
 Jaipur

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4 OCT 2021

3. The Respondent is a private limited Company incorporated under provisions of the Companies Act, 1956 on 05.01.1996, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U45201RJ2012PTC037603 and the Registered Office of the Respondent is at 101, Sumner Complex, Near Bagaria Bhawan, F-174, Gautam Marg, C-Scheme, Jaipur-302001 (Rajasthan). The authorized share capital of the company is Rs. 70,00,000/- (Rupees Seventy Lakhs Only) and paid up share capital is Rs. 70,00,000/- (Rupees Seventy Lakhs Only), as per Master Data of the Company.

4. It is the case of the Applicant that the Respondent has been availing services of the Applicant for the work of data entry on a regular basis. In continuation to that, the Respondent approached the Applicant and issued a work order bearing no. ETPPL/2019-20/002 dated 04.05.2019. As per the terms and conditions in the said work order, the Respondent had committed that they shall release the complete (100%) payment to the Applicant within 3 days of raising the invoice. Consequently, the Applicant supplied goods as per the work order and accordingly issued invoices to the Respondent.

5. It is further stated that the Applicant upon completion of entire job and after getting the quantities of data entry records verified by the Respondent, raised a tax invoice bearing no. 89173 on 03.03.2020 for an amount of Rs. 1,12,10,437/- which was duly accepted by the Respondent. The tax

CP No. (IB)-158/9/JPR/2020



Assistant Registrar
National Company Law Tribunal
Jaipur

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4 OCT 2021

invoices are annexed as Annexure-5. Moreover, it is stated that the Respondent made payments on current and running account basis and accordingly, the part payments received from the Respondent have been considered and accounted towards the amount outstanding towards the earliest issued invoice i.e., on "*first raised and first received basis*" by the Applicant.

6. The Applicant has also stated that the Respondent made last payment of Rs. 7,00,000/- on 12.07.2019, thereafter no payment has been received by the Applicant and Rs. 1,13,33,127.45/- (without interest) is still due which reflects in the statement of ledger account of the Respondent maintained in the books of the Applicant during the period from 01.04.2018 to 31.08.2020, which is annexed as Annexure-6.

7. It is further stated that the Applicant through e-mails dated 26.06.2020 and 14.07.2020 and also telephonically requested the Respondent to release the payment of outstanding dues but to no avail. Subsequently, on account of failure of the Respondent to clear its outstanding debts upon occurrence of the default, the Applicant issued statutory demand notice dated 21.07.2020 under Section 8 of the Code as per Form 3 as prescribed under Rule 5 of the Rules at the registered office of the Respondent requesting for unconditional repayment of the entire unpaid operational debt. Copy of the demand notice along with the postal receipt and its tracking report are annexed as Annexure-8 (Colly). The Applicant also sent the said demand

CP No. (IB)-158/9/JPR/2020



Assistant Registrar
National Company Law Tribunal
Jaipur

4 OCT 2021

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notice vide email dated 05.08.2020. The Applicant stated that neither any notice of dispute nor any payment was received by the Applicant within 10 days of the receipt of demand notice.

8. As a consequence of non-payment of the due amount and interest, this application was filed. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 1,13,33,127.45/- (Rupees One Crore Thirteen Lakhs Thirty Three Thousand One Hundred Twenty Seven and Forty Five Paise Only) (without interest), as an outstanding amount, as reflected in Part IV of the Form - 5 filed.

PART IV

Particulars of Operational Debt	
Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Total Principal Debt due is Rs. 1,13,33,127.45/- (Rupees One Crore Thirteen Lakhs Thirty Three Thousand One Hundred Twenty Seven and Forty Five Paise Only) (without interest). Worksheet-1.
Amount claimed to be in default and the date on which the default occurred	Amount claimed to be in default is Rs. 1,13,33,127.45/- (Rupees One Crore Thirteen Lakhs Thirty Three Thousand One Hundred Twenty Seven and Forty Five Paise Only) (without interest). Date of default: 06.03.2020 Worksheet-2.

CP No. (IB)-158/9/JPR/2020



Assistant Registrar
National Company Law Tribunal
Jaipur

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4 OCT 2021

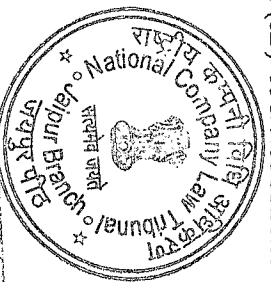
9. The Respondent has filed reply vide Dy. No. 1011/2021 dated 19.04.2021 through its authorised representative Mr. Rajesh Singh, director of the Respondent Company, authorised vide Board resolution dated 05.04.2021 annexed as Annexure -2 to the reply. The Respondent submits that it had requested the Applicant at times that it will not be possible for the respondent to make good the commitment towards repayment of outstanding debt of the Applicant.

10. The Applicant has filed rejoinder vide Dy. No. 1663/2021 dated 23.08.2021 and submits that the Respondent has categorially admitted and acknowledged its default in respect to the payment of outstanding debt due towards the Applicant.

11. This Adjudicating Authority perused all the relevant papers and found them to be in order. The Registered Office of the Corporate Debtor is situated in Jaipur and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. The Application is within the period of Limitation.

12. Upon detailed consideration of the submissions made by the parties and documents filed, it is evident that the payment of claim amount as mentioned in Part IV of Form 5 has been defaulted by the Corporate Debtor and despite issuance of the Section 8 notice under the Insolvency and Bankruptcy Code, 2016 by the Applicant and the receipt of the same

CP No. (IB)-158/9/JPR/2020




Assistant Registrar
National Company Law Tribunal
Jaipur

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4 OCT 2021

by the Corporate Debtor, the payment has not been made. The Applicant has filed an affidavit stating that bank statement for the period starting from 06.03.2020 to 31.08.2020 is annexed with the application which shows non-payment of the operational debt. Hence, this Adjudicating Authority is inclined to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

13. In the instant case, the Operational Creditor has proposed the name of Mr. Prashant Agrawal to be appointed as IRP. The Consent of IRP in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP, is annexed as Annexure-3 to the Application.

14. Accordingly, Mr. Prashant Agrawal, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBB/IPA-001/IP-P00053/2017-18/10127 (email: ippagrawal@gmail.com ; mobile no.: +91-9828355000), is hereby appointed as the IRP. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.

15. Consequences of initiation of CIRP shall be inter-alia as follows:
CP No. (IB)-158/9/JPR/2020



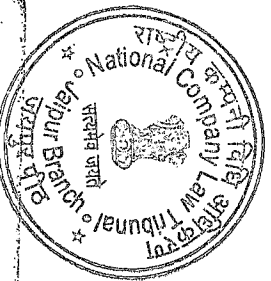

Assistant Registrar
National Company Law Tribunal
Jaipur

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4 OCT 2021

- (i) The IRP appointed by the Adjudicating Authority, Mr. Prashant Agrawal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timeliness specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order which shall be adjusted as CIRP cost during the period of CIRP. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 and 19 of the Code all personnel of the Corporate

CP No. (IB)-158/9/JPR/2020



Assistant Registrar
National Company Law Tribunal
Jaipur

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4 OCT 2021

Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

16. Accordingly, CP No. (IB)-158/9/JPR/2020 is admitted.

Sd/-
(L.N. GUPTA)
TECHNICAL MEMBER

Sd/-
(AJAY KUMAR VATSAVAYI)
JUDICIAL MEMBER

September 30th, 2021
AV



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National Company Law Tribunal
Jaipur

4 OCT 2021

CP No. (IB)-158/9/JPR/2020