

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 218/Chd/Hry/2020

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s PAN Portfolios Private Limited
L-1/54 B, LIG Flats, Kalkaji,
New Delhi-110019

...Petitioner-Operational Creditor

Vs.

M/s KSBL Securities Limited
having its registered office at
Plot No.1, Naher (Canal) Colony,
B/H Water Filling Plant,
Dhankot, Gurugram-122001.

...Respondent-Corporate Debtor

Judgement delivered on: 18.06.2021

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

For the Operational Creditor: Mr. Vishav Bharti Gupta, Advocate

For the Corporate Debtor : None.

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, (**for brevity 'IBC' / 'Code'**), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s PAN Portfolios Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate the Corporate Insolvency Process (CIRP) in case of KSBL Securities Limited (**for brevity 'Corporate Debtor'**). The petitioner company passed a resolution dated 26.02.2020 (Annexure-C) authorising Mr. Ravi Ranjan Shahi to do all acts in relation to the matter of corporate debtor. The affidavit of Mr. Ravi Ranjan Shahi in support of the contents of the application is filed at page No.18 –19 of the petition.

2. The Corporate Debtor namely, KSBL Securities Limited, is a Company incorporated on 22.01.1993 under the provisions of Companies Act, 1956 with CIN No. U74899HR1993PLC045764 having its registered office at Plot No.1, Naher (Canal) colony, B/h Water Filling Plant, Dhankot, Gurugram which falls within the State of Haryana. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹5,00,00,000/- and Paid-Up Share Capital of the Company is ₹2,87,00,000/-. Copy of Master Data of corporate debtor is found attached as Annexure-B of petition.

3. The facts of the case, briefly, as stated in the petition are that the corporate debtor sought the service of petitioner for assisting, controlling and review of overall affairs of the company as a virtual CFO. The remuneration

of the petitioner was decided at ₹75,000/- per month to be invoiced on quarterly basis. Copy of service agreement dated 02.07.2019 is found attached as Annexure-F of the petition. The petitioner has raised an invoice of ₹2,65,500/- to the corporate debtor on 01.10.2019 on which TDS of ₹22,500/- was duly deducted by corporate debtor and remaining amount of ₹2,43,000/- was payable. Copy of Invoice is attached as Annexure-I of the petition. It is also stated that the petitioner has sent payment reminder letters vide speed post on 27.01.2020 as well as by email on 05.02.2020 which are attached as Annexures-K & J respectively. It is also stated that no reply has been received from the corporate debtor. Form 16A issued by the Income Tax Department showing the deduction of TDS by the corporate debtor is attached as Annexure-L. In Part-IV of Form-5, the amount claimed to be in default is ₹2,43,000 and date of default is stated to be 31.10.2019 which is 30 days from the invoice date.

4. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as it failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Form 3 dated 07.02.2020 (Annexure D) is stated to be served upon the corporate debtor by speed post. The demand notice was accompanied by agreement dated 02.07.2019, MSME Certificate of petitioner, Ledger Account, Invoices, E-mails and Reminder Letters issued by corporate debtor. The corporate debtor vide the demand notice dated 07.02.2020 was called upon to repay the total unpaid operational debt of ₹2,43,000/- within 10 days.

6. It is deposed by the petitioner that the demand notice was issued to the corporate debtor vide speed post and the same has been delivered successfully. It is also deposed that the operational creditor has received reply in which corporate debtor has accepted the unpaid operational debt. The affidavit is appended with the petition at Page No. 20 to 22.

7. In Part III of Form 5, the operational creditor has proposed Mr. Pawan Kumar Agrawal, bearing registration No. IBBI/IPA-001/IP-P00852/2017-18/11435 as the Interim Resolution Professional. The consent of the proposed IRP furnished in Form 2 dated 26.02.2020 is placed at page 23 to 29, in which he has stated that he is currently serving as a Resolution Professional in two other proceedings. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professional of ICAI.

8. Notice of this petition was issued to the corporate debtor on 10.12.2020 to show cause as to why this petition be not admitted.

9. Respondent-corporate debtor filed reply vide Diary No. 02231/1 dated 05.03.2021, in which it has been stated that due to non-materialization of receivables, the company is unable to discharge its liabilities.

10. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

11. The first issue for consideration is whether the demand notice in Forms 3 dated 07.02.2020 was properly served. The demand notice was sent to the registered address of the corporate debtor as per the master data (Annexure-B) of the petition in which registered office is shown as Plot No.1, Naher (Canal) Colony B/h Water Filling Plant, Dhankot, Gurgaon, HR 122001.

Copy of postal receipt and tracking report showing duly service of notice are attached as Annexure E (Page Nos. 36, 37 & 37A).

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent-corporate debtor has filed reply and admitted the occurrence of default towards operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

13. We have gone through the contents of the application filed in the Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,43,000/- as on 31.10.2019. Copy of service agreement executed between operational creditor and corporate debtor is appended as Annexure F of the petition. It can be seen that as per service agreement a monthly professional fees of ₹75,000/- has been fixed. Operational creditor has raised an invoice No. 09A/Oct/2019-20 dated 01.10.2019 in lieu of the services provided to corporate debtor. Ledger account of corporate debtor maintained by operational creditor is attached as Annexure H of the petition. Afterwards, petitioner sent reminder letter (Annexure F) vide speed post on 27.01.2020 and an e-mail on 05.02.2020 demanding outstanding dues. Later on, a demand notice in Form-3 was issued on 07.02.2020 stating that an amount of ₹2,43,000/- was due on 31.10.2019. Copy of postal receipts and tracking report is at Page Nos. 36 & 37. The bank statement for the period October 2019 till February 2020 is attached as Annexure M. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section

9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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 corporate debtor.

- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till completion 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.”

15. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pawan Kumar Agrawal and there is nothing adverse against him. In view of the above, we appoint Mr. Pawan Kumar Agrawal, Registration No. IBBI/IPA-001/IP-P00852/2017-18/11435, E-mail: irp@ppglegal.com as the Interim Resolution Professional subject to the condition that the appointed IRP will furnish Form 2 within one week from the date of this order, if not filed. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the

financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

June 18th, 2021
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