

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP 263/IBC/NCLT/MAH/2018**

Under Section 9 of the I&B Code, 2016

In the matter of

**Sanjeev Gupta** ....Operational Creditor

v/s

**Vijaykamal Properties Pvt. Ltd.**

.... Corporate Debtor

Order delivered on: 21.1.2019

Coram: Hon'ble Mr V. P. Singh, Member (Judicial)

Hon'ble Mr Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Adv. Girish B. Kedia

For the Respondent: Adv. Makarand Raut

*Per V. P. Singh, Member (Judicial)*

**ORDER**

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 by Operational Creditor, namely Sanjeev Gupta against Corporate Debtor, namely Vijaykamal Properties Pvt. Ltd. stating that the Corporate Debtor failed to make payment of Rs. 29,97,608/- inclusive of interest, wherein the principal amount is Rs. 26,75,847/- and interest @21% from 1.7.2017 to 31.1.2018 is Rs. 3,21,761/-. The date of default stated is 1.7.2017. The Company Petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
2. The Operational Creditor is the sole proprietor of Global Advertisers. The Operational Creditor had sent two demand notices both dated 10.1.2018.
3. The case of the Operational Creditor as stated in the petition is as follows
  - a) that pursuant to the separate written communication letter executed by the Corporate Debtor, the Operational Creditor has carried out necessary advertisements on hoardings and raised six invoices (i) dated 24.3.2017 for sum of Rs. 1,08,910/-, (ii) dated 15.4.2017 for Rs. 82,437/-, (iii) dated 7.4.2017 for Rs. 9,21,879/-, (iv) 14.4.2017 for Rs. 74,750, (v) 15.4.2017 for Rs. 11,21,250/- and (vi)

dated 7.4.2017 for Rs. 13,66,621/-. The terms envisaged the payment to be made within 90 days failing which the Corporate Debtor has to pay interest at 21% per annum for the delayed period.

- b) A barter agreement was entered into between the Operational Creditor and M/s Ravi Development on 6.9.2013. The Corporate Debtor being an associate concern of M/s Ravi Associates availed the services of the Operational Creditor in respect of display of advertisement to the tune of Rs. 26,75,847/-.
- 4. The Operational Creditor sent another demand notice dated 10.1.2018 demanding outstanding payment in respect of unpaid invoices from the Corporate Debtor.
  - 5. The Operational Creditor has annexed the bank certificate dated 6.2.2018 stating that no payment has been received from the Corporate Debtor after 25.5.2017 and at present overdue amount as per book of records are Rs. 26,75,847/-. Further, the Operational Creditor has annexed affidavit of no dispute under Section 9(3)(b) of the IBC.
  - 6. The Corporate Debtor has filed a reply stating that
    - a) The application is not maintainable as the money claimed is not debt. The Applicant is not Operational Creditor and the Respondent is not Corporate Debtor under the provisions of IBC.
    - b) The Corporate Debtor has not made any default in payment of service charges as per the invoices. The Corporate Debtor is ready and willing to pay the amount due in the form of "Flat" as agreed under "Barter Agreement" entered into between the Operational Creditor and the Corporate Debtor recorded in Memorandum of Understanding dated 6.9.2013 (MOU). Therefore, no amount is due and payable by the Corporate Debtor to the Operational Creditor in monetary consideration as per the invoices. The only remedy of the Operational Creditor is under MOU and before the appropriate forum.
    - c) As per the MOU, the Corporate Debtor and the Operational Creditor agreed that disputes not resolved amicably within 30 days shall be referred to arbitration.

- d) That in terms of the MOU, the Corporate Debtor and the Operational Creditor exchanged communications for allotment of flat in lieu of the advertising work done. However, before the communications could be finalised, the Operational Creditor by its letter dated 12.10.2017 called upon the Corporate Debtor and its sister concern, M/s Ravi Development to make payment of the work of outdoor advertisement.
  - e) Since even after the receipt of notice dated 12.10.2017, the Operational Creditor kept on negotiating with the Respondent to carry forward the Barter deed and therefore the notice dated 11.1.2018 was not replied to by the Corporate Debtor.
7. The Operational Creditor has filed an affidavit-in-rejoinder, *inter-alia*, stating
- a) that after the Operational Creditor called upon the Corporate Debtor to make the payment, the Corporate Debtor offered 6 cheques (without date) aggregating to a sum of Rs. 26,44,830/- drawn in favour of the Operational Creditor with a covering letter stating that the cheques to be deposited only after receipt of the confirmation from the Corporate Debtor. However, the Operational Creditor did not accept the said cheques.
  - b) The affidavit-in-rejoinder also states that it is unbelievable that the Corporate Debtor is ready and willing to hand over a flat worth Rs. 71 lakhs approximately for a claim of Rs. 29,97,600/-. Further stated that against the flat offered, no occupation certificate is obtained, therefore it is not acceptable.
  - c) That the email communications annexed to the reply are in respect of transactions between the Operational Creditor and M/s Ravi Developers.
8. The Corporate Debtor has denied all the allegations set out in the affidavit-in-rejoinder.
9. We have heard the parties and perused the record.
10. It is pertinent to note that the MOU was executed between the Operational Creditor and one, M/s Ravi Development. The MOU was not executed between the Operational Creditor and the Corporate Debtor. Though the Corporate Debtor and M/s Ravi Development may be related, they are in law separate legal entities. There

is no privity of contract between the Operational Creditor and the Corporate Debtor through this MOU. Therefore, the debt does not emanate from the MOU.

11. It is also pertinent to note that it is not in dispute that the advertising work was carried out by the Operational Creditor for the Corporate Debtor for which invoices were raised and have been annexed to the present petition. These unpaid invoices form the basis of the operational debt.
12. In view of our discussion, the objection of the Corporate Debtor that the debt emanates from the MOU and is not an operational debt is not tenable since the operational debt is in existence from the invoices raised for the advertising work.
13. The Operational Creditor has provided advertising services to the Corporate Debtor and raised invoices exceeding Rs. 1 lakh. The Operational Creditor sent two demand notices to the Corporate Debtor. However, the Corporate Debtor did not reply to either of them. The Operational Creditor after that filed the petition before this Tribunal. The Operational Creditor has annexed the affidavit of no dispute. Bank certificate certifying that no payment has been received by the Operational Creditor has also been annexed. Since the present application is complete in all respects, it deserves to be admitted.
14. This Bench hereby admits this petition filed under Section 9 of IBC, 2016, declaring moratorium with consequential directions as mentioned below:
  - I. That this Bench hereby prohibits
    - 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.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That since the name of the Interim Resolution Professional to carry out the functions as mentioned under IBC has not been proposed, this Bench hereby appoints Ms. Deepa S. Bahal having registration number IBBI/IPA-002/IP-N00183/2017-18/10454, email id: deepabahal.ip@gmail.com. The fee to be paid to Interim Resolution Professional/ Resolution Professional should be strictly in accordance with the Regulations of the IBBI, circulars, directives issued in this regard.
15. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by speed post and email.

Sd/-

**Ravikumar Duraisamy**  
**Member (Technical)**

Sd/-

**V. P. Singh**  
**Member (Judicial)**

DT. 21.1.2019