

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.154/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

Bhuwalka Mercantile LLP, having its registered office at S-204 Ideal Plaza, 11/1, Sarat Bose Road, 2nd Floor,Kolkata-700020.

... Operational Creditor

Versus

In the matter of:

Aelis Enterprise Learning and Implementation Solutions Pvt. Ltd., (CIN: UT4999WB2009PTC216105), having its Registered office at 4/8, S.N. Banerjee Road, Barrackpore, Barrackpore Shading Arcade, West Bengal, PIN-700120.

...Corporate Debtor

Date of hearing :17/02/2022

Order Pronounced on :21/03/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms.Sinthia Bala , Adv.

] For Operational Creditor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **Bhuwalka Mercantile LLP**, absolute owner of immovable property of assessee Holding 0.4(7), S.N.Banerjee Road, situated at 4(2), admeasuring 1500 sq.ft.,having its registered office at S-204 Ideal Plaza, 11/1, Sarat Bose Road, 2nd Floor,Kolkata-700020,(hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Aelis Enterprise Learning and Implementation Solutions Pvt. Ltd., (CIN: UT4999WB2009PTC216105)**, having its Registered office at 4/8, S.N. Banerjee Road, Barrackpore, Barrackpore Shading Arcade, West Bengal, (hereinafter referred as the Corporate Debtor).
3. It is submitted by way of a lease agreement dated 1st April,2018, Operational Creditor provided the aforesaid said Demised Property on lease to Corporate Debtor at a monthly rent of Rs.67,500/- per month for a period from 1st April, 2018 to 31st March,2027 provided that the rent gets enhanced by 20% every three years from the date of the execution of the agreement, and handed over the peaceful possession of the said demised property to the said Corporate Debtor.
4. It is stated that the said corporate debtor paid interest free security deposit of Rs.4,05,000/- to the said Operational Creditor at the time of entering into the said lease agreement. It is further submitted that as per the lease agreement dated 1st April,2018, the Corporate Debtor was required to pay rent on monthly basis with effect from 1st April,2018 on or before 5th day of each current month and with further condition that in case the monthly lease rent is not paid within 5th day of the running month, it will attract

interest @ 18% compounded monthly. It is submitted that vide another agreement dated 1st April,2018 between the Operational Creditor and the Corporate Debtor which is called Amenities Agreement, the said Corporate Debtor agreed to pay monthly consideration of Rs.60,000/- to the Operational Creditor for maintenance and up-keeping etc. of the said premises for the aforesaid period. The rent was further agreed to be enhanced by 20% after three years from the date of execution of the agreement. It is submitted that the Corporate Debtor is in possession of the said premises and had accepted the bills raised for rent and amenities provided to them. The Corporate Debtor had paid monthly rent and consideration on account of amenities up to December, 2017, and thereafter defaulted in making payment of dues on account of rent and amenities from January, 2018 onwards upto date of filing of the petition and he still enjoying the possession of the said premises in accordance with the lease agreement and amenities agreement.

5. It is submitted by the Operational Creditor that in spite of persistent requests, the Corporate Debtor has not paid the outstanding dues and has defaulted in making payment of rent of the premises and amenities since January, 2018 till date. It is stated that the Operational Creditor was thereafter constrained to serve a demand notice in Form-3 and Form-4 demanding payment of the said rent and amenities along with interest under Rule 5 of the Code, on 27.11.2018 by Speed Post to the registered office of the Corporate Debtor which was duly received by them as per the Speed Post Track Report and no dispute has been raised by the said Corporate Debtor.

6. It is submitted that notice of this petition was given to the Corporate Debtor, the Corporate Debtor filed reply and Operational Creditor filed rejoinder thereto.

7. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

8. In the reply affidavit filed by the Corporate Debtor through one of its Directors, it is submitted by the Corporate Debtor that the default had occurred but not intentionally. It is submitted that the Government of India, Ministry of Skill Development owes huge amount to the Corporate Debtor which is due and payable. The Corporate Debtor had undertaken to repay the dues of the Operational Creditor as and when funds come in their account from the Government of India, not later than 31st day of March, 2020. It is stated that despite being well aware of such facts and having agreed to a mutual settlement, the Operational Creditor filed the said petition with malafide intention.

9. It is mentioned in the reply affidavit that the petition is not maintainable as the Bhuwalka Mercantile LLP is not an "Operational Creditor" within the meaning of section 5(20) of the Insolvency and Bankruptcy Code, 2016. It is further submitted that there is lease agreement and Amenities agreement between the parties and as such unpaid rent and amenities do not constitute "operational debt" within the meaning of section 5(21) of the Insolvency and Bankruptcy Code, 2016 and that the Operational Creditor should have invoked the jurisdiction of Civil Court for breach of contract and unpaid rent and amenities, as the NCLT lacks jurisdiction to adjudicate the claims of the Operational Creditor within the meaning of the Code.

10. There is no plausible defence raised by the Corporate Debtor in its reply.

11. In the Rejoinder, the Operational Creditor has submitted that the Operational Creditor is the owner of the aforesaid premises and on the request of the Corporate Debtor, that office space was given on lease at an agreed monthly rent and agreed amenities charges, total amounting to Rs.1,27,500/- with 20% increase every three years from the date of commencement of the said agreement. It is submitted that the Corporate Debtor continued to make payment without any protest or demur and all of a sudden, for no reason, they stopped paying the rent since 1st January, 2018. It is also submitted in the rejoinder that several reminders were issued to the

Corporate Debtor to clear the monthly rent and amenities charges but the Corporate Debtor made various false commitments and there was no payment made.

12. It is submitted that the demand notice as envisaged under section 8 of the Code, was issued, but this time the Corporate Debtor chose to remain silent and did not reply to the notice.

13. The Operational Creditor further submits that there is nothing to prove on record that there was any pre-existing dispute, because if there had been any dispute, the Corporate Debtor would have replied to the said notice. It is submitted that the Hon'ble Supreme Court has laid down that the rent receivable is an operational debt. It is submitted that the Corporate Debtor has already admitted its liability to pay the amount due and payable to the Operational Creditor for the period stated in the petition.

14. The petition is otherwise complete in all respects.

15. We have gone through the pleadings of the parties and heard the Ld. Counsel for the Operational Creditor because the Ld. Counsel for the Corporate Debtor had stopped appearing before the Court. There does not seem to any defence available to the Corporate Debtor for its default in payment of operational debt. This petition, therefore, deserves to be admitted. We, therefore, pass the following orders:-

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 Securitisation 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.

- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Ms. Rashmi Chhawchharia , IRP** having Reg. No. **IBBI/IPA-001/IP-P02016/2020-2021/13148**, email rashmi.chhawchharia@gmail.com to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x) **Ms. Rashmi Chhawchharia,IRP**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
16. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
17. List the matter on **12/05/2022** for filing of **Progress Report**.
18. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 21st day of March, 2022

PJ.