



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

CP (IB) No. 336/Chd/Chd/2019

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

In the matter of:

Vij Corporate Solutions

through its Proprietor Ms. Vijay Vij
having its Branch Office at
Plot No. 961, Sector-82,
Industrial Area, Mohali-160062

...Petitioner-Operational Creditor

Vs.

Stellar Edge Solutions Private Limited

having its registered office at
SCO No. 371-72-73, 2nd Floor,
Sector 34-A, Chandigarh-160022
CIN No. U72900CH2010PTC032603

...Respondent-Corporate Debtor

Judgement delivered on: .12.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. S.S. Kaushik , Advocate

For the Respondent-
Corporate Debtor : Mr. Anil Kr. Aggarwal, Advocate



Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **M/s Vij Corporate Solutions** through its Proprietor Ms. Vijay Vij, (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Stellar Edge Solutions Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Stellar Edge Solutions Private Limited, is a Company incorporated on 30.11.2010 under the provisions of Companies Act, 1956 with CIN No. U72900CH2010PTC032603 with its registered office at SCO No. 371-72-73, 2nd Floor, Sector 34-A, Chandigarh-160022. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A-18.

3. The facts of the case, briefly, as stated in the petition are that the corporate debtor approached operational creditor for receiving computer training services vide agreements dated 28.08.2015 and 28.04.2016 to the candidates enrolled with the corporate debtor under the Government Scheme of NDLM (Annexure A-2) and raised various invoices. The first invoice was raised on 18.03.2016 for Rs. 2,61,775/- and payment was received on 22.03.2016 of Rs. 2,56,539.50 after deducting TDS of Rs. 5,235.50. Last payment of Rs. 26,000/- was received on 10.10.2016. The corporate debtor raised invoices for the period February,2016 till July,2016



for Rs. 1,95,475/- (Annexure A-4 to A-8). During 2015-16 the operational creditor raised invoices totaling to Rs. 7,08,180/-. The corporate debtor failed to pay an amount of Rs. 1,95,475/-. The complaint was made before IG Chandigarh for the outstanding amount but however, no concrete action was taken. The frivolous and false allegations were made by the corporate debtor on operational creditor. Since, no response was received from the corporate debtor the operational creditor left with no option except to send a demand notice.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 4,85,865/- (Principal amount of Rs. 1,95,475/- plus interest of Rs. 1,13,390/- plus damages and unearned profit of Rs. 1 lakh plus litigation expenses amounting to Rs. 77,000/-) and default occurred on 28.08.2016 i.e. when the last invoice was raised on the corporate debtor. Copy of agreements (Annexure A-2 and A-3), invoices (Annexure A-4 to A-8) and ledger (Annexure A-9) is attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 13.03.2019 through registered post and through e-mail dated 13.03.2019 (Annexure A/14, 15 and 16) and reply to demand notice was received on 22.03.2019 wherein it is stated that specific requirements mandated in Form-3 are not mentioned. The particulars of operational debt, transaction on account of which the purported debt fell due and on what basis debt of Rs. 4,85,865 have been arrived at are not mentioned. Further, on what basis the rate of 24% of interest has been charged. The invoices attached were never issued or delivered. The applicant has not given complete and accurate facts of the business relation



and disputes between the parties. There is a pre-existing dispute between the parties. The applicant had defrauded the corporate debtor by using a separate entity.

6. Notice of this petition was given to the respondent-corporate debtor to show cause as to why this petition be not admitted. The corporate debtor has filed reply vide diary No. 5848 dated 23.10.2019 wherein it is stated that the applicant has concealed the material facts and there is pre-existing dispute between the parties and corporate debtor issued a legal notice dated 25.04.2017 as the applicant was violating the terms and conditions of the Franchisee Agreement dated 28.08.2015 and renewal agreement dated 28.07.2016 wherein the applicant started a competitive business by the name M/s Shambhu Engineers and Fabricators Pvt. Ltd., leading to drastic fall in the enrollment of the candidates. In reply to the demand notice the corporate debtor stated that the invoices were never issued or delivered. The applicant had filed a false affidavit of no dispute and had made a false statement about non-deposit of TDS.

7. The rejoinder is filed vide Diary No. 7211 dated 17.12.2019 wherein it is stated that the invoices raised by the operational creditor are on the basis of details admitted by the corporate debtor in its e-mail dated 11.08.2016 and the corporate debtor admitted the liability (Annexure A-10, A-12 and A-13). No clause had been violated of the Franchisee Agreement. There is no link between the operational creditor and M/s Shambhu Engineers as the operational creditor is not the owner of the firm and there is no proof of evidence which shows that there is any link. The corporate debtor had never deposited the TDS within time. The short written



submissions are filed by applicant vide Diary No. 00574/01 dated 19.07.2022 and by corporate debtor vide Diary No. 00574/2 dated 24.08.2022.

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

9. The first issue for consideration is whether the demand notice in Form 3 dated 13.03.2019 sent by the corporate debtor through registered post and through e-mail dated 13.03.2019, tracking report shows that the demand notice was duly served (Annexure A-14, 15 and 16).

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. In reply to demand notice it was stated by the respondent-corporate debtor that specific requirements mandated in Form-3 are not mentioned. The particulars of operational debt, transaction on account of which the purported debt fell due and on what basis debt of Rs. 4,85,865 have been arrived at were not mentioned. Further, it was alleged that on what basis the rate of 24% of interest was charged. The invoices attached were never issued or delivered. However, there is no supporting evidence to the allegation made by the corporate debtor. Affidavit dated 26.04.2019 is attached that no debt is disputed by the corporate debtor. Moreover, there is no rebuttal to the documents provided by the operational creditor. Even if the interest component and other damages and expenses are not included then also the principal amount of Rs. 1,95,475/- is above the threshold limit of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020). Thus, it can be said that the operational debt is not disputed as it is admitted in the email dated 11.08.2016.



11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 13.03.2019 in Form 3 attached as Annexure A-4. Therefore, the period of limitation would begin from the date of default 28.08.2016 i.e. when the last invoice was raised on the corporate debtor. Copy of agreements (Annexure A-2 and A-3), invoices (Annexure A-4 to A-8) and ledger (Annexure A-9) are attached with the main petition. This application was filed on 17.05.2019 vide Diary No. 2536. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. Rs. 1,95,475/-. The corporate debtor approached the operational creditor for receiving its services for imparting Computer Training services to the candidates enrolled with the corporate debtor. Copy of agreements (Annexure A-2 and A-3), invoices (Annexure A-4 to A-8) and ledger (Annexure A-9) is attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor



is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Stellar Edge Solutions Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Navneet Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Navneet Gupta, Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619, E-mail: navguptaca@gmail.com , Mobile No. 9814333213 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Navneet Gupta shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of



the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall



extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation



by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

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



determination of the operational 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 first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. 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.

19. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to



send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

SD/-

(Subrata Kumar Dash)
Member (Technical)

SD/-

(Harnam Singh Thakur)
Member (Judicial)

December , 2022
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