

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA

CP(IB) No. 2081 /KB/2019

In the matter of:

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:

Gopal Chandra Agarwal, carrying on business under the trade name and style of Kiran Advertising, in sole proprietorship, from his office as well as principal place of business at 4, Thakurdas Chakraborty Lane, Ground Floor, Kolkata-700006, in the state of West Bengal.

.....Operational Creditor

-Versus-

Gurukul Activity Centre Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No-U80903WB2012PTC172170 and its registered office at 196, Jessore Road, Patipukur, Kolkata-700048, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing :28th February 2022

Date of pronouncing the order: 22nd March 2022

Coram:

Shri Rajasekhar V.K., Member(Judicial)

Shri Balraj Joshi, Member(Technical)

Appearances (via video conferencing):

For Operational Creditor: Ms. Puja Beriwal, Advocate

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Gopal Chandra Agarwal**, carrying on business under the trade name and style of Kiran Advertising, in sole proprietorship (**Operational Creditor**), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Gurukul Activity Centre Private Limited** (“**Corporate Debtor**”).

Submissions on behalf of the Operational Creditor

3. The Operational Creditor is engaged in the business of Event Management, Print, Electronic, Outdoor Publicity, Designing and Printing. The Operational Creditor over a period of time, published advertisements on behalf of the Corporate Debtor in the Hindi Daily Newspaper namely ‘Sanmarg’. The submission of the Operational Creditor is that the Corporate Debtor has failed to pay for the services of the Operational Creditor since Bill No. KA/P/14/12-13 dated 6th June, 2012.
4. It is submitted that the Corporate Debtor has committed default in the payment of thirteen bills between 6th June 2012 and 13th May 2014, amounting to a total of ₹3,15,000/-. The said bills have been received by the Corporate Debtor and have been found to be in order after scrutiny on their part. Further, there is an acknowledgement of the debt by the Corporate debtor in their emails dated 26th May, 2017 and 27th May, 2017.
5. It is submitted that the Advocate on behalf of the Operational Creditor, sent a letter dated 9th January 2015 to the Corporate Debtor, thereby demanding the payment of the outstanding dues. Later on, the Corporate Debtor, vide email dated 26th May 2017, proposed to pay to the old outstanding dues by initially paying ₹1,50,000/- lumpsum in the month of July and then the rest of the amount by EMI of ₹10,000/- per month till the dues are cleared. The said proposal was accepted by the Operational Creditor vide email dated 2nd

October, 2017. However, no payment was made by the Corporate Debtor in terms of the agreement. The date of default is stated to be 1st August 2017.

6. It is submitted that a demand notice dated 11th May 2019 was sent by the Operational Creditor to the Debtor, who did not raise any dispute regarding the same.
7. The total amount of debt is ₹6,40,136/- which includes the principal amount of ₹3,15,000/- and interest @18% per annum amounting to ₹3,25,136/- till 31st July, 2019.

Submissions on behalf of the Corporate Debtor

8. In the reply- affidavit filed by the Corporate Debtor, Corporate Debtor contends that the instant application is barred by limitation and not maintainable in law.
9. The Corporate Debtor further submits that the Corporate Debtor is not liable to pay any amount to the Operational Creditor and that some of the bills were issued wrongly in the name of the Corporate Debtor. The Bills bearing Nos. (v), (viii), (ix), (x), (xi) and (xii) as mentioned in the instant application are disputed and not liable to be paid for by the Corporate Debtor. Hence, out of the principal sum of ₹ 3,15,000/-, the Corporate Debtor is not liable to pay ₹1,46,006/-. Further, the Corporate Debtor has already paid a sum of ₹1,99,752/- to the operational Creditor on account of its publication of advertisement against a sum of ₹1,68,994/-. The excess of ₹30,758/- was paid by the Corporate Debtor against the subsequent bill which is not subject matter of the instant case.
10. There is no acknowledgement of the alleged claim by the Corporate Debtor. The Corporate Debtor further states that the allegations contained in the statutory notice, the notice dated 9th January, 2015, the letter dated 11th May 2019 and the emails dated 19th June 2019, 20th June 2019 and 28th July 2019 are incorrect and baseless.
11. The Corporate debtor denies the contentions of the email dated 26th May 2017 as sent by the Corporate Debtor and emails dated 27th May 2017 and 2nd

October, 2017 as sent by the Operational Creditor for being incorrect and baseless.

Analysis and Findings

12. Heard the Ld. Counsel for the Operational Creditor and perused the records.
13. At the very first glance, it is clear to us that there is no written agreement between the parties for the services provided. However, both the parties have acknowledged to the verbal arrangement and the rendering of service by the Operational Creditor to that effect.
14. The last due invoice raised by the Operational Creditor is dated 13th May, 2014 which would indicate that the original date of default would be 13th May, 2014. In this case, the limitation period to file the petition would end 13th May, 2017. However, on the basis of the settlement agreement the parties, which was entered into vide emails dated 26th May, 2017 and 27th May, 2017 and the breach thereof, the date of default has been taken as 1st August, 2017. In this regard, we would like to rely on the decision taken by the NCLT Allahabad Bench in the matter of **Delhi Control Devices (P) Limited v. Fedders Electric and Engineering Ltd.** [CP(IB) No. 343/ALD/2018] wherein it was held that the failure or breach of settlement agreement can't be a ground to trigger CIRP against Corporate Debtor under the provision of *the Code* and remedy may lie elsewhere, not before this Adjudicating Authority.
15. Further, in **Omega Elevators Vs. Prajay Properties Private Limited** in [CP(IB)No.691/9/HBD/2019] , the Hyderabad Bench again held that default in payment of instalments according to the Agreement to Pay entered into between the parties cannot be categorised as an Operational Debt as the same does not fall within the definition of an Operational Debt as per the IBC, 2016.
16. Keeping in view the aforementioned judgments, the breach of the agreement entered into by the parties on 27th May, 2017 will not be a ground for initiation of CIRP and the date of default arrived at by the Operational Creditor is incorrect. As such, the original date of default will be 13th May, 2014, and accordingly, the instant petition is barred by limitation.

17. Further, out of the principal amount of ₹3,15,000/- claimed by the Operational Creditor, the Corporate Debtor has made a payment for a sum of ₹1,99,752/- between 23rd October 2017 and 29th April, 2019. The Corporate Debtor has in the reply- affidavit contended that he is not liable to pay the remaining amount of ₹1,46,006/- pertaining to Bill No. (v), (viii), (ix), (x), (xi) and (xii) since the said bills were issued to the Corporate Debtor mistakenly. As such, the said bills are disputed by the Corporate Debtor and need to be examined further in a Civil Proceeding. It is not possible to decide such matters in summary proceedings under the Code.
18. In view of the above facts and circumstances, we are of the view that this petition is barred by limitation and hence is not maintainable under the Code and hence reject the Company Petition on the grounds stated above. Consequently, **C.P.(IB) No. 2081/KB/2019** shall stand dismissed.
19. The dismissal of the present petition shall not stand in the way of any other remedy pursued by the Operational Creditor under any other law.
20. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
21. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

BALRAJ JOSHI
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JOSHI
Date: 2022.03.22 17:31:39
+05'30'
Balraj Joshi
Member (Technical)

Rajasekhar V K
Digitally signed
by Rajasekhar V
K
Date: 2022.03.22
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Rajasekhar V.K.
Member (Judicial)

Signed on this, the 22nd day of March, 2022

SM[LRA]