IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V

(IB)-150/ND/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

INNOVATIVE FACILITY SOLUTIONS PVT. LTD.
(THROUGH MR. DEEPAK SHARMA, CHIEF OPERATIONS MANAGER)
CIN: U74900DL2013PTC251724
MB-10, NAURANG HOUSE 21,
KASTURBA GANDHI MARG,
NEW DELHI - 110001

... OPERATIONAL CREDITOR

AND

M/S. REAL CARE BUILDING MAINTENANCE SERVICES PVT. LTD.
CIN: U01403DL2013PTC249632
406, FOURTH FLOOR, RECTANGLE ONE,
D-4, DISTRICT CENTRE,
SAKET, NEW DELHI - 110017

...CORPORATE DEBTOR

SECTION: 9 of IBC, 2016

Order Delivered on: 01.04.2022

CORAM:

SHRI P.S.N. PRASAD, MEMBER (JUDICIAL)

SHRI AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

PRESENT-

For the Operational Creditor: Adv. Himesh Thakur and Adv. Vivek Joshi

For the Corporate Debtor : None Present

ORDER

Per P. S. N. Prasad (Member Judicial)

1. This present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows: -
    i. That the Operational Creditor is a company engaged in the business of providing facility and payroll management services. The Corporate Debtor is engaged in the business of

agriculture and animal husbandry service activities except veterinary activities.

ii. That the parties entered into an agreement dated 13.06.2017 wherein the Corporate Debtor agreed to avail facility management services from the Operational Creditor and in lieu of the services agreed to make the payment as per the invoices raised.

iii. That any objection that was to be raised pertaining to the invoices raised by the Operational Creditor was to be done within a period of 7 days from the receipt of the invoice. Further, if no objection was raised, the invoices were to be deemed admitted and the Corporate Debtor was under an obligation to make the payment within a period of 45 days.

iv. That the Parties renewed the agreement and entered into a new agreement dated 19.04.2018.

v. That the Operational Creditor raised timely invoices in accordance with both the agreements which were acknowledged by the Corporate Debtor. No dispute was ever raised by the Corporate Debtor in relation to the invoices within the prescribed period of 45 days.

vi. That, as per the records and ledger, from August 2017 onwards, the Corporate Debtor only made a part payment and the remaining invoices are pending and fully unpaid. That, as on date, an amount of Rs. 15,48,903/- is due and payable by the Corporate Debtor.

vii. That the Corporate Debtor acknowledged the unpaid amount until March, 2019 vide e-mail dated 19.06.2019 and further confirmed the amount vide the statement of confirmation of accounts dated 11.06.2019 which was duly signed and stamped by the Corporate Debtor.

viii. That, despite the acknowledgement, the amount is still unpaid. Being aggrieved by the inaction, the Operational Creditor issued a demand notice u/s 8 of the Code on 08.07.2019 and the same was delivered upon the Corporate Debtor on 10.07.2019. No reply to the demand notice has been received by the Operational Creditor.

ix. That the total amount of debt is Rs. 18,35,215/- along with interest @18% p.a.

3. Subsequently, during the hearing on 08.01.2020, the Operational Creditor informed this Adjudicating Authority that after the delivery of demand notice on 10.07.2019 vide registered speed post and email, the Corporate Debtor has changed its registered address to "W4D, 204/5, Keshav Kunj, Carriappa Marg, Western Avenue, Sainik Farms, New Delhi –110062" on 19.08.2019. Further, vide supplementary affidavit dt. 15.01.2020 and 28.01.2020, the Operational Creditor brought these facts on record and filed the Form No. INC-22 for change of address filed with the ROC by the Corporate Debtor and the corrected Form 5. Furthermore, on the hearing on 11.02.2020, the Operational Creditor submitted that he has served the paper book on the changed address.

4. Consequent to the notice issued by this Adjudicating Authority vide order dated 11.02.2020, no one has appeared on behalf of the Corporate Debtor despite multiple opportunities and as a result the Corporate Debtor was proceeded ex-parte on 01.12.2021.

5. We have heard the arguments made by the Ld. Counsel for the Operational Creditor and perused the documents and the written submissions filed by him. The Operational Creditor has established the existence of debt and default on the part of the Corporate Debtor and no notice of dispute has been received by the Operational Creditor. Further, the Corporate Debtor sent a statement of confirmation of accounts for the period 01.04.2018 to 10.06.2019 dated 11.06.2019 vide email dated 19.06.2019 that was duly signed and stamped by the authorized representative/personnel of the Corporate Debtor which shows acknowledgement of debt. Furthermore, the Corporate Debtor has not availed the opportunities provided by this Adjudicating Authority to defend the arguments made by the Operational Creditor. In view of the above, this Adjudicating Authority **admits** present application and **initiates CIRP** on the Corporate Debtor with immediate effect.

6. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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;

(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.

Further:

(2) 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.

(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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 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."

7. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

8. Section 16(1) read with 16(3) of the Code mandate that the Adjudicating Authority shall appoint an Interim Resolution Professional on the insolvency commencement date wherein no proposal for an Interim Resolution Professional is made. In the present case, the Operational Creditor has not proposed the name of any Interim Resolution Professional from the empanelled list made available IBBI vide its communication no. IP-12011/1/2020-IBBI/1103/27385 dated 31.12.2021.

Accordingly, we hereby appoint, Mr. Pradeep Kumar Arora an Insolvency Professional, Registration No. IBBI/IPA-002/IP-N00540/2018-2019/11849 email id: pradeep@rplegalindia.com duly empanelled with the IBBI. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report within 30 days before this Bench.

9. The Operational Creditor is directed to deposit a sum of Rupees two lakhs to meet the immediate expenses of the Interim Resolution Professional. The same shall be fully accountable by the Interim Resolution Professional and shall be reimbursed by the CoC to the Operational Creditor to be recovered as CIR costs.

10. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the

Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make appropriate application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

11. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven

As

days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

-Sd-

AVINASH K. SRIVASTAVA
Member (T)

-Sd-

P. S. N. PRASAD
Member (J)