

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.940/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

SUDESH RAMKRISHNA BHOSLE

[PAN NO: ABYPB8405D]

...Operational Creditor

v/s.

SIGMA TECHINFRA SOLUTIONS

(INDIA) PRIVATE LIMITED

[CIN: U74920PN2004PTC019553]

...Corporate Debtor

Order Delivered on: 11.07.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

Mr. Arnab Dutta, Ld. Counsel.

For the Corporate Debtor:

Mr. Manoj Kumar Mishra,
Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Sudesh Ramkrishna Bhosle (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Sigma TechInfra Solutions (India) Private Limited, the Corporate Debtor.

1.1. The Company Petition is filed on 04/06/2021 claiming an amount of Rs. 13,26,88,000/- (Rs. 11,80,00,000/- plus interest @ 18 % Rs. 1,46,88,000/-) in default. The date of default as specified in Part IV of the petition is 01.10.2020.

2. The Operational Creditor is an individual engaged in the business of consultancy to the Real Estate Companies. The Operational Creditor had entered into a contract with the Corporate Debtor, and issued a work order no. SRB/02/19-2020 on 10.01.2020 for providing technical and non-technical staff for supervision at Hinjewadi Pune Site and Survey of Slums in Various parts in Mumbai for assessing potential of redevelopment for total consideration of Rs. 12,36,95,000/- (Rupees Twelve Crore Thirty-Six Lakhs Ninety-Five Thousand only). The work order did not stipulate the time period for provision of services.

2.1. As per the verbal arrangements made by and between the parties' that full payment was to be made in advance. The corporate debtor raised an invoice No. STSIPL/Mum/SRB/2020-21/230 dated 31.05.2020 amounting to Rs. 11,80,00,000/- (Eleven Crore Eighty Lakhs) [Rs.10,00,00,000/- Fees, plus Rs. 1,80,00,000/- G.S.T.], pursuant to the Memorandum of Understanding dated 20.03.2020.

2.2. Immediately after receiving the invoice the Operational Creditor made full payments of invoiced amount in various parts on and from 28.07.2020 to 21.09.2020 to the Corporate Debtor. Even after receipt of full payment the

Corporate Debtor failed to provide the services as agreed between the parties and failed to deposit the GST amounting to Rs. 1,80,00,000/- to the department.

2.3. Despite several reminders the Corporate Debtor failed to refund the full advance money paid to it, due to which the Operational Creditor issued a Demand Notice u/s 8 of IBC, 2016 on 23.04.2021 by Speed Post and by email on 06.05.2021. Although the Notice by Speed Post has been undelivered due to "addressee left without instruction" but the email has been delivered to the email id mentioned in the Master data as obtained from the Ministry of Corporate Affairs. The corporate debtor has failed and neglected to reply the Notice of Demand under IBC.

3. This bench Vide Order dated 02.11.2022 forfeited the right to file reply on behalf of Corporate Debtor. The Corporate Debtor nor prayed for recall of order dated 02.11.2022.

Findings:

4. We have heard the arguments of Learned Counsel.

4.1. As observed by the Bench, the date of default, as claimed in the petition, falls during the period prescribed by Section 10A of IBC, which reads as follows:

“Section 10A: Notwithstanding anything contained in sections 7, 9 and 10, no application for Initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for Initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period. Explanation. —For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

5. Although from the petition, pleadings made and arguments extended by the Counsel of both the sides, it is abundantly clear that there is a debt of Rs. 13,26,88,000 which is owed by the Corporate Debtor to Operational Creditor and the same amount is in default due to non-provision of services, against which the advance was given by the Operational Creditor to the Corporate Debtor. In the normal circumstances it is a fit case for Admission of the Corporate Debtor into Insolvency, because Debt and Default is established and the amount of Debt is more than threshold limit of Rs.1,00,00,000/-. However, in the view of insertion of Sec 10A in IBC as mentioned above, this petition is barred by the provisions of Sec 10A as the date of default in this case is 01.10.2020. As per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the period from 25/03/2020 till 24/03/2021, keeping in view of the extended period of Sec 10A, the application filed by the Operational Creditor against the Corporate Debtor cannot succeed and is hereby dismissed with a liberty granted to the Operational Creditor to pursue his case before the appropriate forum. In view of the above, we find that the present case is fit for dismissal.

ORDER

6. The petition bearing C.P. (IB) No. 940/MB/C-IV/2021 filed by Sudesh Ramkrishna Bhosle (“the Operational Creditor”), seeking initiation of

Corporate Insolvency Resolution Process (CIRP) in the matter of Sigma TechInfra Solutions (India) Private Limited, the Corporate Debtor is **dismissed**.

7. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
11.07.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)