



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

Item No. 502
IB/893/ND/2022

IN THE MATTER OF:

Arista Management & Realty Advisors Private Limited	...	Applicant
Versus		
M/s Teriyaki Builders Private Limited	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 29.08.2023

Coram:

MR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

C.P.(IB)/893/2022 stands admitted.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

P.S.N. PRASAD
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-893(ND)/2022

**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:

M/s. Arista Management & Realty Advisors Private Limited
.... **Operational Creditor**

Vs.

M/s. Teriyaki Builders Private Limited
.... **Corporate Debtor**

CORAM:

DR. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 29.08.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The instant application is filed by M/s. Arista Management & Realty Advisors Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') incorporated under the provisions of the erstwhile Companies Act, 1956 and having CIN: U74140DL2008PTC177291 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Teriyaki Builders Private Limited (hereinafter referred as 'Respondent Company' or



‘Corporate Debtor’) for defaulting the payment of Rs.1,23,90,000/- (Rupees One Crore Twenty-Three Lakhs Ninety Thousand Only) which includes Principal amount being Rs.1,05,00,000/- (Rupees One Crore Five Lakhs Only) plus applicable GST at the rate of 18% being an amount of Rs. 18,90,000/- (Rupees Eighteen Lakhs Ninety Thousand Only) along with interest @18% per annum..

2. The Corporate Debtor M/s. Teriyaki Builders Private Limited having CIN: U51909DL2011PTC377749 incorporated under the provisions of the Companies Act, 2013 having its registered office situated at 740 GF, Janta Flat, GTB Enclave Dilshad Garden, Delhi North East DL 110093. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi and this Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated the facts of the present case as averred by the applicant are that the applicant is engaged in the business of providing Consulting, Management & Realty Advisory services to real estate company in entire North India region and the Corporate Debtor is a Real Estate Company engaged in real estate development. It was submitted that Corporate Debtor had engaged Applicant/Operational Creditor for providing various real estate advisory services / solutions including but not limited to providing services for identification of land parcels, facilitation of deals / transactions, liaison, sales consultancy in one of its ongoing project at Sadar Bazar, Delhi – 110006.
4. It was further submitted that after understanding the scope of work and due discussion & deliberations, the Applicant and the Corporate Debtor had entered into a Services Agreement dated 02.12.2018 (“Agreement”)



whereby the Applicant was appointed as a Service Provider for providing Services, as defined under the said Agreement for successful execution and completion of the Project of the Corporate Debtor located at Sadar Bazaar, Qutab Road, Delhi. It was submitted that pursuant to the said Agreement, the Applicant had provided the required services and successfully completed all the assignments marked to the Applicant, which is evident from the services completion certificate jointly signed between the Parties on 10.01.2022.

5. It was submitted that as per the terms of the said Agreement, an amount of Rs. 1,05,00,000/- (Rupees One Crore Five Lakhs Only) was payable by the Corporate Debtor to the Applicant as per clause 3.3 of the said Agreement, which provided that the Service Fee shall be paid to the Applicant as a bullet payment at the end of the Project, i.e., the date when the Company sells 80% of the inventory or on 31.03.2022, whichever is earlier.
6. Further, it was submitted that after final completion of assignment assigned to Applicant and on request of Corporate Debtor, the Applicant on 04.04.2022 had issued a Proforma invoice and demanded the Corporate Debtor to release the payment as per the terms of agreement dated 02.12.2018. Moreover, the Applicant had multiple meetings with the Corporate Debtor in the office of the Corporate Debtor for clearance of dues wherein the Corporate Debtor assured that the payments shall be cleared to the Applicant, but despite repeated follow-ups the Corporate Debtor had failed to pay the amounts due and payable to the Operational Creditor
7. The Applicant on 19.10.2022 had raised a GST tax invoice upon the Corporate Debtor. It is pertinent to mention that Applicant, from its own resources had paid and deposited the GST over the said invoice with the



GST department as per the rules. Therefore, the total Service Fee of Rs. 1,23,90,000/- (Rupees One Crore Twenty-Three Lakhs Ninety Thousand Only) – Principal amount being Rs. 1,05,00,000/- (Rupees One Crore Five Lakhs Only) plus applicable GST at the rate of 18% being an amount of Rs. 18,90,000/- (Rupees Eighteen Lakhs Ninety Thousand Only) became due and payable to the Applicant on 31.03.2022 and which amounts are still outstanding.

8. The Applicant had sent notice under Section 8 of Insolvency & Bankruptcy Code, 2016 in Form 3 & Form 4 along-with the tax invoice dated 19.10.2022 and the said statutory Demand Notice was delivered to the Corporate Debtor on 21.10.2022. The Corporate Debtor, till date has not replied to the statutory notice issued under Section 8 of the Code, 2016.
9. In the reply filed by the Corporate Debtor, it is submitted that the since early 2020, the business of Corporate Debtor was grossly affected due to various circumstances, including the onset of Covid-19 pandemic. It was further submitted that the Applicant and the Corporate Debtor had entered into an oral agreement and modified the terms of agreement dated 02.12.2018. It was submitted that as per the oral agreement between the parties, the Applicant had agreed not to initiate any proceedings for repayment of any amount due and therefore, the debt has neither become due nor payable, but initiated the instant proceedings.
10. Further, it was submitted that the Corporate Debtor is making continuous attempts for settlement with the Applicant. However, the same has not fructified as the intent of the Applicant is only to recover money from the Corporate Debtor, rather than settle the dispute between the parties.



11. The Corporate Debtor acknowledged that it has taken the services of Applicant and is willing to pay the money to Applicant, but due to on going financial crunch, the Corporate Debtor is now not able to make the payments as on committed time frames.
12. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant document annexed with the respective submissions have been carefully perused.
13. Adverting to the facts of the present case, the Applicant is engaged in the business of providing real estate advisory, liasioning, sale consultancy services and solutions for the real estate projects. The Corporate Debtor was having a project at Sadar Bazar, Delhi-110006 having a retail saleable area of approximately 1300 sq. mtrs which is going to be a Public Private Partnership along with North Delhi Municipal Corporation. The Parties had entered into a Service Agreement dated 02.12.2018 for the services of the Applicant as per the scope of services enumerated in the Service Agreement towards the project at Sadar Bazar, Delhi-110006 having a retail saleable area of approximately 1300 sq. mtrs .
14. The Applicant had rendered services to the Corporate Debtor as per the covenants of the Service Agreement dated 02.12.20218, pursuant to which the Applicant is entitled to the Service Fees of Rs. 1,05,00,000/- plus taxes. The completion of the work certificate was issued to the Applicant on 10.01.2022 providing blow by blow description of the work completed by the Applicant along with the date of completion and the same is signed by both the Applicant as well as the Corporate Debtor. The Applicant had issued proforma invoice dated 04.04.2022 amounting Rs.1,23,90,000/- and further issued tax invoice was issued on 19.10.2022. It is pertinent to note that as per Clause 3.3 of the Agreement,



“the service fee shall be payable as a bullet payment to the service provider at the end of the project, i.e., the date when company sells 80% of the inventory or till 31.03.2022, whichever is earlier.” Accordingly, pursuant to the agreement, the Service Fees of Rs. 1,05,00,000/- plus taxes had become due on 31.03.2022. The Corporate Debtor has neither alleged nor placed on record any document to establish any deficiency in the services rendered by the Applicant. The work completion certificate dated 10.01.2022 bears the testimony that the work was completed to the satisfaction of the Corporate Debtor.

15. From perusal of the records and going through the submissions of the parties, it is apparent that the factum of debt exceeding the pecuniary threshold and default in respect thereof has not been denied by the Corporate Debtor. The sum and substance of the defence put forth by the Corporate Debtor in its reply is that the Corporate Debtor and the Applicant had entered into an oral agreement by virtue of which the Applicant had agreed not to initiate any proceedings for repayment of any amount due to the Applicant. We are of the considered view that the defence put forth is not supported by any material evidence for considering the issue of maintainability of the present application. It is a settled position of law, that an application under Section 9 of the Code, 2016 has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.

16. The Hon'ble Supreme Court judgement in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34,** have categorically laid down what the Adjudicating Authority has to examine in an Application under Section 9, which is as follows:-

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:



- (i) *Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) *Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) *Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

17. Thus, having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5)(i) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)-893/(ND)/2022) stands admitted and the CIRP is hereby initiated against M/s. Teriyaki Builders Private Limited.**

18. The applicant in Part -III of the application has proposed the name of Mr. Sudhanshu Gupta as IRP. Accordingly, this bench appoints Mr. Sudhanshu Gupta having registration number IBBI/IPA-002/IP-N00216/2017-2018/10688 and email id – sg_1973@rediffmail.com as the Interim Resolution Professional of the corporate debtor. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any



disciplinary proceedings against him, within five (5) days of pronouncement of this order.

19. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sudhanshu Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor
20. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - “(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 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.*
 - (e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*



21. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.

22. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the 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'.

23. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. 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.



24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Accordingly, the instant application filed under Section 9 of the Code, **2016 bearing C.P.(IB)/893/2022 stands admitted.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N. PRASAD)
MEMBER (J)**