

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

CP(IB) No. 691/KB/2020

A petition 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.

And

In the matter of:

High Growth Consultants Private Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No-U51909WB1996PTC078296 and its registered office at 16A Everest House, 46C J.L, Nehru Road Kolkata- 769012, West Bengal

.....Operational Creditor

-Versus-

Samarpan Viniyog Private Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No-U51102WB2005PTC102247 and its registered office at 235/2A, A.J.C. Bose Road, 3rd Floor, Kolkata-700020, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 13th July, 2022

Date of pronouncing the order: 20th July, 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/ physical):

For Operational Creditor : Mr. Rishav Banerjee, Advocate

Mr. Sanjib Dawn, Advocate

For Corporate Debtor : Mr. Meenakshi Manot, Advocate

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by Mr. Kanchan Kumar Agarwal, authorized signatory on behalf of **High Growth Consultants Private Limited** (Operational Creditor), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Samarpan Viniyog Private Limited** (“Corporate Debtor”).

Submissions on behalf of the Operational Creditor:

3. The case of the Operational Creditor is that upon order placed by the Corporate Debtor *vide* letter dated 20 April 2019, it had prepared a Detailed Project Report (DPR) for the Varanasi Cruise Project of the Corporate Debtor in the Financial Year 2019-2020. The Corporate Debtor, *vide* the said letter instructed the Operational Creditor that the report was to be submitted within one month and that the price would be ₹5,50,000/- (Rupees Five Lakh Fifty Thousand Only) excluding taxes. The Corporate Debtor further mentioned therein that the payment will be made within 15 days of submission of satisfactory DPR after deduction of statutory dues.
4. The Operational Creditor, on 14 May 2019 submitted the DPR along with the invoice. Accordingly, the debt fell due after 15 days from the date of invoice. It first fell due in June 2019 and the Corporate Debtor defaulted in the payment of the said amount.
5. As such, an amount of ₹5,50,000/- along with interest @18% per annum from the due date remains payable by the Corporate Debtor.

6. The Operational Creditor has relied on the following documents to establish its case:
- a. Work order dated 20.04.2019 of Samarpan Viniyog Private Limited (Annexure “D”)
 - b. Invoice No. HGCPL/002/19-20 of High Growth Consultants Private Limited (Annexure “E”)
 - c. Letter dated 15.07.2019, 22.09.2019 and 28.12.2019 by the Operational Creditor for payment of unpaid bill (Annexure “F”)
 - d. Copies of Bank Statements of the Operational Creditor from 1.05.2019 to 21.01.2020 evidencing the non-receipt of total operational due from the Corporate Debtor (Annexure “G”)

Submissions on behalf of the Corporate Debtor:

7. It is admitted that a work order for preparation of DPR was issued to the Operational Creditor for the Varanasi Project for which a consolidated price was settled between the parties at ₹5,50,000/-. Accordingly, a DPR was submitted by the Operational Creditor along with the invoice dated 14 May 2019.
8. The project however, could not be taken off due to some unavoidable circumstances and the Corporate Debtor is not in a position to pay the outstanding debts as demanded by the Operational Creditor. The Corporate Debtor informed of the situation to the Operational Creditor and sought for settlement. However, no settlement could be matured.

Rejoinder on behalf of the Operational Creditor:

9. The Corporate Debtor has misdirected itself by filing the reply as it has not issued any notice to dispute after receiving the Form 3. Further, *vide*

letter dated 05 August 2019, the Corporate Debtor had confirmed its outstanding debts and expressed its inability to pay the said debt.

10. The Operational Creditor has submitted record of the Financial Information in Form C *vide* Unique Debt Identifier AAACH7171C_HGCPL/002/19-20 and information as on 06 June 2020.

Supplementary Affidavit on behalf of the Corporate Debtor:

11. The Corporate Debtor, in compliance of order dated 26 November 2021, has submitted, *vide* supplementary affidavit dated 04. January 2022, its balance sheets for the Financial Years 2018-19, 2019-20 and 2020-21.

Analysis and Findings:

12. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
13. The Operational Creditor issued a demand notice in Form 3 under section 8 of the Code on 11 January 2020. Further, the Operational Creditor has submitted an affidavit under section 9(3)(b) of the Code, affirming that the Corporate Debtor has not raised any dispute regarding the unpaid operational debt. The Operational Creditor has further produced affidavit affirming that it has not received any payment from the Corporate Debtor after the issuance of the demand notice in Form 3.
14. Further, the Corporate Debtor has admitted the claim of the Operational Creditor *vide* letter dated 05 August 2019 whereby it further confirmed its liability of ₹5,50,000/-.
15. However, a perusal of the master data of the Corporate Debtor reveals that the paid-up share capital of the Corporate Debtor is ₹45,70,000/- (Rupees Forty-Five Lakh Seventy Thousand Only) and that the Corporate Debtor has given a corporate guarantee for the amount of ₹4,82,42,00,000/- (Rupees

Four Hundred Eighty- Two Crore, Forty-Two Lakh Only). A further perusal of the balance sheets of the Corporate Debtor for the Financial Year 2018-19 reveals that the reserves and surplus of the company as on 31 March 2019 is ₹21,70,65,940/- (Rupees Twenty-One Crore Seventy Lakh Sixty-Five Thousand Nine Hundred and Forty Only). The balance sheets for the Financial Year 2020-21 further show that the Corporate Debtor's reserves and surplus as on 31 March 2021 is ₹21,63,66,860/- (Rupees Twenty-One Crore Sixty-Three Lakh Sixty-Six Thousand Eight Hundred and Sixty Only). The company has no long term borrowings.

16. The purpose of the Code is to resolve the insolvency of the Corporate Debtor and not recovery of debt. On perusal of the said documents, we are of the opinion that the Corporate Debtor in the instant case is not insolvent and very much capable of repaying the due amount to the Operational Creditor.
17. In this regard, we would like to rely on the judgment given in **Hytone Merchants Private Limited vs. Satabdi Investment Consultants Private Limited**, Company Appeal (AT) (Insolvency) No. 258 of 2021, wherein it was observed that the Adjudicating Authority should be very cautious in admitting the Application so as to prevent the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Thus, the Adjudicating Authority must take every precaution so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency. (Para 39).
18. The admission on the part of the Corporate Debtor further suggests to the possibility of collusion between the parties. As such, this Adjudicating Authority is not fully satisfied that the instant petition should be admitted and the Corporate Debtor should be brought under CIRP. Hence, we reject the Company Petition on the grounds stated above. Consequently, **C.P.(IB) No. 691/KB/2020** shall stand **dismissed**. Needless to say, the Operational Creditor

is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.

19. 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.
20. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 20th day of July, 2022

SM[LRA]