

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

IB-413/(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:

M/s R.G. Luthra & Co.
Reg, Office: E-336, GF,
Vikas Marg, Nirman Vihar,
Delhi- 110092

...Applicant

Versus

M/s ABAG Hi-Tech Education Limited
Reg Office at: 106, Vishwadeep Tower,
Plot No. 4, District Centre, Janak Puri,
New Delhi- 110058

...Respondent



Coram:

SHRI. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Udit Chauhan and Aditya Prakash
Arora, Advocates
Counsel for Respondent: Mr. Ankit Sibbal and Rohitt Kumar
Yadav, Advocates

ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: . .2020

1. This is an application filed by the Applicant M/s R.G. Luthra & Co. seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s Abag Hi- Tech Education Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 2,30,841/- (Rupees Two Lakh Thirty Thousand Eight

2



Hundred and Forty one only) towards the services provided by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant is a registered Chartered Accountancy firm and is engaged in the business of providing services of statutory audits and finalization of Balance Sheets of the Companies apart from the other charged Accountancy tasks.
- ii. That the Respondent engaged the Applicant for the purpose of performing tasks of audits of the respondent Company, thereby the Board of the Respondent Company issued an appointment letter dated 15.05.2014 whereby, appointing the applicant as the statutory auditors.
- iii. That the applicant in response to the appointing letter dated 15.05.2014 gave its written consent along with the certificate under section 139 of Companies Act, 2013 and the applicant fulfilled the criteria as mentioned under section 141 of



Companies Act, 2013 by way of letter dated 22.07.2014 along with the certificate.

- iv. The applicant submitted that the respondent after receiving consent letter dated 22.07.2014, along with the certificate, confirmed the appointment of the Applicant as Statutory Auditor by way of resolution dated 29.09.2014, passed in the 5th Annual General Meeting thereby holding that the Applicant shall hold the office till conclusion of the 10th Annual General Meeting of the Company to be held in the year 2018-19. The Respondent communicated the confirmation to the applicant by way of re-appointment letter dated 01.10.2014.
- v. That the applicant after conducting the statutory audit and tax audit for the year 2012-13 for the Respondent, the applicant raised an invoice of Rs. 47,753/- (Rs. Forty Seven Thousand Seven Hundred AND Fifty Three only) dated 31.03.2014. On account of failure of the Respondent to pay the said amount, the applicant addressed a letter dated 15.10.2014 to



the Director of the Respondent, Mr. Amul Gabrani for clearing the bill raised by the Applicant.

- vi. The applicant further submitted several reminder letters on 02.11.2015, 29.01.2016, and 15.07.2016 were sent to the Respondent for clearing the unpaid invoices.
- vii. That the Respondent wrote a letter dated 13.08.2016 acknowledging the non-payment of the invoices and assuring payment within 15 days. The applicant submits that despite assurances of 15 days, the payment was not made and thus the Applicant issued a letter dated 18.08.2017, stating that the payment to statutory auditors is a requirement under the Companies Act, 2013.
- viii. That the Respondent by way of its letter dated 01.10.2017 apologized for the delay and requested some more time for making the payment.
- ix. That the applicant due to the long standing relationship between the applicant and the directors of the Respondent and the statutory nature of the duties being performed by the applicant, the



applicant continued its services and conducted statutory audit for the year 2013-14, 2014-15, 2015-16 and 2016-17 and raised invoices of Rs, 44,944/- , Rs. 46,000/- and 47,200/-.

- x. That the applicant had sent various reminders by way of request letters dated 01.12.2017, 18.10.2018, 15.01.2019 and 17.07.2019 quoting the commitment of the Respondent of making the due payments to the Applicant.
- xi. That the Respondent by way of letter dated 02.11.2018 assured the applicant that the payments shall be made by 31.12.2018. However, the applicant submits that the Respondent failed to make any payments for the services rendered by the applicant. Further the respondent by way of letter dated 04.02.2019 assured the applicant that the bankers have finally agreed to cooperate to increase the banking limits and by virtue of the cooperation of the bankers, the Respondent shall be able to clear the outstanding of Rs. 2,30,841/- before 30.06.2019 without any further delay and further requested the



applicant to initiate steps towards preparation of auditing for the years 2017-18 onwards for to enable the Respondent in getting the cooperation of the bankers.

- xii. The Applicant issued Demand Notice in the form of Form-3 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 07.12.2019 calling upon the Respondent to clear the amount of default i.e. Rs. 2,30,841/-. The Respondent upon receipt of the Demand Notice dated 11.12.2019 issued a reply stating that they do not have funds to make the payment and they are expecting funds from the bankers only after which they would be in a position to make the payments.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Respondent filed its Affidavit on behalf of the Respondent stating that:

- i. The application has been perused by the Respondent and submitted that the dues of the

7



applicant amounting to Rs. 2,30,841/- which are in the form of statutory audit fee are admitted and not being denied by the Respondent.

- ii. That non payment of dues of the applicant by respondent are not intentional or deliberate on the part of the Respondent and it has arisen due to extreme losses in the business of the Respondent.
 - iii. That the Respondent has been continuously making efforts for the revival of the Respondent but nothing fruitful has come up in favor of the Respondent.
 - iv. That the Respondent is not in a position to raise a dispute against the present application or deny the claim of the applicant in any manner whatsoever.
3. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application. The counsel for the Corporate debtor submitted that the Corporate Debtor is not in a position to raise a dispute against the



present application or deny the claim of the applicant in any manner whatsoever.

4. On perusal of Application as well as the documents enclosed, the operational Creditor has established the existence of debt and default on the part of the Corporate Debtor and the Corporate Debtor while availing the opportunity provided by this Tribunal clearly admitted the outstanding debt and did not raise any dispute against it. In view of the above situation, this Adjudicating Authority admits this petition and initiates CIRP on the Respondent with immediate effect.

5. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent 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.”

4. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Debashis Nanda, Address: CS-14, C-Floor, Ansal Plaza, Vaishali, Ghaziabad- 201010, Reg. No: IBBI/IPA-003/IP-N00040/2017-18/10316 and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

-Sd/-

(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd/-

(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

RDS

IB-413/ND/2020
R.G. Luthra & Co. v. M/s ABAG Hi Tech Education Limited

11

