

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
IB-2399(ND)/2019**



Order 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:

Mr. ROMESH CHANDRA GROVER

Proprietor of Krishna Studio

Having its Office at:

5, Harphool Singh Building, Clock Tower, Delhi-110007.

..... Operational Creditor

VERSUS

M/s. PARAMOUNT COACHING CENTRE PRIVATE LIMITED

Having its registered Office at:

B-14, 3rd Floor, Commercial Complex,

Near Batra Cinema, Mukherjee Nagar, Delhi-110009.

..... Corporate Debtor

Order Delivered On: 19.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Birendra Kumar Mishra, Ms. Poonam Atey, Advs.

For the Respondent : Ms. Jasmine Damkewala, Ms. Vaishali Sharma, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by Mr. Romesh Chandra Grover, the Applicant/Operational Creditor on 23.09.2019 before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. Paramount Coaching Centre Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding payment of a sum of Rs. 1,32,53,589/- (Rupees One Crore Thirty Two

IB-2399(ND)/2019

Date of Order: 19.12.2023



Lakh Fifty Three Thousand Five Hundred and Eight Nine Only) including interest amount @18% p.a. to the tune of Rs. 17,78,757/- (Rupees Seventeen Lakh Seventy Eight Thousand Seven Hundred and Fifty Seven Only). As per the Section 8 demand notice dated 06.04.2019, the date of default in the present matter is 31.03.2018.

2. **Submission of the Applicant/Operational Creditor**

- i. It is case of the Applicant that he was approached by the Respondent /Corporate Debtor for its services and the Applicant/Operational Creditor has been extending these services of out-of-home advertisement along with space for display of advertisement at various sites to the Corporate Debtor since year 2012 till 2018.
- ii. The Applicant/Operational Creditor has submitted that it has raised monthly invoices which were initially honoured by the Corporate Debtor, however later on, invoices raised were not regularly honoured, leading to the outstanding amount as due and payable by the Corporate Debtor, on accounts maintained by the Operational Creditor to the tune of Rs. 1,14,74,832/- (Rupees One Crore Fourteen Lakh Seventy Four Thousand Eight Hundred and Thirty Two Only).
- iii. As per case of the Operational Creditor, the Corporate Debtor vide letter dated 22.10.2018 has duly confirmed its liability to the tune of Rs. 98,44,229/- (Rupees Ninety Eight Lakh Forty Four Thousand Two Hundred and Twenty Nine Only) as due and payable on 31.03.2018.
- iv. The Applicant/Operational Creditor further claims interest to the tune of Rs. 17,78,757/- calculated @18% p.a., on the principal amount i.e., Rs. 1,14,74,832/-, totalling to Rs. 1,32,53,589/-.
- v. The Applicant/Operational Creditor served a demand notice dated 06.04.2019 under Section 8 through speed post upon the Corporate Debtor, which was duly served. However, no reply was received by the Operational Creditor within 10 days of sending the said notice.



3. **Submission of the Respondent/Corporate Debtor**

- i. The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Operational Creditor/Applicant and stated that it was approached by Operational Creditor/Applicant whereby Applicant had offered to provide advertisement facilities for enhancing and boosting the coaching business of the Respondent's Coaching Institute.
- ii. The Corporate Debtor/Respondent has submitted that there has been no agreement with the Operational Creditor/Applicant and the invoices have been wrongly raised by the Operational Creditor.
- iii. The Corporate Debtor Further submitted that the letter dated 22.10.2018 as relied upon by Operational Creditor has been denied as forged by the Corporate Debtor.
- iv. The Corporate Debtor further submitted to have received no demand notice under Section 8, citing the reasons of Covid-19 pandemic.

4. **Analysis and Findings**

- i. We have heard the Ld. Counsel appearing for both parties. We have also perused the documents on record.
- ii. The following issues emerge for Consideration:
 - a) Whether the present application is within the Limitation period to initiate the CIRP against the Corporate Debtor or not.
 - b) Whether the transaction involved between the Operational Creditor and the Corporate Debtor is Operational Debt or not.

iii. First Issue- Limitation

As per law laid down by the Hon'ble Supreme Court, in the case of **B. K. Educational Services Pvt. Ltd. versus Parag Gupta and Associates** in Civil Appeal No. 23988 of 2017, Law of Limitation i.e., Article 137 of the Limitation Act, 1963 is applicable to the Application filed under Section 9 of the Code.

It is seen from the records of the case that the last invoice was raised by the Applicant on 26.10.2018, which has not been specifically denied/disputed by the Respondent. Further, the terms of the



invoice, have also not been specifically denied/disputed by the Respondent. A credit period of 15 (Fifteen Days) was given to the Respondent to make payment and accordingly, the amount as per the said last invoice, fell due on 10.11.2018.

Article 137 of the Limitation Act provides a 3 (Three) year of Limitation Period from the date when “Right to Apply” accrues. The Applicant gets 3 (Three) Years from the 10.11.2018, and the Application has been filed on 23.09.2019.

The first issue is answered accordingly and we are of the considered view that the present Application filed by Applicant/Operational Creditor is well within the limitation period i.e., of 3 (Three) Years from the date of default.

iv. Second Issue- Operational Debt

It is pertinent to mention that the scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment.

Admittedly, the Applicant/Operational Creditor has rendered services to the Respondent/Corporate Debtor from 2012 till 2018 and raised invoices for the said period with the last invoice being on 26.10.2018.

The definition of “Operational Debt” is given under sub-section 21 of Section 5 of the Code, which reads as “*a claim in respect of the provision of goods or services*” amounts to an Operational debt.

Admittedly, the claim made by the Applicant is in respect of advertisement facilities/services provided by the Applicant to Corporate Debtor for enhancing and boosting the coaching business of the Corporate Debtor’s coaching Institute and therefore it can be held to be an Operational Debt within the meaning of the Code.


- v. The Ld. Counsel appearing for the Respondent during the course of argument had stated that there is a pre-existing dispute, however, he failed to substantiate the argument by any documentary evidence and he has not pleaded the same. Further, the Corporate Debtor did not reply to the Section 8 demand notice and not raised any pre-existing dispute prior to the issuance of Section 8 Demand Notice.



- vi. The Applicant/Operational Creditor has further relied on the letter dated 22.10.2018, whereby Respondent confirms its outstanding liability to the tune of Rs. 98,44,229/- as on 31.03.2018 in favor of the Applicant, which has been only denied as forged document without any document at least showing concern/grievance of the Respondent against such forgery brought on record.
 - vii. On a conspectus of the case, we have found that the Corporate Debtor has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective. The Operational Creditor has established that he has supplied outdoor advertisement services which were rendered by the Operational Creditor to the Corporate Debtor and accordingly invoices were raised whereas the Corporate Debtor has failed to make the payments due to the Operational Creditor.
 - viii. Having considered the facts and circumstances of the case, we are of the considered view that the Operational Creditor has established that the debt is due and there is a default committed by the Corporate Debtor and there is no pre-existing dispute pending on the date when the Operational Creditor sent the demand notice under Section 8 of IBC, 2016.
 - ix. Therefore, we are of the view that the present application under Section 9 of the IBC, 2016 ought to be **admitted**.
5. In view of the above findings, we are satisfied that the present application fulfills the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -
- a. The Application bearing **IB-2399(ND)/2019** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted**.
 - b. We also declare a 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:



- i. *“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;*
 - ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - iii. *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;*
 - iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor. [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]”*
- c. 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.

- d. Since Section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional (IRP) for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Santanu Kumar Samanta, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by the IBBI. The registration number of the IRP is IBBI/IPA-001/IP-P-02324/2020-2021/13511, the address of the IRP is C-170, Golf View Apartments, Saket, National Capital Territory of Delhi, Delhi-110017 and the e-mail id of the IRP is santanukumar@yahoo.com and the contact number of the IRP is +919810031794.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, Mr. Santanu Kumar Samanta is appointed as IRP.

- e. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.



- g. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Adjudicating Authority hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- j. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- k. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**