

**IN NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT- V**

**C.P. 627/IB/MB/2020**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Siddesh Bhalchandra Naik**

Vishnu Sadan, S.V. Road, Goregaon West, Opp. Vijay Sales, Mumbai- 400 104

**.....Operational Creditor**

**Vs**

**M/s. Rao Edusolutions Pvt. Ltd.**

Reg. Off.: A- 113, 1<sup>st</sup> Floor, Boomerang, Chandivali, Near Chandivali Studio, Andheri East, Mumbai - 400072

**.....Corporate Debtor**

**Order pronounced on: 03.07.2023**

**Coram:**

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

***Appearances (via Videoconferencing)***

For the Applicant: Mr. Pankaj G Jain, Advocate

For the Respondent: None


***Per: Kuldip Kumar Kareer, Member (Judicial)***

## ORDER

1. This Company Petition is filed by Siddhesh Bhalchandra Naik (hereinafter called "**Petitioner**"/ "**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s. Rao Edusolutions Pvt. Ltd. (hereinafter called "**Respondent**"/ "**Corporate Debtor**") alleging that the Corporate Debtor has committed a default to an extent of Rs. 23,74,133/-. This Petition has been filed by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "**Code**") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

### FACTS OF THE CASE

2. The Operational Creditor has rendered services to the concerned Corporate Debtor as a "Consultant of Mathematics". In this regard, the Corporate Debtor executed a Service Agreement dated 06.12.2017 with the Operational Creditor, for a term of three years starting from 01.04.2017 to 31.03.2020.
3. The Operational Creditor signed the Original Service Agreement on stamp paper and handed over the same to Mr. Vinay Kumar, Managing Director of the Corporate Debtor, who promised to return back a photocopy of the signed agreement but never gave the same to the Operational Creditor /Applicant.
4. The Operational Creditor was asked to submit the bills for the monthly Professional fees, as per the Service Agreement, dated 06.12.2017, including the applicable GST as per the law, payable by the Corporate Debtor within 10 days of the bills raised.
5. The Operational Creditor raised a bill for December 2017 on 10.01.2018, and the same was paid by the Corporate Debtor by 20.01.2018, except GST amount. Subsequently, when Operational Creditor deposited GST for




December 2017, the Corporate Debtor paid the GST component too. This way the Corporate Debtor has paid the bills regularly till March, 2018.

6. Thereafter, the Corporate Debtor, after taking the credit of the GST amount did not pay the GST amount deducted to the Petitioner, thus leaving a balance of the bills unpaid. The Corporate Debtor had started delaying the amount to be paid after August, 2018, by one or two months. The payments for November 2018 and December 2018 payments were delayed by four to five months.
  
7. The Operational Creditor resigned from the post of 'Consultant of Mathematics' by sending an email dated 11-April-2019 and the Corporate Debtor has accepted the resignation on the same day itself. The Operational Creditor was informed to work till 08.06.2019 as per the Service Agreement, which the Operational Creditor has complied with. It has further been submitted that the Corporate Debtor had promised to clear all outstanding dues within 90 days of the Operational Creditor's last day with the Corporate Debtor.
  
8. The Operational Creditor raised bills dated 30.04.2018 to 16.11.2019 for the payment of professional fees to the Corporate Debtor bearing bill Nos. 10 to 24 out which 10 to 19 are partly paid bills for the months from April 2018 to January 2019 (GST amounts pending) and bill Nos. 20 to 24 for the months of February 2019 to June 2019 have not been paid by the Corporate Debtor at all.
  
9. The Operational Creditor claims that the Corporate Debtor defaulted in the payment of Rs.23,74,133/- and the bills for the same were annexed with the Petition.

10. The Operational Creditor has been regularly communicating with the Corporate Debtor for the recovery of its outstanding due. However, the Corporate Debtor failed to pay the outstanding dues of Rs. 23,74,133/-.
11. In this regard, the Applicant has sent demand notice dated 16.12.2019 to the Corporate Debtor under Section 8 of Insolvency and Bankruptcy Code 2016. However, the Petitioner neither received the outstanding dues nor any reply to the said demand notice which necessitated the filing of the present petition

**REPLY FILED BY THE RESPONDENT**

12. At the outset, the Respondent has denied all the averments made by the Operational Creditor and submitted that the Petition is not maintainable and bad in law.
13. The Respondent has submitted that the Demand Notice 16.12.2019 issued on the behalf of the Operational Creditor is not in terms of the requirement of Rules 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It is neither as per the format given in the Form 3 nor as per Form 4. Therefore, the Demand Notice under Section 8 is not accordance with the Code or the Rules formed thereunder.
14. The Respondent has placed its reliance upon the clause 8.1 and clause 8.2 of the Agreement dated 02.04.2018 and submitted that the Operational Creditor has sent the Resignation Letter on 11.04.2019 and resigned from the post on 8th June 2019, i.e., before the Completion of the said contracted period of 3 years mentioned in the Service Agreement. As per the Service Agreement dated 06.12.2017, the Operational Creditor was required to serve the Company till 31.03.2020. However, he resigned from the Company violating the terms of the Service Agreement. It is further submitted that the Operational Creditor resigned in the midst of the academic period starting



from 1st June to 30th April of the next year, thereby violating the clause 8.2 of the Service Agreement.

15. The Respondent has further submitted that that the Applicant in clear breach of the Agreement took up the Assignment "Narayana Education Trust" COMPANY's Competitor within 6 months of expiry of the said agreement.
16. The Respondent has further submitted that the Applicant has not obtained a "No Dues" Certificate from any of the departments of the Corporate Debtor which is also in violation of clause 9.2 of the Service Agreement dated 06.12.2017.
17. The Respondent further has submitted that with respect to clause 15.1 of the Agreement, the Applicant is liable for all taxes including service tax (If applicable) and income tax arising from the compensation and other amounts, if any paid under the Agreement. However, the Applicant has included the GST amount payable by him in the amount allegedly outstanding and due from the Corporate Debtor. Therefore, the amount claimed in default is itself incorrect.
18. The Respondent has submitted that the Applicant's all Annual Tax Statement, bank statements and GST statements and Form 26-AS from August 2019 till October 2020 should be called for to examine whether he has breached clause 3.3 of the Agreement.
19. It is submitted that the Petition filed by the Petitioner is frivolous, vexatious and filed to extract money from the Corporate Debtor, which the Petitioner is not entitled to. The Corporate Debtor reserves the right to claim compensation, penalties, legal costs from the Petitioner for the breach of the Agreement. Therefore, the Company Petition deserves to be dismissed.

## **REJOINDER FILED BY THE OPERATIONAL CREDITOR**

20. At the outset, the Operational Creditor denied all the averments made in the Affidavit-in-reply.

21. It has been submitted that with respect to Demand Notice dated 16.12.2019, the Corporate Debtor has paid only an amount of Rs.3,50,000/- inclusive of TDS, leaving an outstanding balance of Rs. 20,24,133/-.

22. It has been submitted that the Corporate Debtor has taken the cognizance of the resignation email dated 11.04.2019 without any disputes and objections except for the notice period clause. In this regard, the Operational Creditor has submitted that all the alleged violation of terms and condition now stand discarded.

23. With respect to the allegation of joining the Narayana Education Trust, the Operational Creditor has submitted that for earning the livelihood, he has exercised its fundamental right to practice profession.

24. The Operational Creditor has further submitted that all the allegation with respect to violation of various clauses of the Services Agreement are afterthought and baseless, so as to create a façade of defense. With the above averments, the Operational Creditor has prayed for the admission of the present petition.

## **FINDINGS**

25. We have heard the Ld. Counsels for the petitioner and perused the documents available on record while none was present on behalf of Corporate Debtor.




26. The Counsel for the Operational Creditor has argued that the operational debt of Rs. 23,74,133/- was outstanding against the Corporate Debtor on account of the services having been rendered by the Operational Creditor. The Counsel for the Operational Creditor has further argued that in the reply filed by the Corporate Debtor, the factum of non-payment of the claim has not been specifically denied. Therefore, the factum of the amount claimed being due against the Corporate Debtor is not disputed at all. Therefore, according to the Counsel for the Petitioner, a strong case for admission of petition under Section 9 is made out in the instant case.

27. We have considered the contentions raised by the Counsel for the Petitioner and perused the records.

28. There is no dispute with regard to the fact that the Operational Creditor has been rendering services to the Corporate Debtor with effect from 1st April 2017 following execution of the service agreement dated 06.12.2017. It is not disputed that as per the said Service Agreement, the Operational Creditor was to render services for a minimum lock in period of 3 years and even after completion of 3 years, the Operational Creditor could terminate the contract by giving one-month's prior notice or by depositing salary in lieu thereof. It is also not disputed that the Corporate Debtor left the services before the inclusion of 3 years lock in period. In the given circumstances, it has to be seen as to whether despite the breach of contract committed by the Operational Creditor, the latter is still entitled to invoke the provisions of Section 9 of the Code on account of non-payment of service dues which are covered under the definition of operational debt.

29. We have gone through the reply in total filed by the Corporate Debtor. There is no denial in the reply of the fact that the amount claimed by the Operational Creditor was not outstanding. In addition to this, the Corporate Debtor has not placed on record any documents showing the exact amount



of payments made by the Corporate Debtor to the Petitioner. It appears the Corporate Debtor has deliberately withheld the record of payment made to the Petitioner for which an adverse inference has to be drawn against it. Even otherwise, in the Affidavit-of-rejoinder, the Operational Creditor has submitted that with respect to Demand Notice dated 16.12.2019, the Corporate Debtor has paid an amount of Rs. 3,50,000/- inclusive of TDS, leaving an outstanding balance of Rs. 20,24,133/-. This has not been controverted by the Corporate Debtor which amounts to acceptance of the outstanding amount.

30. It is well settled that if a fact is not specifically denied in the reply, it is deemed to have been admitted by the opposite parties. Therefore, it can be safely held that the Corporate Debtor was in default in payment of its due towards the Operational Creditor, as claimed in the petition.

31. The entire defence of the Corporate Debtor raised in the reply hinges upon the terms and conditions of the service agreement. It has been claimed that the Petitioner himself has breached the terms of the said contract. He left the services before the lock in period of 3 years and that too without any notice. However, in our considered view, the breach of contract has not been a part of the Petitioner alone. It is evident that the Corporate Debtor failed to pay the monthly fees to the Petitioner from 30.04.2018 to 16.11.2019 which was also a condition of the contract to be abided by the Corporate Debtor. Non-payment of monthly dues from time to time by the Corporate Debtor also amounted to breach of contract. Therefore, the Corporate Debtor cannot be heard harping that the Petitioner has committed breach of contract by not completing the mandatory period of three years and therefore, he is not entitled to invoke Section 9 petition.


32. Under the circumstances, we are of the considered view that if the Petitioner was not being paid as per the terms and conditions of the contract, the

Operational Creditor was well within its right to leave the services even before lock in period. In addition to this, the Corporate Debtor have not assigned any valid reasons for non-payment of monthly fees to the Operational Creditor.

33. As a result of the above discussions, it is held that there has been an operational debt and default on the part of the Corporate Debtor and under the circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code. It is ordered accordingly in following terms:

### **ORDER**

- a. The above Company Petition No. 627/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Rao Edusolutions Pvt. Ltd.**
- b. **Mr. Viral Vora**, having registration No. *IBBI/IPA-001/IP-P-02703/2022-2023/14141*, having email Id- *ipviral.vora@gmail.com*, having Mobile Number- 9619716363, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of **Rs. 3 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering,



alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP 627 of 2020 is **admitted**.

SD/-

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

SD/-

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**