

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

In CP No. (IB) 43/9/JPR/2020

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

IN THE MATTER OF:

Mr. Rajesh Kumar Sharma, Proprietor of M/s Sharma Art & Computer
Opp. Panchayat Samiti, Near Old
Water Tank, Pankha, Jhotwara,
Jaipur, Rajasthan – 302012

...Applicant / Operational Creditor

VERSUS

Guman Builders & Developers Private Limited
CIN: U45201RJ2013PTC041592
171, Officers Campus Exten.,
Jaipur, Rajasthan – 302021

...Respondent/Corporate Debtor

For the Applicant : Shretima Bagri, Adv.
For the Respondent : Ankit Sareen, Adv.

Order Pronounced On: 28.04.2022


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ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by Mr. Rajesh Kumar Sharma ('Applicant' / 'Operational Creditor') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against Guman Builders & Developers Private Limited ('Respondent' / 'Corporate Debtor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') for the alleged default on the part of the Respondent in settling an amount of Rs. 8,62,484/- (Eight Lakhs Sixty-Two Thousand Four Hundred and Eighty-Four Only) that is due towards the services provided by the Applicant.
2. The Applicant, Mr. Rajesh Kumar Sharma, is the sole proprietor of M/s Sharma Art & Computer and is in the business of printing and designing work for business houses and a range of other related goods.
3. The Corporate Debtor Guman Builders & Developers Private Limited is a company incorporated under the Companies Act, 1956 in 2013 and is engaged in the real estate business. The Corporate Debtor has an Authorised Share Capital of Rs. 9,50,00,000/- (Nine Crores Fifty Lakhs Only) and Paid-Up Share Capital of Rs. 7,50,00,000/- (Seven Crores Fifty Lakhs Only). Copy of the same is annexed as Annexure – 1 of the Application.
4. The Corporate Debtor has sought the supply of various goods from the Operational Creditor primarily towards its marketing and office stationery material duly supplied by the Operational Creditor and received by the



Corporate Debtor. Copies of invoices of such transactions are annexed in the Application in Annexure – 3.

5. The Applicant stated that the Corporate Debtor has confirmed its liability against the aforementioned due invoices through its balance confirmations for each year ending 2016, 2017, 2018 and 2019 but has failed to pay the amount annexed in the Application in Annexure – 6.
6. The Operational Creditor served statutory demand notice under section 8 of the Code to the Corporate Debtor in person on 22.11.2019 and sought immediate repayment. However, the representatives of the Corporate Debtor denied paying because of the ongoing proceedings whereby the Enforcement Directorate had attached their properties.
7. The total outstanding amount of the aforesaid operational debt along with interest, as enumerated under Part IV, is as follows:

PART IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<u>Amount of Debt Granted:</u> Total Principal Amount: Rs. 3,77,000/-
2.	Amount claimed to be in default and the date on which the default occurred	<u>Amount Claimed:</u> Rs.8,62,484/- [#] Total Principal Amount: Rs.3,77,000/- Total Interest Due: Rs.4,85,4845/-* <u>Date from which Debt fell Due:</u>

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		<p>The debt fell due on each date of the invoices, starting from the first unpaid invoice dated 13.05.2015 till the last unpaid invoice dated 06.07.2015.</p> <p>Date(s) of Disbursement <i>vide</i> Invoices No.</p> <table border="1"> <thead> <tr> <th>Invoice No.</th> <th>Amount</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>54.</td> <td>Rs.73,700</td> <td>13.05.2015</td> </tr> <tr> <td>68.</td> <td>Rs.75,000</td> <td>27.05.2015</td> </tr> <tr> <td>83.</td> <td>Rs.1,00,000</td> <td>15.06.2015</td> </tr> <tr> <td>89.</td> <td>Rs.1,20,000</td> <td>25.06.2015</td> </tr> <tr> <td>98.</td> <td>Rs.8,300</td> <td>06.07.2015</td> </tr> <tr> <td>Total</td> <td>Rs.3,77,000</td> <td>-</td> </tr> </tbody> </table>		Invoice No.	Amount	Date	54.	Rs.73,700	13.05.2015	68.	Rs.75,000	27.05.2015	83.	Rs.1,00,000	15.06.2015	89.	Rs.1,20,000	25.06.2015	98.	Rs.8,300	06.07.2015	Total	Rs.3,77,000	-
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* Rate of Interest is being charged at 18% p.a. till 20.11.2019.

Annexure 2 of the Application.

8. The Respondent has submitted in its reply / written submission *vide* Diary No. 2829/2021 dated 22.12.2022 that it is not wilfully defaulting on the repayment. It always had the intention of repaying the sale consideration, but it is handicapped because of the registration of an FIR against the director of the Respondent on 06.03.2016 for involvement in the alleged fraud and misappropriation of funds committed by one Mr. Bharat Bumb with the Syndicate Bank, Jaipur. It was also contended that the Enforcement Directorate had passed a Provisional Attachment Order dated 12.09.2020 through which all the assets of the Respondent Company have been seized and attached while freezing the accounts. Therefore, the Respondent cannot access its bank accounts, and as a result, it is unable to repay the aforementioned sale consideration amount.

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9. The learned counsel for the Applicant relied on the petition filed and stated that the requirements of Section 9 of the Code are satisfied and the petition needs to be admitted. The learned counsel for the Respondent argued that the interest at the rate of 18% per annum was never agreed upon between the parties. However, it acknowledges the principal amount of Rs. 3,77,000/- (Rupees Three Lakhs and Seventy-Seven Thousand Only) is due and payable on their part.
10. The Respondent also submits that the Operational Creditor should approach the appropriate forum, in the present case ED, for the reliefs as unless the ED grants liberty to the Respondent Company to access its bank accounts, the Respondent Company will not be able to pay the due amount.
11. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur, and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. The various invoices annexed with the Application are dated 13.05.2015, 27.05.2015, 15.06.2015, 25.06.2015 and 06.07.2015. It is seen that the Corporate Debtor has time and again acknowledged its liability in its book of accounts, which is annexed *vide* Annexure – 6 of the Application. The latest acknowledgment in the form of ledger account confirming the balance of the Operational Creditor came on 01.04.2019 and the Application was filed on 30.01.2020. Therefore, the present Application has been filed within the period of limitation.

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12. The first issue is whether the demand notice in Form No. 3 dated 22.11.2019 was served upon the Respondent. The demand notice dated 22.11.2019 was given in person. Copy of the same is annexed as Annexure – 5 of the Application.
13. The next issue for consideration is whether the Respondent disputed the operational debt. The Respondent acknowledged its liability concerning the principal amount, and as per documents placed on record with the Adjudicating Authority, there is no dispute as to the outstanding liability of the Respondent Corporate Debtor towards the Applicant Operational Creditor.
14. Upon a detailed consideration of the Application and documents filed by the Applicant, it is apparent that the payment of the claim amount has been defaulted by the Corporate Debtor. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
15. There is a total unpaid operational debt (in default) of Rs. 3,77,000/- (Rupees Three Lakh Seventy-Seven Thousand), and the Applicant has further claimed 18% per annum interest up to 20.11.2019 from each invoice. It is observed that the Operational Creditor has issued various invoices (Annexure A-3 Colly) for goods supplied to the Respondent / Corporate Debtor. The Applicant / Operational Creditor has furnished an affidavit confirming non-receipt of any notice of dispute under Section 9(3)(b) of the Code and non-receipt of any money from the Corporate Debtor dated 28.01.2020. This Adjudicating

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Authority has held above that the Operational Creditor correctly delivered the demand notice in Form No.3, and no pre-existing dispute is proved.

16. No agreement or any other legal document has been filed before us, which establishes that the agreed interest rate between the parties is 18% per annum. In the absence of mutual understanding between the parties in relation to the calculation of interest amount, this Adjudicating Authority believes that the Rate of Interest claimed by Applicant @18% per annum is in excess of the existing commercial market practices. This Adjudicating Authority is inclined toward calculating interest amounts at the prevalent and predominant rate in the market. Therefore, the rate of interest on which Interest Amount shall be calculated is awarded at 9% per annum. The interest is payable from the date(s) of default till the order of admission of this Application for the process of CIRP.
17. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
18. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'), but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed the name of any person to be appointed as IRP. Hence, this bench will appoint the RP from the pool of RPs

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empanelled with the IBBI. Therefore, the bench appoints Mr. Lalit Mohan Sharma, bearing Registration No. IBBI/IPA-002/IP-N00770/2018-19/12379 with the e-mail address lalitsharma7324@gmail.com and phone number +91-8875012080 as the IRP in the present matter. The said IRP is directed to file the written consent to act as a resolution professional in Form-A provided under Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

19. In this matter, the Interim Resolution Professional appointed herein, Mr. Lalit Mohan Sharma, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

20. Consequences of commencement of CIRP shall be inter-alia as follows:

i. The IRP appointed by the Adjudicating Authority, Mr. Lalit Mohan Sharma, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of

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the Corporate Debtor; and collation of the same shall be done.

- ii. Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
- iii. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- iv. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, and the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

21. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Resolution Professional by all modes for information.

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22. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the RP nominated herein on his e-mail id.

23. Accordingly, CP No. (IB)- 121/9/JPR/2019 is admitted.

IA No. 49/JPR/2020

This IA has been filed *vide* Diary No. 225/2020 dated 30.01.2020 by the Applicant under Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking an Ad-Interim Injunction on the sale, alienation or transfer of any of the assets of the Corporate Debtor pending the admission of this Application under Section 9 of the Code by Rajasthan Financial Corporation and others.

The Application filed by the Applicant has already been admitted under Section 9 of the Code; this IA becomes infructuous and accordingly stands disposed of.



**DEEP CHANDRA JOSHI
JUDICIAL MEMBER**



**RAGHU NAYYAR
TECHNICAL MEMBER**