



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – V

ITEM No. 1
IB-294/ND/2020

IN THE MATTER OF:

Arrina Education Services Pvt. Ltd. ... Applicant

Versus

Skillar Enterprises India Pvt. Ltd. ... Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 18.05.2023

Coram:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. CP IB No. 294/(ND)/2020 stands **admitted**.

Sd/-
RAHUL BHATNAGAR
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD
MEMBER (JUDICIAL)



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)

CP No. (IB)-294(ND)/2020

IN THE MATTER OF:

Arina Education Service Pvt. Ltd.

7th Floor, Bhaveshwar Arcade,
LBS Marg Ghatkopar (West),
Mumbai - 400086

...Applicant/Operational Creditor

VERSUS

Skillar Enterprise Pvt. Ltd.

Innov8 Ras Vilas Saket, Ground Floor
Saket Salcon, Rasvilas District Centre
Sector 6, Pushp Vihar
Next to Select City Walk Mall
South Delhi - 110017

...Respondent / Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 18.05.2023

CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Manish Dhir a/w Mr. Anuj Athalye i/b Legasis
Partners

For Respondent : Ms. Simran Jeet, & Mr. Puneet Singh Bindra, Advs.



ORDER

PER - SHRI RAHUL BHATNAGAR, MEMBER (T)

1. The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr Balaji Thotadri (for brevity '**Operational Creditor/ Applicant**'), authorized vide Board Resolution dated 10th December 2019, with a prayer to initiate the Corporate Insolvency Resolution Process against Skillar Enterprise Private Limited (for brevity '**Corporate Debtor/ Respondent**').

2. That the Applicant is a company incorporated on 12.01.2012 with CIN U80301MH2012PTC225975 under the provisions of Erstwhile Companies Act, 1956 having its registered Office at Nishuvi Ground Floor, 75 Dr. Annie Besant Road Worli Mumbai, Mumbai City MH 400018 IN and correspondence address at 7th Floor, Bhaveshwar Arcade LBS Marg, Ghatkopar West, Mumbai

3. That the Corporate Debtor namely, Skillar Enterprise India Pvt. Ltd. (formerly known as PSVP IT Skill Projects Pvt. Ltd.) is a Company incorporated on 30.07.2015 with CIN U74140DL2015PTC283386 under the provisions of the Companies Act, 2013 having its registered Office at Innov8 Ras Vilas Saket, Ground Floor, Saket Salcon Rasvilas, District Centre Sector 6, Pushp Vihar Next to Select City Walk Mall, South Delhi - DL - 110017.

4. It is submitted by the Applicant that Simens Industries Software Ltd and Design Tech System Ltd. with Andhra Pradesh State Skill Development Corporation was planning to set up six centers of excellence and thirty Technical Skill Development Institutes in the



state of Andhra Pradesh. The objective of setting up the centre was to train the youth of Andhra Pradesh. Accordingly it was decided that the Andhra Pradesh State Skill Development Corporation (APSSDC) will provide physical infrastructure in Engineering, Polytechnic and mobilize candidates for training.

5. The corporate debtor was assigned to be the system integrator on behalf of Design Tech systems Ltd., for implementation of the project. The corporate debtor with their partner thereafter shall set up practical labs and provide the content for training. On these terms the applicant and the corporate debtor entered into a master service agreement dated 30th March 2016, wherein the scope of work was also entered between the parties. Pursuant to the said agreement the corporate debtor issued numerous statements of works (SOW) pertaining to services to be rendered by the applicant to the corporate debtor for APSSDC, Department of Higher Technical Education & Skill Development, (Government of Jharkhand) and Technical Skill Development Institute in State of Tamil Nadu respectively.

6. The applicant as per the terms and conditions of the agreement and the work stipulated as per the SOW provided services to the corporate debtor to the best of the ability of the applicant. The agreement provides for the following relevant clauses:

- a) The clause 4.2 provides that Corporate Debtor to pay applicant as per the payment terms agreed in each SOW.
- b) The clause 4.3 provides that corporate debtor will not delay the payment to applicant beyond the payment agreed in the SOW.
- c) Clause 7.1(b) provides that corporate debtor has 7 days time to give written letter to applicant if the deliverables by the applicant has material gap to the scope laid down in SOW and then Applicant was to re-perform that specific deliverables at their own expenses within the period mutually agreed between the Applicant and the Corporate Debtor.



d) Clause 9.1 of the said agreement stipulated that any party upon the occurrence of an event of default was required to serve a copy of the notice in writing within a period of 90 days in the defaulting party.

7. The applicant is claiming monies in respect of the services provided by the applicant in terms of the said SOW's. The applicant further stated that Andhra Pradesh State Skill Development Corporation (APSSDC) has paid the monies to DesignTech who in turn has paid monies to Corporate Debtor including for services rendered by the Applicant.

8. Thereafter, all the parties to the said agreement i.e. Applicant, Corporate Debtor and Design Tech mutually agreed to terminate the said agreement and all SOW in the month of January 2018. Accordingly, the corporate debtor vide its letter dated 29th September, 2018 recorded mutual termination of the said agreement w.e.f. 1st September 2018. Further by the said letter the Corporate Debtor admitted its liability for an amount of Rs.1,36,98,401/-, not identifying any defects with the services provided by the applicant. Further from the above letter it is manifestly clear that Corporate Debtor did not have any issues with regard to the alleged quality of services provided and that DesignTech did not identify any defect in any of the services performed by the applicant. It is added that till date Design Tech has neither raised any defect in the services provided by the applicant nor the corporate debtor has forwarded any other letter forwarded by APSSDC about the quality of services provided by the applicant till date.

9. Pursuant to the said letter the applicant vide its email dated 2nd October 2018 acknowledged the receipt of the mutual termination letter and conveyed to the corporate debtor that a sum of Rs.1,3,75,401/- was due and payable and in the event of the said



amount is not payable, it shall attract interest @ 18% p.a. the 30th October 2018.

10. The applicant thereafter sent various reminders to pay the outstanding dues. However, the corporate debtor failed to make payment and for the first time came up with a false case as an afterthought vide email dated 30th October 2018, that Design Tech has terminated its contract with corporate debtor on grounds of deficiency of services provided by the applicant. Further has also stated that they had issued credit notes which resulted in huge financial loss and that certain issues were yet to be resolved.

11. Pursuant to this the applicant vide email dated 31st October 2018 again requested the corporate debtor to pay the outstanding amount and further stated that Rs.1,36,98,401/- was an admitted amount. The applicant also made it clear to the corporate debtor that the agreement was between the applicant and the corporate debtor and it is the responsibility of the corporate debtor to resolve such issues. In response the corporate debtor instead of making the payments stated that the applicant has committed breach of contract and that there were certain issues which were to be resolved by Design Tech and till the same are cleared the corporate debtor shall not make payment.

12. The corporate debtor kept on giving bogus assurances that they were looking into the payment issue and only sought time to revert with the issue of pending payment. On 5th December, 2018 the corporate debtor again sought one weeks' time to revert on the payment issue. The applicant through its advocate vide email dated 1st Feb 2019, issued a letter calling upon the corporate debtor to make payment. The Corporate debtor vide email dated 8th feb 2018 denied all allegations and came up with a false case that Design Tech has informed the corporate debtor that the payment of applicant has been withheld as Design Tech had found some deficiency in the services of



the applicant. In response the applicant issued letter dated 3rd April 2019 and sated that the corporate debtor had himself signed all the invoices and the same would not have been signed if there were defects in the services being offered by the applicant.

13. It is submitted by the applicant that thereafter the corporate debtor through its advocate issued another letter dated 12th April 2019 wherein they have again denied their liability, stating that release of payment is subject to their client's (Design Tech) not indentifying any defects in the services of the applicant. Further despite regular follow ups the corporate debtor failed to pay the outstanding liability due.

14. As a consequence the applicant was constrained to issue a demand notice dated 17th May, 2019 under Section 8 of the I & B code, 2016 calling upon the corporate debtor to pay an amount of INR 1,58,36,583/- The said notices were duly served at the registered office of the corporate debtor as per the MCA website.

15. The corporate debtor vide letter dated 29th May 2019 replied to said liability denying any liability towards the applicant and stated that the applicant's claim was subject to Design Tech not identifying any defects services of the applicant. Accordingly the corporate debtor raised a pre-existing dispute with the applicant.

16. Design Tech vide its letter dated 21st August, 2019 conveyed to the applicant that its payment has been released and also that Design Tech has not identified any defects in the work of the applicant. On receiving the said letter, the applicant through its Advocate vide letter dated 4th October 2019 informed the Corporate debtor through its advocate that Design Tech in unequivocal terms has stated the following :

- a) No defects were found in the services provided by the applicant and



b) Design Tech has made its payment to the Corporate Debtor.

17. Despite the issuance of the aforementioned letter the corporate debtor failed to release the payment of the Applicant. Further vide letter dated 5th November 2019, once again denied their liabilities and stated that transaction between the applicant and corporate Debtor is disputed and also falsely alleged that applicant did not comply with the terms and condition of the agreement.

18. It is submitted by the applicant in Part IV that the amount of its total debt due as on date is of Rs. 1,69,95,656/-, due as outstanding for the services provided by the applicant under the Master Service Agreement dated 30th March, 2016, i.e. the principal amount of Rs.1,38,75,401/- and including interest calculated @ 18% p.a. amounting to Rs. 31,20,225/-.

19. The Corporate Debtor filed reply to the application and stated the following:

- a) That there are pre-existing dispute between the parties in respect to the claim raised by the applicant within the meaning of Section 8 of the insolvency ad Bankruptcy Code, 2016. It is stated that the MSA with the applicant was executed on 30th March 2016 and was effective from 1st Jan 2016. As per the MSA it was acknowledged and agreed by the applicants that the completion of services shall be based upon the acceptance and satisfaction of the user of these services.
- b) That the issues raised in the present applicant are not covered under the summary jurisdiction of NCLT.
- c) That the applicant is using the proceedings under the Insolvency as a recovery mechanism. Thereby misusing the code to extract money from the corporate debtor
- d) That there is an arbitration agreement between the petitioner and respondent to resolve all disputes among them.



- e) The corporate debtor has denied that vide letter dated 29.09.2018 any amount was admitted.
- f) It is averred by the corporate debtor that Design Tech and the applicant have colluded as they had issued legal notice to the corporate debtor alleging services provided by the corporate debtor are deficient in nature and thereby seeking money from corporate debtor for the losses incurred. On the contrary have issued letter to the applicant stating that there are no defects and the total payment has been released. This clearly depicts that concocted and frivolous actions. Hence the present applicant is liable to be dismissed.

20. We have perused the averments and heard the arguments made by the applicant and the Corporate Debtor. The corporate debtor has raised objection as regards the default and claimed that no default has occurred and no amount is due and payable. Moreover, the corporate debtor has stated that there exists a pre-existing dispute, which had been raised prior to issue of demand notice. It is worthwhile to mention that the corporate debtor has repeatedly mentioned that the amount is payable to the applicant subject to the condition that Design Tech has not identified any defect in the services of the applicant. However, when Design Tech issued its letter dated 21st August, 2019 conveyed the applicant that its payment has been released and also that Design Tech has not identified any defects in the work of the applicant. It is the contention of the corporate debtor that the applicant and Design Tech have colluded with each other and are levying frivolous allegations.

Further, it is also observed that the Corporate debtor vide its letter dated 29.09.2018, has specifically admitted that a sum of Rs. 1,36,98,401/- which is more than Rs.1 Lakh is due and payable to the applicant. From the above it is evidently clear that the dispute raised by the corporate debtor is merely a moonshine dispute and not a genuine one. It is further observed that corporate debtor has defaulted in payment of operational debt, accordingly, the present application stands admitted in terms of Section 9(5)



of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor.

21. The present Application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The present application is filed on 13.01.2020 and the applicant has failed to mention any date of default, therefore we shall consider the date of default from the date when the parties mutually decided to terminate the Master Service Agreement i.e. 29.09.2018, therefore the present application is not barred by the threshold limit of Rs.1,00,00,000/- as per Section 4 of IBC. Further the default being well above, **the present application is admitted in terms of Section 9(5) of the IBC.**

22. **Accordingly, the CIRP is initiated** and moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force. 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.

23. Since there is no IRP has been proposed by the Operational Creditor, this Bench appoints Mr. Mahesh Taneja as IRP of the corporate debtor, having registration no. IBBI/IPA-002/IP-N00739/2018-19/12326, having



email address maheshtaneja111@yahoo.in as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and hereby:

“Mr. Mahesh Taneja is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The court officer will inform the IRP so appointed by all modes.”

24. The Operational Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet to the immediate expenses. IRP may on receipt of Rs. 2 Lakhs inform in writing to this tribunal that Operational Creditor has complied with directions. The amount however will be subject to adjustment by the Committee of Creditors, in resolution process cost as accounted for by Interim Resolution Professional.

25. Let copy of the order be served to the parties. Applicants are also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

26. A copy of the order shall be communicated to the applicants as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

27. In terms of the above order IB/294/ND/2020 is disposed of.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

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