

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT- III**

**IB-953/ND/2020**

U/S. 9 of the IBC, 2016 and Rule 6 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority), Rule, 2016

**IN THE MATTER OF**

**Nimit Soni S/o Vijay Soni**

**Office at:- Block A-52/7, Middle Circle, Connaught Place  
New Delhi-110001**

**Rajan Soni S/o Late Prem Soni**

**Office at:- Block A-52/7, Middle Circle, Connaught Place  
New Delhi-110001**

**Vijay Soni S/o Late Prem Soni**

**Office at:- Block A-52/7, Middle Circle, Connaught Place  
New Delhi-110001**

...Operational Creditor/Petitioners

**Versus**

**M/s Grades Entertainments Private Limited  
Through its CEO,  
Regg. Office:**

**H.No.-241, KH No. 270/228/173  
3<sup>rd</sup> Floor, Street No. 9, BLK-A, Village Wazirabad,  
North Delhi-110084**

...Corporate Debtor/Respondent

*Delivered on 15.02.2022*

**Coram:**

**Shri Bachu Venkat Balaram Das**  
Hon'ble Member (Judicial)

**Shri Narender Kumar Bhola**  
Hon'ble Member (Technical)

**Appearances:**

Operational Creditor: Adv. Rahul Rathore

Corporate Debtor: Adv. Shailendra Singh and Adv. Muskaan Garg

**ORDER**

**Per: Bachu Venkat Balaram Das, Member (Judicial)**

1. The Operational Creditors, Mr. Nimit Soni & ors have filed the instant petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Grades Entertainments Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -



- a. It is the case of the Operational Creditors that they are carrying on the business under the name and style "Paras Art Studio". They were engaged by Corporate Debtor through Cox & Kings Ltd ("C&K") to provide designing and fabrication services for the event Petrotech 2019 held under auspices of Ministry of Petroleum and Natural Gas on 10-12<sup>th</sup> February 2019 at India Expo Mart, Greater Noida, U.P. The aforesaid services were properly provided by Operational Creditors, as required. There is no dispute in relation to the performance of services by the Operational Creditors. It is submitted that as against invoice no. PAS/2018/01/337 dated 21.01.2019, a sum of Rs. 2,43,08,000/- was due and payable, however, the Corporate Debtor has made only part payment of Rs. 1,09,00,000/- while balance of Rs. 1,34,08,000/- remains unpaid.
- b. It is submitted that Notice in Form 3 was issued by the Operational Creditors on 27.01.2020 through courier and scanned copy of the same was sent through email on 29.01.2020. It is stated that more than ten days later, on 11.02.2020, a reply was received from the Corporate Debtor. The reply does not disclose the existence of any dispute prior to the receipt of the notice in Form 3. The receipt of invoice and its part payment is not denied by Corporate Debtor but a defense was taken that there is no privity of contract between Corporate Debtor and Operational Creditors and that the payment



on Operational Creditors' invoice raised on Corporate Debtor was made on behalf of C&K.

- c. It is further submitted that by an email issued by C&K, the Operational Creditors were engaged for rendering services and C&K directed that the invoices for such services shall be raised on the Corporate Debtor. Accordingly, invoices were raised on the Corporate Debtor and partly paid by the Corporate Debtor. In the circumstances, Corporate Debtor came into direct contractual relationship with Operational Creditors as a principal and the role of C&K whether taken as an intermediary or co-principal does not absolve corporate debtor from the liability of making the payment to operational creditors. Moreover, corporate debtor having partly paid the amount raised in the invoices, it is estopped from denying the relationship or liability. Hence, the captioned petition.

3. The Corporate Debtor has also filed reply to the captioned petition and submitted that present petition is not maintainable u/s 9 of IBC, 2016, as the payment as claimed by the Operational Creditor does not fall within the ambit of Operational Debt as defined in IBC, 2016. It is submitted that corporate debtor was engaged by C&K for providing the services for Petrotech 2019 and as per agreement the corporate debtor acted as an intermediary for C&K for limited purpose of disbursing



payments to other vendors including 'Paras Art Studio' and payments were to be made by Corporate Debtor only on instructions of the C&K, hence, the payment was made on instructions of C&K. It is further submitted that in the meantime CIR Process initiated against C&K by the Mumbai Bench of this Adjudicating Authority vide order dated 22.10.2019 and pursuant to that Operational Creditor also raised claim against the said company, however, due to inability of the petitioners to sue C&K, it issued a defective demand notice for seeking balance payment of Rs. 1,34,08,000/-. It is worthwhile to mention that the Corporate Debtor also filed its claim before the IRP/RP of C&K. It is further contended that no debt is payable by the corporate debtor to the operational creditors as no service is rendered by the operational creditor to corporate debtor. The demand notice by the operational creditor has been disputed by the corporate debtor on the ground that there is no privity of contract between operational creditors and corporate debtor. The petition is further objected on the ground that the claim has been raised by petitioner against third party.

4. The Operational Creditor also filed the rejoinder and denied all the contentions and averments raised by the corporate debtor and further submitted that operational creditors have been able to obtain the purchase order dated 30.01.2019 placed by C&K on the respondents and invoice dated 30.01.2019 raised by the respondent on C&K asking



for services including the services performed by the OC, the downstream service providers. It is further submitted that the respondent is not an agent as per the arrangement right from inception. The invoice was raised as per instructions on the respondent and said invoice is booked by the respondent in its books and not in C&K books. Furthermore, the said invoice is partly paid by the respondent and not by C&K. It is further argued that the respondent had deposited TDS of Rs. 4,12,000/-, which is the TDS on the entire amount of the invoice i.e., Rs. 2,06,00,000/-. It is also stated that OC deposited the GST of Rs. 37,08,000/- on the entire amount of invoice in favour of the respondent and benefit of the said amount as input amount has been taken by the Respondent. Therefore, it is clear from the above facts that the respondent is not merely acting as agent of C&K. It is also argued that the respondent has submitted the entire claim before the IRP/RP in respect of services rendered by the respondent from the downstream service rendered by the respondent to C&K which was obtained by the respondent from the downstream service providers including the OC, therefore, the IRP/RP has not admitted the claim of Operational Creditors.

5. Both Petitioners and Respondent have filed the written submissions and reiterated all the facts as already discussed above, therefore, are not repeated again.

6. We have perused the pleadings and heard the arguments advanced by the Ld. Counsels appearing for both the parties. We have also gone through the case laws relied upon by both the parties. It is clear that the Petitioners have rendered the services and there is no dispute with respect to the defect of the services. The only dispute is whether the Respondent/corporate debtor has merely acted as an intermediary or was acting as the principal/co-principal with C&K. In order to arrive at any conclusion, we have carefully perused the transactions and invoices, which shows that the invoice was raised in favour of Respondent and not C&K. Furthermore, part payment is made by the Respondent and not by C&K. The respondent has deducted TDS and same is evident from Form 26AS and the Operational Creditor has deposited GST amount of Rs. 37,08,000/- on the entire amount of invoice in favour of the respondent. Therefore, it is clear from the above discussion that the respondent was not merely acting as an agent rather it was acting as the principal and hence is liable to pay the amount to the petitioners which it defaulted in part. As a result, this authority is inclined to initiate the CIR Process of Corporate Debtor. Therefore, the present petition is **admitted**.

7. The Operational Creditor has not proposed the Insolvency Resolution Professional. This adjudicating authority hereby appoints Mr. Nitish Kumar Chugh having Reg. No. IBBI/IPA-001/IP-P01636/2019-

2020/12529 (Email ID: [ca.nitish@gmail.com](mailto:ca.nitish@gmail.com)) as IRP from the list provided by the IBBI subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

8. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Nitish Kumar Chugh, to meet out the expense to perform the functions assigned to her in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
9. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of



Section 14(1), shall follow in relation to the Corporate Debtor and following shall remain prohibited during the moratorium:

- 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 (54 of 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.

However, during the pendency of the moratorium period, the provisions of Section 14(2) to 14(4) of the Code shall come in force.

10. A copy of this order shall be communicated to the operational creditor, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Operational Creditor is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for



updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

11. The order is pronounced by this Adjudicating Authority in virtual Hearing.



**(Bachu Venkat Balaram Das)**  
Member (Judicial)



**(Narender Kumar Bhola)**  
Member (Technical)