

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 575/MB/2023

Under section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Mrs. Dakshata Rajesh Singh

(Proprietor of M/s. Ved Communications)

Having its registered address at No. 3,
Siddhant Apartments, Bhaskar Colony,
Opposite Times of India Building, Naupada,
Thane- 400602

..... Petitioner/ Operational Creditor

Versus

**M/s R K S Home Solutions Marketing and
Consultancy Pvt. Ltd. (RK's Homes)**

Having its registered office at: - Plot No.
601/609, Vasudeo Chambers, Mulund-
Goregaon Link Road, Off. Mulund, Opp. D
Mart, Nahur, Mumbai- 400078

Also at: Flat No. – 1304, Casa Marina,
Hiranandani Estate, Thane West- 400607

..... Respondent/Corporate Debtor

Order Delivered on :- 10.11.2023

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Mr. Pritesh Burad

ORDER

Per: - Coram.

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Mrs. Dakshata Rajesh Singh (Proprietor of M/s. Ved Communications)** (hereinafter called as "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s R K S Home Solutions Marketing and Consultancy Pvt. Ltd. (RK's Homes)** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") for resolution of an unresolved Operational Debt of Rs. 7,77,42,358/- (Rupees Seven Crores Seventy Seven Lakhs Forty Two Thousand Three Hundred Fifty Eight Only)

The submissions of the Financial Creditor are as follows:

2. The petitioner i.e. Mrs. Dakshata Rajesh Singh, Proprietor of M/S. Ved Communications having its registered office at No. 3, Siddhant Apartments,

Bhaskar Colony, Opposite Times of India Building, Naupada, Thane-400602, Maharashtra and is engaged in the business of Advertising and marketing.

3. That the Respondent i.e., M/S. R K S Home Solutions Marketing and Consultancy Pvt. Ltd. a registered Limited Liability Company incorporated under the Companies Act, 1956 and is engaged in the business of buying selling, trading, branding, awareness, Advertising complaining etc. A copy of Company Master Data of Corporate Debtor downloaded from website of Ministry of Corporate Affairs is enclosed as Exhibit A to the petition.
4. The Corporate Debtor approached the petitioner to provide advertising services which included print media releases for promotion of their business activity in various newspapers. The Corporate Debtor informed the petitioner for publishing/advertisement and thereafter, the petitioner would do the needful at its own cost and thereafter raise the Invoice for the same on Corporate Debtor.
5. On invoice being raised, the payment of the Invoice was to be paid within 30 days from the date of Invoice. As per mutual agreement between the parties, the Corporate Debtor gave various orders of advertisements and the petitioner raised various invoices towards the work executed for the Corporate Debtor which was duly acknowledged and accepted by the Corporate Debtor. Furthermore, the Corporate Debtor made payments during the initial months. Subsequently, the Corporate Debtor started defaulting in making payments of the amounts raised.

6. The petitioner from time to time executed the advertising orders with utmost diligence and in a timely manner which was duly acknowledged by the Corporate Debtor. Post the work done, the petitioner had raised 10 (ten) invoices amounting to Rs. 7,79,52,358/- (Rupees Seven Crores Seventy Nine Lakhs Fifty Two Thousand Three Hundred Fifty Eight only) which are due and payable to the petitioner. Out of this said amount, the Corporate Debtor have made part payment of Rs. 2, 10,000/- (Rupees Two Lakhs Ten Thousand Only) against some of the Invoices. However, no further payment was made with respect to aforesaid Invoices by the Corporate Debtor. Despite repeated reminders and follow-ups through email, and telephonic conversations, the Corporate Debtor have failed to make the payment of pending Invoices.
7. As the debt became due and payable, the petitioner requested the Corporate Debtor to release and clear the amount of Rs. 7,77,42,358/- (Rupees Seven Crores Seventy-Seven Lakhs Forty Two Thousand Three Hundred Fifty Eight Only) along with Interest @36% from the date of default of Invoice but the Corporate Debtor has neglected to pay the outstanding amount.
8. Thereafter, the petitioner issued the Demand Notice (Form 3 and 4) dated 14.04.2023 to the Corporate Debtor through their Advocate via registered post on registered Office of the Corporate Debtor whereby it has specifically mentioned that the Corporate Debtor must make the payments within 10 days from the date of receipt of the notice. The same was served vide Email dated 18.04.2023 on registered email id of Corporate Debtor. The registered Post returned with the remark "Addressee left without Instructions".

However, the email service is completed and hence, the same is considered as valid service.

9. Despite the receipt of the Demand Notice, the Corporate Debtor has not made any further payment and hence the Corporate Debtor has failed to pay the outstanding dues of Rs. 7,77,42,358/- (Rupees Seven Crores Seventy-Seven Lakhs Forty Two Thousand Three Hundred Fifty Eight Only) along with interest @ 36% p.a. from the respective due date till realization.
10. The Corporate Debtor's failure to pay the outstanding dues owed makes it apparent that the Corporate Debtor is not able to service its dues and is unable to pay its dues to the petitioner and hence the Insolvency Proceedings are required to be initiated against the Corporate Debtor.

ANALYSIS AND FINDINGS

11. Notice of the petition was issued and served upon the Corporate Debtor but none appeared on behalf of the Corporate Debtor despite service. As a result, the Corporate Debtor was proceeded against ex-parte vide order dated 26.09.2023.
12. We have heard the Counsel for the Operational Creditor and have gone through the record.
13. It has been pointed out by the Counsel for the operational Creditor that the Corporate Debtor was supplied goods vide invoices issued between

05.11.2018 and 14.04.2019 which are annexed with the petition as Exhibit-C. The Counsel for the Operational Creditor has further pointed out that against the invoices the aggregate amount of which comes to Rs. 7,79,52,358/-. The Corporate Debtor paid only a sum of Rs. 2, 10,000/- on 17.01.2020, as is reflected in the ledger account Exhibit-I and a sum of Rs. 7,77,42,358/- was outstanding against the Corporate Debtor at the time of filing of the petition. The Counsel for the Operational Creditor has further contended that the present petition under Section 9 of the Code is within limitation as the period from 15.03.2020 to 28.02.2022 is liable to be excluded as per the Order dated 10.01.2022 passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020*. The Counsel for the Operational Creditor has further submitted that the petition be admitted.

14. Having noted the above contention raised by the Counsel for the petitioner, we find that the Operational Creditor supplied goods worth Rs. 7,79,52,358/- vide invoices issued between 05.11.2018 and 14.04.2019. As per the invoices, the Corporate Debtor is liable to pay interest on overdues bill. As per Ledger Account Exhibit – I, the Corporate Debtor paid only a sum of Rs. 2, 10,000/- on 17.01.2020 against the above referred invoices. It is also on record that as the payment was not made by the Corporate Debtor, the Operational Creditor issued demand notice in form- 3 and form-4 dated 14.04.2023 calling upon the Corporate Debtor to make the payment of the outstanding dues. The notice was duly served upon the Corporate Debtor but despite that no payment was made. Even though the invoices were raised between 05.11.2018 and 14.04.2019, the Corporate Debtor paid a sum of Rs. 2, 10,000/- lakhs on 17.01.2020 which amounts to acknowledgement of debt. The Corporate Debtor further signed confirmation of account dated 23.11.2019. Considering the law laid down by the Hon'ble Supreme Court in

Suo Moto case, the period from 15.03.2020 till 28.02.2022 is liable to be excluded for the period of limitation, the present petition, which was filed on 25.05.2023, is liable to be treated to have been filed within the period of limitation.

15. Since the Corporate Debtor has not appeared in this case and was proceeded against ex-parte, there is absolutely no defence in this case. Even otherwise, the existence of operational debt and its default by the Corporate Debtor has been established on record and further that the petition has been filed within the period of limitation.
16. As a result of the brief discussion, we hold that it is a fit case for admission under Section 9 of Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:-

ORDER

- a. **The above Company Petition No. (IB) 575 (MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s R K S Home Solutions Marketing and Consultancy Pvt. Ltd. (RK's Homes)**
- b. **This Bench hereby appoints Mr. Udaykumar Bhaskar Bhat, Registration No: IBBI/IPA-001/IP-P-01425/2018-2019/1223 as the Interim**

Resolution Professional having his registered office at B-304, Goldville Apartments, Aundh Ravet Road, Thergaon ,Pune, Maharashtra, 411033 ; Email:- udaybhat2805@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** 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 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

17. **Accordingly, this Petition is admitted.**

18. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)