

In the National Company Law Tribunal
Mumbai Bench.

C.P.(IB)-3543/MB/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

M/s. Global Advertisers : Petitioner/ Operational Creditor

V/s

M/s. Paramvir Real Estates LLP : Respondent/ Corporate Debtor

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

SHOW CAUSE NOTICE

1. Today (03.09.2019), a Praecipe has been moved by 'mentioning' as soon as the Court assembled. The Applicant's as well as the Respondent's Learned Representatives are respectively present.

2. Orally it was communicated that the matter was on Board on 27.08.2019 and Reserved for passing a "withdrawal" Order.

3. It is informed that the Respondents had approached the Petitioner and payment was made to the Petitioner. Hence the 'withdrawal' Order be passed immediately.

4. The manner in which the Praecipe was moved and considering the fact that daily Orders are uploaded regularly, hence there was no occasion for moving such Praecipe, that too, through 'mentioning' in the morning. It was communicated to the parties that such 'mentioning' be discouraged, as also observed by the Hon'ble Supreme Court. On the Praecipe it was recorded as under:-

"With the imposition of cost of Rs. 1,00,000/- (Rupees One Lakh only) to be paid equally by the parties, Order shall be passed expeditiously on receipt of payment by the Registrar/ Assistant Registrar, NCLT, Mumbai by 6th September 2019."

5. After the Court hours, the Registry was asked to put up the file urgently for necessary action. The Registry has informed as under:-

On the Praecipe, the CP No. was wrongly intimated as 'IBC Application No.2543 of 2018'. The correct number of the case is CP(IB)/3543/MB/2018. The wrong mentioning of the C.P. number has caused great inconvenience to the Registry in locating the file.

6. We are further pained to place on record that the statement of "withdrawal" was misleading and wrong. In this case hearing was completed on 27.08.2019 and kept 'Reserved for Orders'. The Order was passed on 28.08.2019 wherein the Petition u/s.9 of M/s. Global Advertisers (Operational Creditor) was "Admitted" against M/s. Paramvir Real Estates LLP (Corporate Debtor) in respect of an Operational Debt of Rs.28,46,709/- by appointing Interim Resolution Professional (IRP) as well as by pronouncing the commencement of "Moratorium".

7. Since the Petition u/s.9 has already been "Admitted" vide Order dated 28.08.2019, therefore the parties have made a wrong statement before this Bench. Making a wrong statement attracts penalty/ fine u/s.235A of the I&B Code which prescribes a maximum penalty of Rs.2 Crores.

8. A Show Cause is hereby issued as to why the parties be not punished considering u/s.235A of The Code. Both the parties are to be present in the Court in person on **13.09.2019 at 10.30 a.m.**

Sd/-
CHANDRA BHAN SINGH
Member (Technical)
Date : 03.09.2019
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Sd/-
M.K. SHRAWAT
Member (Judicial)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No.3543/I&BC/NCLT/MB/MAH/2018

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of
M/s. Global Advertisers
...Petitioner/ Operational Creditor
V/s
M/s. Paramvir Real Estates LLP
....Respondent/ Corporate Debtor

Heard on 27.08.2019
Order delivered on: 28.08.2019

Coram: Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Advocate Girish B. Kedia a/w Advocate Shivangi Kedia a/w
Advocate Trupthi Shetty.

For the Respondent: Advocate Deepa More.

Per: Chandra Bhan Singh, Member (Technical).

CORRIGENDUM ORDER

1. This is an order for the correction of Order dated 28.08.2019 in the matter of initiation of CIRP of M/s. Paramvir Real Estates LLP (admission order) in C.P. No.3543/I&BC/NCLT/MB/MAH/2018.
2. The Order dated 28.08.2019 inadvertently mentions the date of hearing to be 27.08.2018 and 'Order delivered on' to be 28.08.2018 in the cause title of the said order. The correct date of hearing of this petition is 27.08.2019 and the order was delivered on 28.08.2019. The same be read accordingly.
3. The header of the order from page 2 onwards inadvertently mentions Company Petition No. of this petition to be "C.P. No.1536/I&BC/NCLT/MB/MAH/2017". The correct Company Petition Number of this petition is C.P. No.3543/I&BC/NCLT/MB/MAH/2018. The header of the said order shall be read as "C.P. No.3543/I&BC/NCLT/MB/MAH/2018"
4. The Order stands corrected accordingly.

SD/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-
M.K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 04.09.2019

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No.3543/I&BC/NCLT/MB/MAH/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of
M/s. Global Advertisers
...Petitioner/ Operational Creditor

V/s

M/s. Paramvir Real Estates LLP
...Respondent/ Corporate Debtor

Heard on 27.08.2018
Order delivered on: 28.08.2018

Coram: Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Advocate Girish B. Kedia a/w Advocate Shivangi Kedia a/w
Advocate Trupthi Shetty

For the Respondent: Advocate Deepa More.

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. A Petition was filed on 06.09.2018 under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") in Form No.5 by the Petitioner M/s. Global Advertisers (Operational Creditor) to initiate Corporate Insolvency Resolution Process under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Paramvir Real Estates LLP (Corporate Debtor) to claim an Operational Debt of ₹28,46,709/- as on 01.08.2018. The date of default is mentioned as 06.04.2017
2. The Petitioner (Operational Creditor) appointed the Corporate debtor for mounting its displays at various sites in Mumbai for advertisement purposes. Pursuant to one Confirmation letter issued by the Corporate Debtor, the Operational Creditor carried out the advertisement on behalf of Corporate Debtor and submitted necessary invoices aggregating to a sum of ₹27,03,536/-. As per the terms set out in the Confirmation letter, the payment was to be made within 90 days failing which the Corporate Debtor is bound and liable to pay interest @ 21% p.a. for the delayed period from the date of default.

3. The Operational Creditor has produced on record 10 unpaid invoices issued upon the Corporate Debtor from the year 2015 till the year 2017, aggregating to an amount of ₹27,03,536/-. The Operational Creditor sent a Demand Notice dated 09.02.2018 under Form 3 for claiming the aforesaid amount. Pursuant thereto, the Corporate Debtor made a payment of ₹4,25,000/- leaving the balance sum of ₹22,78,536/- along with interest.
4. The Operational Creditor has also produced on record its Bank Statement with HDFC Bank and a Bank Certificate u/s 9(3)(c) of the I&B Code thereto stating that the Operational Creditor has only received a payment of ₹4,25,000/- against the outstanding amount.
5. The Corporate Debtor has not raised any dispute in respect of the advertisement on hoardings carried out by the Operational Creditor. To that effect, an affidavit under section 9(3)(b) of the I&B Code has been annexed in the petition and has been duly perused. The Operational Creditor has submitted a work completion report to the Corporate Debtor listing out the sites at which the advertisement has been done.
6. The Corporate Debtor has neither replied to the Demand Notice nor to this petition filed by the Operational Creditor despite being given ample number of opportunities. It is evident that the Corporate Debtor has nothing to say in its defence and the claim of the Operational Creditor is self speaking in terms of its genuineness.
7. The Petitioner stated that the impugned Petition is filed within the period of limitation as the first pending unpaid invoice fell due somewhere in January 2016 and this petition has been filed on 06.09.2018. The ledger account of the Corporate Debtor in the books of Operational Creditor also corroborates the amount claimed.

No Submissions by the Corporate Debtor:-

8. The Corporate Debtor has neither replied to the Demand Notice sent to it u/s 8 of the I&BC nor filed an affidavit in reply to this Petition. The representative of the Corporate Debtor has appeared in this matter but did not take any pains to file reply to the petition. Instead, a payment of ₹4,25,000/- was made by the Corporate Debtor after receipt of Demand Notice, which makes it obvious that the Corporate Debtor is not contesting this petition/claim.

Findings:-

9. After hearing the submissions made and perusing the documents produced on record, it is considered that the debt in question is an admitted debt in view of the payment of ₹4,25,000/- made after receipt of Demand Notice towards this claim and in view of the evidences that corroborate to the existence of the Petitioner's claim.

10. On the basis of the evidences on record the Operational Creditor has established that invoices amounting to ₹22,78,536/- are pending since 2016. The said amount is due and a default has also occurred. Considering these facts and circumstances, in my opinion the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
11. Neither any reply nor any submissions were placed on record from the side of the Respondent despite being granted with sufficient opportunity.
12. The ledger account of the Corporate Debtor and the HDFC Bank Statement of the Operational Creditor annexed in the Petition is evident of the fact that the Corporate Debtor is liable to pay and is only stalling the payments. The Corporate Debtor never denied the said liability under consideration.
13. It has also been observed that the notice sent under Section 8 (2) of the Code and it is found that the Corporate Debtor has received the same but has not paid the amount of unpaid dues. Further, if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt.
14. As a consequence, after the expiry of the period as prescribed and keeping presumably admitted facts in mind that, the Operational Creditor has not received the outstanding Debt from the Debtor and that the formalities as prescribed under the I&B Code have been completed by the Operational Creditor, it is my conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is accepting its default.
15. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Hirachand Nemichand Bafna**, having registration no. as IBBI/IPA-001/IP-P01207/2018-19/11922, having address at 1502, Garner Towers, Sheth Motisha Lane, Mazgaon, Mumbai-400010 as Interim Resolution Professional for initiation of CIRP.
16. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

17. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
18. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
19. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

SD/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-
M.K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 28.08.2019