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IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, KOLKATA

Coram:

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, Member (Technical)

CP(IB) No.288/KB/2019

In the matter of:

An application to initiate corporate insolvency resolution process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

~ And ~

In the matter of:

Aithent Technologies Private Limited [CIN: U74899DL1992PTC049356], having its registered office at A-16/9, Vasant Vihar, New Delhi 110057.

... ... **Operational Creditor**

~ Versus ~

Web Date Systems Private Limited [CIN: U72300BR2012PTC018668], having its registered office at 2nd Floor, Shalimar Cold Storage Gate No.1, New Bye-Pass Road, Anisabad, Patna 800 002, Bihar.

... ... **Corporate Debtor**

Counsels On Record:

1. Ms. Urmila Chakraborty, Advocate
2. Mr. Gulshan Kumar Sachdev, Advocate
3. Mr. Ayush Jain, Advocate

For the Corporate Debtor

1. Mr. Rahul Parasrampuria, PCS
2. Mr. Rohit Parasrampuria, PCA
3. Mr. Udit Agarwal, Advocate

For the Operational Creditor

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Date of Hearing: 11th March, 2020

Date of Pronouncement of Order : 13th March, 2020

ORDER

Per Virendra Kumar Gupta, Member (T)

1. This application has been filed under Section 9 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") by Operational Creditor Aithent Technologies Private Limited for the purpose of initiating Corporate Insolvency Resolution process ("CIRP") against the corporate debtor Web Date Systems Private Limited as it has committed default in payment of outstanding debt. The amount claimed in default is Rs.54,73,536/-.

2. The facts, in brief, are that a commercial property was given on lease by Lease Deed dated 15th June 2015. Lease rent has remained outstanding.

3. The Ld. Counsel on behalf of the Operational Creditor appeared and submitted that default continued from 19th February 2018. The Corporate Debtor also accepted its debt by email dated 14th May 2018. Our attention was also drawn to the Ledger Account, copy of Invoices and terms & conditions of the Agreement/Lease Deed. It was specifically argued that it was not a case simply of outstanding amount only on account of lease rent but amount of electricity charges, diesel, sewer and water charges were also due. Our attention was specifically drawn, in this regard, to page no. 41 containing details of such charges. Based upon this statement, it was pleaded that even if the lease rent was not considered as operational debt, in view of the decision of the Hon'ble NCLAT, still this application was maintainable as the amount on account of other charges was much more than the threshold limit of Rs. 1 Lac.

4. On the other hand, Ld. Counsel for the Corporate Debtor placed strong reliance on the decision of Hon'ble NCLAT in the case of *M. Ravindranath Reddy vs. G. Kishan & Ors. in Company Appeal (AT) (Insolvency) No. 331 of 2019, Order dated 17th January 2020.* It was also pleaded that other charges also arose on account of lease, hence, the ratio of

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this decision was applicable to such charges also. Reliance was also placed on the decision of NCLT, Mumbai Bench, in the matter of *Citicare Super Speciality Hospital vs. Vighnaharta Health Visionaries Pvt. Ltd. (C.P. No. 567/IB/2018), Order dated 11th March 2019.*

5. We have considered the submissions made by both the sides and material on record. Admittedly, in the present case, there are dues of electricity, diesel, sewer and water charges which are undisputed by the Corporate Debtor. The quantum of such claim/ debt is also more than Rs. 1 Lac. Diesel has been consumed for providing electricity. Electricity charges are to be reimbursed by the Corporate Debtor based upon its consumption. Similarly, water charges are also to be paid. These activities clearly fall in the definition of provisions of Services as defined in Section **5(21)** of IBC, 2016 as the definition in Section 5(21) means a claim in respect of the provision of Services. Thus, at the cost of repetition, we hold that by no stretch of imagination it can be said that such facilities provided by the Operational Creditor are not services. Accordingly, we reject the contention of the Corporate Debtor that since main services cannot be categorized as operational debt, these will also not construe as operational debt. In this regard, we are further of the view that no such restriction/condition exists in provisions of Section 5(21) of IBC, 2016, hence, for this reason also, we see no merit in this contention of the Corporate Debtor. As evident from the above discussion that the decision of Hon'ble NCLAT clearly distinguishable on facts, hence, ratio of same is not applicable.

6. Notice U/S 8 of IBC, 2016 has duly been served and acknowledged. The application is otherwise complete and defect-free. The name of the IRP is not proposed as it is not mandatory for an application filed under section 9 of IBC, 2016, hence, we shall appoint IRP from the panel of IRPs approved by IBBI.

7. In the result, this application filed by the operational creditor stands admitted. We order as under:-

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ORDER

i) The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Web Date Systems Private Limited, is hereby admitted.

ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) 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;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 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 (54 of 2002);

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d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) **Mr. Rajesh Lihala**, IP Registration No. IBBI/IPA-001/IP-P00525/2017-2018/10950, Email ID: lihalaco@gmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan, subject to production of written consent within one week from the date of receipt of this order.

xi) The Operational Creditor to pay sum of Rs.50,000/- (Rupees Fifty Thousand only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) List the matter on 21st April, 2020 for the filing of the progress report.

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xiv) Registry is hereby directed under section 7(7) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Virendra Kumar Gupta)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 13th day of March, 2020.

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