


**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI (COURT NO. IV)****Company Petition No. IB- 694/ND/2020**

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

**IN THE MATTER OF:****M/S FINEX CONSULTANCY SERVICES****Through Sole Proprietor CS Nikita Shukla****...Applicant/Operational Creditor****VERSUS****M/S PLUS CORPORATE VENTURES PRIVATE LIMITED****...Respondent/ Corporate Debtor**

Pronounced on: 04/10/2021 

**CORAM:****DR. DEEPTI MUKESH  
HON'BLE MEMBER (Judicial)****MS. SUMITA PURKAYASTHA  
HON'BLE MEMBER (Technical)**  
*IB- 694/ND/2020*

**MEMO OF PARTIES****M/S FINEX CONSULTANCY SERVICES****Through Sole Proprietor CS Nikita Shukla****Office at 1218, 12 Floor, Hemkunt Chabers****Nehru Place, New Delhi****...Applicant/Operational Creditor****VERSUS****M/S PLUS CORPORATE VENTURES PRIVATE LIMITED****Registered office at: L-7, Menz, Floor Green Park Extension****New Delhi-110016****...Respondent/ Corporate Debtor****For the Applicant: Mr Vriti Anand, Advocate****For the Respondent: ----**

**ORDER**

**Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 by, M/s Finex Consultancy Services (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/S Plus Corporate Ventures Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a sole proprietor of M/s Finex Consultancy Services and is a Company Secretary by profession. The office is situated at 1218, 12 Floor, Hemkunt Chabers Nehru Place, New Delhi.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 15.09.1999 bearing CIN U70101DL1999PTC101557 and having its registered office at L-7, Menz, Floor Green Park Extension New Delhi-110016
4. The applicant submits that around December, 2018 the corporate debtor approached the applicant in providing a business plan for revival of the corporate debtor and pursuant to the negotiations between the parties, an agreement of engagement of appointing applicant as consultant was executed on 17.12.2018 between the parties.
5. The applicant submits that as per the clause (3) of the agreement, the professional fees was agreed to be Rs. 6,00,000/- for period of one year. It was further agreed that the said professional fee shall be payable to the applicant in quarterly instalments within 15 days from the receipt of the invoice. Clause 3 of the consultancy

agreement is reproduced herein:

***“Clause 3. FEE***

- i. The professional fee will be Rs 6,00,000/- per year.*
- ii. The professional fees shall be payable to the consultants in quarterly installments within 15 days from the receipt of the invoice.”*

6. The applicant submits that the agreement was effective from 01.01.2019 for a period of one year. Further, as per the said agreement, the applicant diligently performed her duties and raised her quarterly invoice on 07.01.2019 for Rs. 1,50,000/- towards consultation fees for the period from January, 2019 to March, 2019. The applicant submits that a letter dated 30.03.2019 was received from the corporate debtor for suspension of consultancy engagement services without specifying any reason. The applicant submits that as per the clause (5) of the agreement, the procedure for termination of agreement was as follows:

***“Clause 5. TERMINATION***

- i. Either Party may terminate this arrangement upon 30 days' written notice without any reason stated thereof.*
- ii. Either Party may after providing a seven (7) days notice terminate this Agreement if the other Party shall be in breach of any of the terms of this Agreement, which, in case of a breach capable of remedy is not remedied by the relevant Party within 15 days of receipt by the other Party of the notice from the concerned Party specifying the breach and requiring its remedy.”*

7. The applicant submits that the termination was done without the compliance of clause (5), without providing 30 days time period and the applicant did not protest the same. It is submitted that a letter was sent by the applicant to the director of the corporate debtor regarding payment of the pending outstanding

dues. It is stated that the corporate debtor kept assuring the applicant that all dues shall be cleared, but of no avail till yet.

8. The applicant further submits that the corporate debtor contacted the applicant and offered an additional assignment dated 09.08.2019 for purpose of negotiating the sale of shares of few companies with the objective to restructure and revive the corporate debtor. Pursuant to which, the corporate debtor executed a letter of authority in favour of the applicant. The corporate debtor agreed to pay professional fees for this assignment and also assured to clear the previous dues.

The extracts from the assignment are as follows:

*“Your professional fees for this assignment will be 1% of the transaction value of Rs 2,50,000/- whichever is higher. The amount will be paid immediately upon release of offer letter by the purchaser. Simultaneously, we will release your pending payments against consultancy fees for January-March, 2019.”*

9. The applicant further submits that the corporate debtor requested for holding a meeting and apprised of its difficulty in releasing the dues. It is submitted that vide letter dated 16.12.2019, the corporate debtor requested the applicant to release the bills as per the negotiated amount during the meetings. The copy of letter has been annexed and the extracts from the said letter are as follows:

*“Considering the situation, you have agreed to change at the fixed rate mentioned in the assignment letters dated 09.08.2019. Please raise the bills accordingly”.*

The applicant raised the invoice for an amount of Rs 2,50,000/- dated 18.12.2019 as requested by the Corporate Debtor. The applicant repeatedly requested the Corporate Debtor to release the payments of Rs. 4,00,000/- raised under invoices

dated 07.01.2019 for Rs 1,50,000/- and on 18.12.2019 for Rs 2,50,000/- respectively. However, the corporate debtor kept delaying the payments. The applicant submits that corporate debtor had never raised any issue on the quality of services provided by the applicant, in fact, corporate debtor appreciated & acknowledged the professional services provided by the applicant.

10. The applicant issued a letter dated 02.01.2020 to the corporate debtor demanding payment of dues. The corporate debtor in its response vide letter dated 07.01.2020, admitted the dues of the applicant however, till date no payment has been released. The extracts from the letter dated 07.01.2020 are reproduced herein:

*"You have been able to get us extensions from FPI and we appreciate all your efforts and we request you to show patience for few more days. As soon as our transaction with Religare is concluded, we will clear all your bills. We appreciate all your efforts and professionalism in giving your services."*

The copy of letter dated 07.01.2020 is annexed.

11. The applicant issued a demand notice dated 09.01.2020 under the I & B Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which was duly received by the corporate debtor. The said notice was sent by speed post at the registered address of the corporate debtor as reflected in the master data, which is duly delivered to the Corporate Debtor on 11.01.2020. The tracking report is filed, which mentions 'Item Delivery Confirmed'. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.

12. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application at the registered address as well as via email, as reflected on the MCA website, which was duly delivered to the corporate debtor. The affidavit of service has duly been filed.
13. The pleadings were complete and arguments heard and the order was already reserved. The reply of the corporate debtor could not be traced on e portal, therefore clarification was sought on 16.08.2021. The Learned Counsel for the parties stated that the parties had approached for settlement. One week time was granted to settle the matter. No settlement is placed before us.
14. As per Form V, Part IV of the application, the corporate debtor is liable to pay an outstanding sum of Rs. Rs. 4,00,000/- along with interest @12% p.a. The date of default as per part IV is 18.12.2019. The present application was filed on 28.02.2020, hence the debt is not time barred and the application is filed within the period of limitation.
15. The Applicant has filed an affidavit under section 9(3)(b) dated 22.02.2020 affirming that no notice of dispute has been given by the corporate debtor relating to dispute of the unpaid operational debt.
16. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, remained uncontroverted by the Corporate Debtor, as no dispute was raised against section 8 notice & reply to section 9 application was not filed on e-portal hence we proceeded the matter with hearing. The default in payment of the operational debt is beyond doubt and is established and even after order was reserved, on

the day of clarification the corporate debtor requested to defer order for settlement but no settlement was forthcoming. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

18. The Applicant has proposed the name of Mr. Anil Rustgi as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N00683/2018-19/12382 (email-anil.rustgi@yahoo.co.in) as IRP 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 Respondent 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.
19. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Anil Rustgi to meet out the expenses to perform the functions assigned to him 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.
20. 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, 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.

21. A copy of the order shall be communicated to the Applicant, 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. Applicant 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.

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**(MS. SUMITA PURKAYASTHA)**

**MEMBER (T)**

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**(DR. DEEPTI MUKESH)**

**MEMBER (J)**