

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.2158/MB.IV/2019

*Under section 9 of the Insolvency and
Bankruptcy Code, 2016*

In the matter of

Pankaj Modani

...Operational Creditor

Versus

Big Vision Water Tech Private Limited
[CIN: U74900PN2013PTC148810]

... Corporate Debtor

Order pronounced on : 23.09.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Ravikumar Duraisamy : Member (Technical)

Appearances:

For the Operational Creditor : Ms Pallavi Maheshwari, Advocate

For the Corporate Debtor : Mr Chandrakant M. More,
Director present in person.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Pankaj Modani (*Operational Creditor*), an individual, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Big Vision Water Tech Private Limited (*Corporate Debtor*).

2. The Corporate Debtor is a private company limited by shares and incorporated on 12.09.2013 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Pune. Its CIN is U74900PN2013PTC148810. Its registered office is at Gat No.1651, Patil Nagar Chikhali, Taluka Haveli, Pune 411034, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 07.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 1,29,000.00 (Rupees one lakh twenty-nine thousand only) as principal and ₹ 11,682.00 (Rupees eleven thousand six hundred and eighty-two only) as interest as on 05.11.2018, which is stated to be the date of default.
4. The case of the Operational Creditor is The Operational Creditor raised invoices on the Corporate Debtor towards professional fees for providing professional compliance services for the month of October, 2018. The Corporate Debtor was granted a credit period of one month after raising the invoice on 05.10.2018.
5. Bank statements are attached as Exhibit 'E' at pp.52-56. The total debt due and payable to the Operational Creditor is stated to be ₹ 1,40,682.00 (Rupees one lakh forty thousand six hundred and eighty-two only), as mentioned at page 49 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 12.04.2019 to the Corporate Debtor (Exhibit 'C', pp.43-48) in terms of section 8 of the IBC. The Corporate Debtor has not replied

to the Demand Notice. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been annexed at pp.15-16.

7. The Corporate Debtor has not submitted any reply in the matter.
8. We have heard Ms Pallavi Maheshwari, Learned Counsel for the Operational Creditor, and Mr Chandrakant More, Director of the Corporate Debtor.
9. From the records, we observe the following: -
 - (a) There is no record of any contractual arrangement between the Operational Creditor and the Corporate Debtor.
 - (b) Copy of the invoice has not been attached. What has been attached at p.49 is only a calculation sheet mentioning the principal amount of the invoice, the interest calculation. There is no record of the invoice having been served on the Corporate Debtor.
 - (c) There is no record of what professional services have been rendered by the Operational Creditor.
 - (d) Proof of service of Demand Notice has not been attached to the Petition. However, proof of posting in the form of Speed Post receipt No.EM779732264IN dated 12.04.2019 has been attached as Exhibit 'D' at p.59. The tracking receipt attached at p.51 only records that "*Item Dispatched.*" This is not enough to satisfy the requirement of section 9(5)(ii)(c) of the IBC read with rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, both of which use the term "*delivered.*"
10. The pre-requisites of section 9 of the IBC have not been satisfied. Therefore, the present petition fails and therefore, the same is rejected in terms of section 9(5)(ii)(c) of the IBC.

11. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any judicial forum shall not be prejudiced on grounds only of dismissal of the present petition by this Adjudicating Authority.
12. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-
Ravikumar Duraisamy
Member (Technical)

23.09.2020

Sd/-
Rajasekhar V.K.
Member (Judicial)