

NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI
IB-3107/ND/2019

Item 504 of 09.08.21

In the matter of:

Kamiya & Co
Through its Proprietor
Mr. Rakesh Kumar Kamiya

Operational Creditor

Vs

Mystic Monk Designs Private Limited
Z-45, Okhla Industrial Area, Phase-2, New Delhi-110020

Corporate Debtor

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on: 24.08.2021

Coram:

ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

Present:

For the Applicant : Adv Gaurav Bahl
For the Respondent : Ms. Jhum Hum Sarkar

ORDER

Per: K.K. Vohra, Member (T)

1. This is a petition filed by Operational Creditor (OC) seeking initiation of Corporate Insolvency Regulation Process (CIRP) against the Corporate Debtor (CD) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for the alleged default on the part of the CD in settling the amount of Rs 4,00,000 (Pg 9 of Petition) including interest @ 24% PA towards professional services for online test project. It is noted that on 09.08.21, OC submitted that CD is not in a position to make payment. The details of transactions leading to the filing of this application as averred by the OC are as follow:

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●CD approached OC for providing professional services with respect to online test exams and services for preparation of project reports, approaching financial Institutions etc and raised invoice dt 01.05.18 aggregating to Rs 5,00,000. It is also stated that CD transferred an amount of Rs1,00,000 after the receipt of invoice. However he failed to clear the remaining outstanding amount.

●OC issued the Demand Notice u/s 8 of IBC as per Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the CD on 29.06.19 (pg 24-29 of Petition). CD in reply dated 11.7.19 to the demand notice (pg 34) has admitted that there was a commercial agreement and has completely denied regarding any outstanding due to OC.

2. The CD filed a reply dated 06.02.2020 stating that there is no outstanding due to OC. It is further stated that on 30.3.19, CD had released payment of Rs 1,00,000 against the outstanding of Rs 5,00,000 and had requested for time to make the balance payment of Rs 4,00,000, therefore, the petition filed by the applicant is completely unfounded. The CD in its reply has not raised any dispute by OC. It is pertinent to mention here that the CD has not raised objection against the principal amount of OC. Further, CD has not claimed that there is any preexisting dispute between the parties.

3. Heard the parties and perused the case records.

4. The provisions pertaining to filing a petition for initiation of CIRP by OC are given under Section 9 of IBC. Before filing of Section 9 petition, the OC shall issue demand notice under Section 8 of the IBC. Section 8 and Section 9 have been reproduced below:

8. Insolvency resolution by operational creditor.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -



(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

9. Application for initiation of corporate insolvency resolution process by operational creditor.

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under subsection (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish-

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and



(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,-

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if-

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.



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(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

5. While applying aforementioned provisions over the facts of the present case, it is seen that CD in reply to the demand notice (pg 34, para 3) has not raised any dispute to the outstanding dues to OC and has rather admitted that on 30.03.19, it was communicated to the OC that due to financial difficulties payment could not be made by CD. It is further reiterated that the CD vide reply to the petition dated 06.02.20 has acknowledged that there is existence of commercial arrangement and on 30.03.19, payment of Rs 1,00,000 was released against the outstanding. The applicant has placed sufficient evidence in support of its claim. Going by the above details, the OC has clearly established the existence of debt and default on the part of the CD. The petition is within the limitation period.

6. In view of the above facts, the present application deserves to be admitted. Hence, the present application is **admitted** initiating CIRP on the CD, with immediate effect.

7. The OC has proposed the name of IRP; therefore, we appoint Pawan Kumar Garg (Registration No. IBBI/IPA-001/IP-P00608/2017-18/11069; email: ca.pawangarg@gmail.com; M: 9873981462) who has given consent in Form 2 (Pg 21) and has declared that there are no disciplinary proceedings pending against him. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of IBC and file his report within 30 days.

8. In pursuance of Section 13 (2) of IBC, we direct that public announcement shall be made by the IRP within 3 days with regard to admission of this petition under Section 7 of IBC.

9. We also declare a moratorium in terms of Section 14 of IBC. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of IBC. Thus, the following prohibitions are imposed:

a) the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



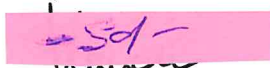
- b) *transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein.*
- c) *any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.*
- d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.*

10. The supply of the essential goods or services to CD as specified, are not to be terminated or suspended or interrupted during the moratorium period [Sec 14 (2) of IBC].

11. The IRP shall perform all his functions contemplated, inter-alia, under Sections 17, 18 and 21 of IBC and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of IBC, Rules, Regulations and shall file reports before the Adjudicating Authority. It is further made clear that all the personnel connected with CD, its promoters or any other persons associated with the Management of CD are under legal obligation as per Section 19 of IBC to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of CD. The IRP shall be under duty to protect and preserve the value of the property of CD as a part of its obligation imposed by Section 20 of IBC and perform all his functions strictly in accordance with the provisions of IBC.

12. OC is directed to deposit a fee of Rs 2 lakh to meet the immediate expenses of the IRP within two weeks of this Order. The same shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to OC to be recovered as CIRP cost.

13. Registry is directed to communicate a copy of the Order to OC, CD, the IRP and the Registrar of Companies, New Delhi at the earliest possible but not later than seven days from today.


(K. K. VOHRA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)