

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

C.P. (IB) 2960/2019

Under section 9 of the IBC, 2016

In the matter of

Hardik Pankaj Jotangia

Room No: 1, Hajrat Bee, Rahim

Bhaugh, Near Radha Krishna

Mandir, SV Road, Ambawadi,

Dahisar East, Mumbai – 400 068

.... Operational Creditor

v/s.

Pollen Computer Park Private Limited

Shop No: 003, Ground Floor, Pooja

Nagar, Building No: 2 CHS Ltd.,

Cabin Cross Road, Bhayander East,

Thane – 401 107

.... Corporate Debtor

Order delivered on: 06.01.2020

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner: Varada Bhide, Company Secretary

For the Corporate Debtor: Maithili Nandedkar & Associates,

Company Secretary

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by one Hardik Pankaj Jotangia, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Pollen

Computer Private Limited (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the petitioner in view of the invoices raised by them as per the Software Development Agreement by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is an adult and an Indian inhabitant and has filed this petition in his individual capacity bearing PAN BEVPJ8393D whereas the Corporate Debtor is a company incorporated on 29/03/2010 and bearing CIN U72900MH2010PTC201393 and having both nominal share capital and paid up share capital of Rs. 1,00,000/-.
3. The professional appearing on behalf of the Operational Creditor submitted that the Operational Creditor and the Corporate Debtor entered into a Software Development Agreement on 02/06/2018. On the very next day i.e. on 03/06/2018, the Corporate Debtor placed a purchase order with the Operational Creditor for development of software to be bought by the Corporate Debtor.
4. The professional for the Operational Creditor further mentioned that on 15/09/2018, the Operational Creditor raised an invoice for Rs.8,75,000/- on the Corporate Debtor for the software developed by him but no payment was made in view of this invoice raised.
5. Therefore, the Operational Creditor had sent 2 reminder notices to the Corporate Debtor to which they replied stating that the payment will be made shortly. Yet, no payment was made and therefore, the Operational Creditor sent a Demand Notice dated 18/06/2019 demanding payment of the principal amount of Rs.8,75,000/- along with interest of Rs.1,04,856/- and the total amounting to Rs.9,79,856/-.
6. The Operational Creditor has annexed the following documents in support of the contentions made:
 - i. Copy of Demand Notice in Form 3 and its acknowledgement
 - ii. Copy of Software Development Agreement dated 02/06/2018
 - iii. Copy of Purchase order dated 03/06/2018

- iv. Invoice dated 15/09/2018
 - v. Copy of First Reminder Letter for payment dated 16/11/2018
 - vi. Copy of Seconder Reminder Letter for payment dated 17/12/2018
 - vii. Copy of reply from the Corporate Debtor dated 14/01/2019
 - viii. Copy of Ledger Confirmation of outstanding balance dated 01/04/2019
 - ix. Master Data and Signatory Details of the Corporate Debtor
 - x. Copy of Consent from the proposed Interim Resolution Professional in Form 2
7. The Corporate Debtor has also filed his reply to this Company Petition wherein the liability raised by the Operational Creditor is not disputed by them and also it is clearly stated that due to slow down in the economy and the overall industrial scenario they are not in a position to pay off the liability.
8. Therefore, after hearing both the parties, the following order is hereby passed:

FINDINGS

9. We have heard the professional appearing on behalf of the Operational Creditor in detail as well as heard the Corporate Debtor and after perusal of all the documents submitted by them, there remains no doubt that an invoice numbered 03/2018-2019 dated 15/09/2019 was raised by them in favor of the Corporate Debtor for which no payment has been made till date.
10. The said invoice no. 03/2018-2019 dated 15/09/2019 which was raised by the Operational Creditor upon the Corporate Debtor was for a total amount of Rs. 8,75,000/- and also bears interest clause at point 3 of the terms and conditions which mentions about interest to be levied at the rate of 18% p.a. if the amount due exceeds 30 days from the date of invoice.
11. Despite of several reminders, the Corporate Debtor failed to make the payments and a Demand Notice dated 18/06/2019 was also sent by the Operational Creditor demanding payment of the principal

amount of Rs.8,75,000/- along with interest of Rs.1,04,856/- and the total amounting to Rs.9,79,856/-. There was neither any reply to this notice nor any payment made by the Corporate Debtor.

12. The Operational Creditor has submitted ledger confirmation of outstanding balance dated 01/04/2019 and other relevant documents which make out the existence of debt and the liability as well as default on part of the Corporate Debtor. Also, the Corporate Debtor in their reply have admitted their liability and default by stating that they are not in a position to repay the dues. Thus, it can be said that the petition fulfills all the requisite conditions necessary to admit a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016. Hence, the petition deserves to be admitted.
13. Therefore, this Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this petition declaring moratorium with the directions as mentioned below:
 - (a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
 - (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the

Central Government in consultation with any financial sector regulator.

- (d) That the order of moratorium shall have effect from 06.01.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Bhavesh Mansukhbhai Rathod, having the registered office at A/101, Shelter CHSL, CSC Road, Opp. Shakti Nagar, Dahisar East, Mumbai – 400 068 and having Registration No: IBBI/IPA-001/IP-P01200/2018-19/11910 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.
14. Accordingly, this Petition is admitted.
15. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

/SNEHA/