

IN THE NATIONAL COMPANY LAW TRIBUNAL

DELHI BENCH (COURT NO. IV)

Company Petition No. IB-1427/ND/2019

(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)

IN THE MATTER OF:

M/s. THIS IS IT DESIGNS

PRIVAVTE LIMITED

... Applicant/Operational Creditor

VERSUS

M/s. KAYO ENTERPRISES

PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 21.01.2020

CORAM:

Dr. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Ms. Palak Rohmetra, Adv.

For the Respondent : Mr. Jatin Kumar, Adv.

MEMO OF PARTIES

M/s. THIS IS IT DESIGNS PRIVATE LIMITED

Having its registered office at:

N-23, SOUTH EXTENSION,
PART-1, NEW DELHI-110049

...Applicant/Operational Creditor

VERSUS

M/s. KAYO ENTERPRISES PRIVATE LIMITED

Having its registered office at:

K-12, BLOCK-K,
HAUZ KHAS ENCLAVE,
NEW DELHI- 110016

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

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 (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s This Is It Designs Private Limited (for brevity 'Applicant'), through its authorized signatory Ms. Saheba Singh,

authorizing her to file present application vide Board resolution dated 10.06.2016, with a prayer to initiate the Corporate Insolvency Resolution Process against (CIRP) against M/s Kayo Enterprises Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a company incorporated on 15.02.2012, under the provisions of Companies Act, 1956 with CIN No. U74210DL2012PTC231548, having its registered office at N-23, South Extension, Part-1, New Delhi-110049, inter alia, engaged in the business of providing interior design consultancy services.
3. The Respondent, namely M/s Kayo Enterprises Private Limited, is a company incorporated on 03.10.2017 under the provisions of Companies Act, 2013 with CIN No. U55204DL2017PTC324376, having its registered office at K-12, Block K, Hauz Khas, New Delhi-110016. The Authorised Share Capital of the respondent company is Rs.1,00,000/- and Paid Up Share Capital of the company is Rs.1,00,000/- as per Master Data of the company.

4. It is the case of the applicant, that a design agreement was entered into between Corporate Debtor and Applicant for engaging Petitioner for Interior Design Consultancy for one of the planned projects of Corporate Debtor with the name of “Esquire” at Samrat Hotel, New Delhi. The Agreement covered the scope of services which were divided into five stages. It was mutually agreed between the parties that supervision provided by the Applicant beyond six months will be charged @ Rs. 10,000 per visit. The payment schedule for design fee has been agreed as follows;

- a.** 18% GSTIN charge on design fee.
- b.** 25% of fee is payable as advance prior to Stage I.
- c.** 25% of fee is payable prior to Stage II.
- d.** 25% of fee is payable prior to Stage III.
- e.** 15% fee is payable during Stage IV.
- f.** 10% fee is payable on Completion of Stage V.

5. It is further stated that, the Corporate Debtor signed design agreement with the Applicant on 20.09.2017. Applicant carried and rendered the interior design consultancy services in stages as agreed by the Corporate Debtor and after

rendering the requisite services, the Applicant Company raised three invoices for the services availed by Corporate Debtor under stage 1 to 3 of the agreed terms and conditions for a total amount of Rs. 26,04,000 (Rupees Twenty Six Lakhs Three Thousand Nine Hundred Ninety Eight) from Corporate Debtor. On 23.10.2018, the Applicant Company raised invoice No. 18-19/070 for the services availed by Corporate Debtor under stage 4 of the agreed terms and conditions for a total amount of Rs. 5,48,700 (Rupees Five Lakhs Forty Eight Thousand Seven Hundred). On 08.04.2019, the Corporate Debtor did not clear the payment of the Forth Invoice, but the Applicant continued to provide their services and the same were regularly accepted by the Corporate Debtor. The Petitioner after completing the fifth stage work raised invoice No. 19-20/092 for the services availed by Corporate Debtor as per the terms and conditions for a total amount of Rs. 3,65,799 (Rupees Three Lakhs Sixty Five Thousand Seven Hundred Ninety Nine) and also raised bill for 28 site visits which were also conducted by the Applicant Company on the request of the Corporate Debtor for six months after

acceptance of design agreement. Reimbursement of site visit expense as per terms and condition of Design Agreement i.e., Supervision beyond 6 months had been charged @10,000 per visit. Site visit reimbursement @Rs. 10,000 per visit i.e., Rs. 2,80,000 (Rupees Two Lakhs Eighty Thousand) has also been unpaid by the Corporate Debtor.

6. In spite of various requests made and reminders sent by the Applicant, the Respondent did not reply. On failure to pay the outstanding dues by the Respondent, the Applicant sent a demand notice dated 30.04.2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the entire payment of unpaid debt to the tune of Rs. 9,14,499/- (Rupees Nine Lakhs Fourteen Thousand Four Hundred Ninety Nine) plus interest @ 24% per annum i.e., Rs. 74,321/- (Rupees Seventy Four Thousand Three Hundred Twenty One) plus site visit reimbursement @ Rs. 10,000/- per visit i.e., Rs. 2,80,000/- (Rupees Two Lakhs Eighty Thousand), the total amount of debt Rs. 12,69,420/- (Rupees Twelve Lakhs Sixty Nine Thousand Four Hundred Twenty), within 10 days from receipt of the notice, failing

which the Applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

7. The Applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.
8. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has not filed its reply to the said notice, nor raised any dispute by way of notice any other. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
9. The Applicant has stated that total debt due and payable is Rs. 12,69,420/- (Rupees Twelve Lakhs Sixty Nine Thousand Four Hundred Twenty). The date on which the debt became due as claimed by the Applicant is 31.10.2018.
10. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The Applicant has also filed affidavit of service wherein he states that the Respondent has been served dasti on 15.04.2019 and through speed post on 24.08.2019 on both the addresses of the Corporate Debtor

i.e., old address as well as new. The relevant documents in this regard have also been annexed along with the affidavit.

11. After the service of said notice, the Respondents have caused appearance in the matter and have filed their reply. In its reply to the present section 9 application, the Respondent states that, the debt raised by the Applicant is based upon a design agreement. That by relying upon the document of the design agreement which is attached by the Applicant along with the paper book, it clearly reflects that the contract is executed between one Mr. Gaurav Marya, who is not a director or authorized signatory of the Corporate Debtor and the Applicant. It does not even bear the signatures of the addressee and no seal/ stamp of the Corporate Debtor.

12. The Respondent further states that, in the present petition the Operational Creditor has raised a false and frivolous claim of Rs. 12,69,420/- (Rupees Twelve Lakhs Sixty Nine Thousand Four Hundred Twenty), for the debt against alleged two invoices dated 23.10.2018 & 08.04.2019. it is relevant to mention that the principal amount as per the invoices is Rs. 9,14,499/- (Rupees Nine Lakhs Fourteen Thousand Four

Hundred Ninety Nine). It is also relevant to mention that the interest on the same is wrongly calculated @ 24% by the Applicant at his whims and fancies. It is also relevant to mention that an amount of Rs. 2,80,000/- (Rupees Two Lakhs Eighty Thousand), is claimed on the head of supervision charges @ Rs. 10,000/- per visit beyond six months. It is relevant to mention that there is no invoice of the same and the dates are just mentioned in the Legal Notice dated 30.04.2019 which is defective as per Section 8 IBC.

13. The Applicant has filed its rejoinder, in which the Applicant states that, the Corporate Debtor in his reply nowhere has raised any dispute with respect to the services rendered by the Operational Creditor, nor has raised any dispute to the principal amount claimed in the present application. If the Corporate Debtor had any bonafide dispute or issue with respect to the subject matter of the application, the demand notice was issued by the Operational Creditor to the Corporate Debtor, where these disputes should have been filed instead of disputing the bonafide claim of the Applicant

on such untenable and baseless grounds at such belated stage.

14. The Operational Creditor further states that, on perusal of the design agreement, it can be observed that the agreement bears signatures of the authorized representatives of both the Corporate Debtor as well as Operational Creditor. It becomes imperative to understand that the agreement was only addressed to Mr. Gaurav Marya, who is employed with the Corporate Debtor and the agreement bears the signature of Ms. Reejakshi Singh who is the creative head of the project “Esquire Club” of the Corporate Debtor (*the same can be seen in the email dated 14.09.2019*) and who has also signed the agreement on behalf of the Corporate Debtor. It is pertinent to mention that the association of Ms. Reejakshi Singh is also clearly evident from the various reminder email correspondences exchanged between her on behalf of the Operational Creditor, wherein the Operational Creditor has repeatedly demanded the outstanding payments for the due rendering of its services.

15. The Applicant further states that, the Operational Creditor has rightfully filed the claim of Rs. 12,69,420/- (Rupees Twelve Lakhs Sixty Nine Thousand Four Hundred Twenty). The principal amount Rs. 9,14,499/- (Rupees Nine Lakhs Fourteen Thousand Four Hundred Ninety Nine), has already been accepted by the Corporate Debtor in its reply as the same has not been disputed. Moreover, the interest @ 24% per annum and the site visit reimbursement @ Rs. 10,000/- per visit i.e., Rs. 2,80,000/- (Rupees Two Lakhs Eighty Thousand), have been claimed by the Operational Creditor as per the design Agreement and the invoices raised. Furthermore, the invoice for site has been duly raised by the Operational Creditor through its email dated 08.04.2019 along with stage VI invoice, which was never disputed by the Corporate Debtor.

16. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant. There has been

much cloud in the submission of the Respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.

17. In **“Innoventive Industries Ltd. (Supra)”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

18. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to

reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the corporate debtor did not survive.

19. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
20. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under

section 9(5) of the Code. Hence, the present application is admitted.

21. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

22. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints the Mr. Chander Shekhar, having registration no. IBBI/IPA-001/IP-P01760/2019-2020/12706, email address is ca.cssuneja@gmail.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

23. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Chander Shekhar 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 three days from the date of receipt of this order by the Operational Creditor. The amount however will 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.

24. 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 Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

25. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from

today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

Sd/-

(Dr. DEEPTI MUKESH)
MEMBER (Judicial)