

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA
C.P (IB) No. 2233/KB/2019

An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Jones Lang Lasalle Property Consultants India Private Limited [CIN U74140DL1997PTC091209], having registered office at No. 1110, 11th Floor, Ashoka Estate, 24, Barakhamba Road, New Delhi – 110001

...Operational Creditor

Versus

BP Suraj Business Combines Private Limited [CIN U70101WB1995PTC072548], having registered office at 198, B B Ganguly Street, Kolkata – 700012.

...Corporate Debtor

Date of Hearing: 28.04.2022

Date of pronouncing the order: 10.05.2022

Coram:

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

Balraj Joshi : **Member (Technical)**

Appearances (through Video Conferencing/Physical)

1. Ms. Manju Bhuteria, Advocate } For the Operational Creditor

2. Mr. Varun Kedia, Advocate }

1. Ms. Debaleena Ganguly, Advocate } For the Corporate Debtor

2. Mr. Debabrata Ganguly, Advocate }

ORDER

Rajasekhar V.K., Member (Judicial)

1. The Court convened *via* video conference.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Mr. Vishal Vijayvargiya, Manager Legal of Jones Lang Lasalle Property Consultants India Private Limited (***‘Operational Creditor’***), duly authorised *vide* Board Resolution dated 29 April, 2019¹, for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against BP Suraj Business Combines Private Limited (***‘Corporate Debtor’***).
3. The present Petition was filed on 11 December, 2019 before this Adjudicating Authority. The total amount claimed in default is Rs.65,29,066/- (Rupees Sixty Five Lakh Twenty Nine Thousand Sixty Six only) [*Principal Rs.54,28,000/- and Interest Rs.11,01,066*], inclusive of interest calculated @12% p.a. till 31 October, 2019. The date of default is stated to be ***21 February, 2018***.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.22,00,000/- (Rupees Twenty Two Lakh only) with paid up Capital as Rs.9,92,000/- (Rupees Nine Lakh Ninety Two Thousand only).
5. ***Submissions by the Ld. Advocate on behalf of Operational Creditor.***
 - 5.1 The Corporate Debtor approached the Operational Creditor, who is in the business of real estate consulting, marketing and advisory, to help them in leasing out of their commercial Building bearing number 198, B.B. Ganguly Street, Bow Bazaar, Kolkata – 700012, comprising of basement, ground floor and four floors and admeasuring 14,500 sq.ft. (***‘Premises’***).
 - 5.2 As per the arrangement between the Corporate Debtor and the Operational Creditor, the Operational Creditor was entitled to a fee equivalent to two

¹ Annexure – A-2, page 15 of the Petition

months rent of the premises. The Operational Creditor was successful in finding a lessee for the Corporate Debtor.

- 5.3 On 18 December, 2017, a Letter of Intent (**'LoI'**) was executed between the Corporate Debtor and the lessee i.e., Kalyan Jewellers India Limited. Kalyan Jewellers India Limited agreed to take the premises on lease for a period of fifteen years.² Subsequently, the Corporate Debtor and Kalyan Jewellers India Limited entered into a Lease Agreement dated 26 December, 2017.
- 5.4 Upon successful completion of the transaction, the Operational Creditor raised a Feecon and Revenue Recognition Confirmation Letter³ (**'letter'**) on 31 December, 2017. As per the arrangement between the Corporate Debtor and the Operational Creditor, the Operational Creditor is entitled to a sum of Rs.46,00,000/- (Rupees Forty Six Lakh only) plus taxes. The said letter was duly accepted by Mr. Vikash Murarka, one of the director of the Corporate Debtor. Subsequently, an invoice dated 22 January, 2018 was issued to the Corporate Debtor; the payment was due on 21 February, 2018.⁴
- 5.5 However, the Corporate Debtor failed to clear the outstanding dues as per the arrangement between the parties. Several calls, letters and mails were sent by the the Operational Creditor to the Corporate Debtor but no response was received.⁵
- 5.6 The Corporate Debtor *vide* its reply dated 03 August, 2019 for the first time denied the claim of total outstanding debt of Rs.54,28,000/- (Rupees Fifty Four Lakh Twenty Eight Thousand only) [including taxes]. However, they admitted that the Operational Creditor would be entitled to a sum of Rs.23,00,000/- (Rupees Twenty Three Lakh only), which is the rent amount for one month in the proposed lease property transaction between the Corporate Debtor and the lessee.⁶

² Annexure – A-4, pages 17 - 32 of the Petition.

³ Annexure – A-5, page 33 of the Petition.

⁴ Annexure – A-6, pages 34-35of the Petition.

⁵ Annexure – A-7, pages 36-41 of the Petition.

⁶ Page 52 of the Petition.

5.7 On failure of the Corporate Debtor to clear the dues, the Operational Creditor sent a statutory notice, dated 22 October, 2019, under section 8 of the Code. The same was delivered to the Corporate Debtor on 01 November, 2019.

6. *Submissions by the Ld. Counsel on behalf of the Corporate Debtor*

6.1 The claim by the Operational Creditor is not an operational claim and is vehemently disputed. The Feecon and Revenue Recognition Confirmation Letter dated 31 December, 2017 is forged and the alleged signature is not of Mr. Vikash Murarka, one of the director of the Corporate Debtor.

6.2 Even though a letter of intent was issued, till date the Lease Agreement could not be registered and the entire transaction has not been completed. The said premise is still under the possession of the Corporate Debtor.

6.3 The alleged operational debt is frivolous and mala fide because the Operational Creditor was entitled to their fee on execution of the Lease Agreement between the Corporate Debtor and the lessee, however, till date the Lease Agreement remains unexecuted.

6.4 The letter dated 03 August, 2019 of the Corporate Debtor has been completely misread because the fee was only payable on the successful completion of the Lease Agreement, which never happened.

6.5 The alleged demand letter and reminder emails were never received by the Corporate Debtor because the same were never sent to the registered email id of the Corporate Debtor.

7. *Rejoinder to the Reply of the Corporate Debtor*

7.1 The Feecon and Revenue Recognition Confirmation Letter dated 31 December, 2017 was also an enclosure to the Notice dated 20 June 2019, to which the Corporate Debtor replied to *vide* letter dated 3 August 2019. However, the Corporate Debtor never raised any allegation in respect of the Feecon and Revenue Recognition Confirmation Letter in its reply dated 3 August 2019. The allegation now raised are nothing but an afterthought.

Further, the Corporate Debtor has admitted that the Lease Agreement was executed.

8. *Supplementary Affidavit filed by the Operational Creditor*

8.1 *Vide* e-mails dated 26 November, 2018 and 11 December, 2018, the Corporate Debtor has acknowledged the outstanding debt towards the Operational Creditor and had promised to release the payment by the end of December, 2018.⁷

Analysis and Findings

9. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the concerned documents annexed to the Petition.

10. As envisaged under section 5 (21) of the Code, a debt arising out of services rendered or goods supplied is an operational debt, it also includes employment or a dues arising under any law for the time being in force and payable to Central Government, any State Government or any local authority. From perusal of the record, it is apparent that the Operational Creditor has clearly provided the service of brokerage to the Corporate Debtor. Hence, there is an existence of an Operational Debt.

11. Further, with respect to the issue of existence of default, the e-mails dated 26 November, 2018 and 11 December, 2018 by the Corporate Debtor clearly resolves the issue, wherein the Corporate Debtor has categorically acknowledged to pay/settle the outstanding debt by the end of December, 2018 against the services rendered by the Operational Creditor.

12. It is also pertinent to mention that with no written arrangement on record between the parties, it is difficult to ascertain the amount of default i.e., whether it would be *Rs.23,00,000/- or Rs.54,28,000/?.* However, be that as it may, this application was filed on 11 December, 2019 and at that time the

⁷ Annexure – B of the Supplementary Affidavit filed by the Operational Creditor.

threshold limit to initiate a CIRP was Rs.1,00,000/- (Rupees One Lakh only). The Application falls within the threshold. Hence, there is a debt & default.

13. As envisaged under section 9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor. From the available record, it is apparent that the Corporate Debtor had never raised any dispute with respect to the services of the Operational Creditor.
14. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. And since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.
15. It is, accordingly, hereby ordered as follows:-
 - a) The application bearing **CP (IB) No. 2233/KB/2019** filed by Jones Lang Lasalle Property Consultants India Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against B P Suraj Business Combines Private Limited, the Corporate Debtor, is **admitted**.
 - b) There shall be a moratorium under section 14 of the IBC.
 - c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - e) **Ms. Rashmi Chhawchharia**, registration number **IBBI/IPA-001/IP-P-02016/2020-2021/13148**, email: **rashmi.chhawchharia@gmail.com**, is

hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - 1

C.P (IB) No. 2233/KB/2019

Jones Lang Lasalle Property Consultants India Pvy. Ltd. v. BP Suraj Business Combines Pvt. Ltd.

The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. CP (IB) No. 2233/KB/2019 to come up on 27 July, 2022 for filing the periodical report.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI** Digitally signed
by BALRAJ JOSHI
Date: 2022.05.10
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Balraj Joshi
Member (Technical)

**Rajasekhar V
K** Digitally signed by
Rajasekhar V K
Date: 2022.05.10
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Rajasekhar V.K.
Member (Judicial)

The order is pronounced on 10th of May, 2022

Safura A., [LRA]