

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

**CP (IB) No.1087/MB-V/2020**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Indiabulls Distribution Services Limited**

[CIN: U74999DL2009PLC191143]

...Operational Creditor/Applicant

V/s

**Tanish Nirmiti LLP**

[LLPIN: AAB-5842]

...Corporate Debtor/Respondent

**Order Dated: 31.07.2023**

*Coram:*

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Adv. Amita Kamble i/b Kshitija  
Wadtkar & Associates.

For the Respondent(s) : None.

**ORDER**

***Per: Anuradha Bhatia, Member (Technical)***

1. This is an application bearing C.P. (IB) No. 1087/MB-V/2020 filed by **Indiabulls Distribution Services Limited**, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against **Tanish**

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**Nirmiti LLP**, Corporate Debtor claiming total outstanding amount of Rs.13,60,073/- (Rupees thirteen lakh sixty thousand seventy-three only) along with 18% interest p.a.

2. The Date of Default as mentioned in the Petition, is 31.03.2017. The Petition is filed on 14.03.2020 which is well within the period of limitation.
3. The case of the Operational Creditor is that:
  - 3.1 The Corporate Debtor is a Limited Liability Partnership firm within the meaning of Limited Liability Partnership Act, 2008. The Operational Creditor and the Corporate Debtor entered into an Arrangement vide an Agreement dated 29.08.2016, whereby the Corporate Debtor authorised the Operational Creditor to act as marketing representative, for the real estate project, namely “Falcon” being developed by the Corporate Debtor.
  - 3.2 The Corporate Debtor, vide its letter dated 22.08.2016, requested its lender DCB Bank to grant NoC for execution of the aforesaid Agreement. Also, the Corporate Debtor has unequivocally agreed and confirmed and it undertook that the instructions for auto transfer of Receivables of the Operational Creditor, from Escrow Account, bearing number 04822000000073 being maintained with DCB Bank, to account number 0003034058535 of the Operational Creditor, being maintained with HDFC Bank are irrevocable and shall remain valid, till the receipt of 100% of its receivables of Operational Creditor (Brokerage / Comissions) for the unit (s) booked by the customer (s) identified by the Operational Creditor.

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- 3.3 DCB Bank vide its letter dated 29.08.2016 granted consent for execution of the aforesaid Agreement and further confirmed the arrangement, as stipulated in the request letter of Corporate Debtor.
- 3.4 The Operational Creditor sold 04 flats/units in the project and as per the terms of the Agreement between the parties, a sum of Rs.13,60,073/- is due and payable by the Corporate Debtor to the Operational Creditor, towards payment of marketing fee / brokerage.
- 3.5 The Operational Creditor raised four Invoices dated 31.12.2017, against the marketing fee/brokerage earned by it, towards booking/sale of the said 04 flats/units, as per the agreed terms of the Agreement. Further, the Operational Creditor raised two Credit Notes dated 03.04.2017.
- 3.6 The Corporate Debtor, vide its letter dated 11.03.2017, acknowledged the sale of 04 flats/units and its liability to make payments and initiated the termination of aforesaid Agreement.
- 3.7 The Operational Creditor, vide its letter dated 10.05.2017, requested for payment of the outstanding amount. The Corporate Debtor did not respond to the said letter issued by the Operational Creditor. The Operational Creditor vide its communication and Email dated 22.05.2017, 28.06.2017 and 12.07.2017, time and again reminded the Corporate Debtor to make payment of the outstanding amount.
- 3.8 Thereafter, the Operational Creditor issued a Demand Notice, dated 02.01.2020, under Rule 5 of the IBBI (Application to

Adjudicating Authority) Rules, 2016, upon the Corporate Debtor, claiming an amount of Rs.13,60,073/- payable within 10 days from the receipt of this Notice.

4. The Corporate Debtor has neither appeared despite several opportunities granted and nor filed any reply in the matter.

***Findings/Observations:***

5. We have heard the arguments of the Learned Counsel for Operational Creditor and perused the records.

5.1 The claim of the Operational Creditor is arising out of an Agreement dated 29.08.2016 entered and executed between Operational Creditor and Corporate Debtor, whereby the Corporate Debtor authorized the Operational Creditor to act as marketing representative for the real Estate Project namely "Falcon" being developed by the Corporate Debtor. In view of the Agreement dated 29.08.2016, the Operational Creditor succeeded in getting the booking of 4 Flats and pursuant it, the Operational Creditor raised Invoices amounting to Rs.11,82,670/-, upon the Corporate Debtor. The details of the total outstanding is summarised as under:

Invoice Date	Invoice No.	Brokerage amount	Service tax	SB Cess	KK Cess	Round off	Total
31.12.2016	IDSL/16-17/NES264	2,14,960/-	30,094.40	1,074.80	1,074.80		2,47,204/-
31.12.2016	IDSL/16-17/NES262	3,46,875/-	48,562.50	1,734.38	1,734.38	(0.26)	3,98,906/-
31.12.2016	IDSL/16-17/NES263	3,49,065/-	48,869.10	1,745.33	1,745.33	0.24	4,01,425/-
31.12.2016	IDSL/16-17/NES265	4,47,915/-	62,708.10	2,239.58	2,239.58	(0.26)	5,15,102/-
31.03.2017	IDSL/16-17/NES340	9,522/-	1,333.08	47.61	47.61	(0.30)	10,950/-
31.03.2017	IDSL/16-	6,951	973.14	34.76	34.76	0.34	7,994/-

	17/NES340						
<b>Credit Note</b>							
03.04.2017	IDSL/17-18/CR01	(62.00)	(8.68)	(0.31)	(0.31)	0.40	(71.00)
03.04.2017	IDSL/17-18/CR02	(1,92,556.00)	(26,957.84)	(962.78)	(962.78)	0.40	(2,21,439.00)

5.2 It is observed by the Bench that the Corporate Debtor, vide its Email dated 14.03.2017 sent to the Operational Creditor, has terminated the Agreement dated 29.08.2016. The Corporate Debtor in the same E-mail, has further provided break-up of brokerage calculation to the Operational Creditor. The relevant extract of the said E-mail is as under:

*“1) with reference to the above-mentioned subject matter, we wish to inform you that the Marketing Agreement with IBDSL will end by efflux of time on 15<sup>th</sup> March 2017.*

*2) Accordingly, we request to kindly inform the CDB bank and also your HDFC bank to close the arrangement to directly transfer the brokerage from our Escrow account.*

*3) Please not that the exclusivity as mentioned in clause 7 of the agreement will end.*

*4) 4 flats viz. Flat No.803, Flat No. 1304, Flat No. 1706 and 1708 have been sold by IBDSL. The costing of the flats and brokerage thereof is attached herewith.*

*5)....”*

5.3 Pursuant to the default on the part of the Corporate Debtor, the Operational Creditor issued a Demand Notice dated 02.01.2020 upon the Corporate Debtor claiming the total outstanding dues. However, the Corporate Debtor failed to reply to the said Demand Notice nor the Corporate Debtor has paid the outstanding dues to

the Operational Creditor. Hence, the Operational Creditor filed the present Petition.

5.4 It is further observed that the Corporate Debtor has neither appeared nor filed its reply in the matter. The matter was listed on several occasions i.e. from 17.12.2020 to 15.05.2023, but the Corporate Debtor failed to appear in the matter. Hence, the matter was heard ex-parte on 15.05.2023.

5.5 After carefully perusing the records, we hold that there has been an operational “**debt**” and “**default**” on the part of the Corporate Debtor and under the circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code.

6. It is ordered accordingly in following terms:

### **ORDER**

- a. The Application bearing C.P. (IB) No. 1087/MB-V/2020 filed by **Indiabulls Distribution Services Limited**, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Tanish Nirmiti LLP**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against **Tanish Nirmiti LLP**.
- b. This Bench hereby appoints **Ms. Neha Jain Nemani**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00147/2017-18/10383, contact: 9137918747, Email: nehavkjain@gmail.com, as the interim resolution professional

to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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.
- e. 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.
- f. 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.

- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

**Sd/-**  
**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**