

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 1365/KB/2019

In the matter of:

M/s. Vasu Publicity, 1, Ballygunge Place, Kolkata - 700019

..Operational Creditor

Versus

M/s. Indian Gem & Jewellery Imperial Private Limited

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

For the Operational Creditor:

1. Mr. Joydeep Guha, Advocate

sd -

For the Corporate Debtor :

1. Mr. SK Singli, Advocate
2. Mr. Ankur Singli, Advocate
3. Mr. Prashant Kumar Tripathi, Advocate

Date of Pronouncement of the Order : 13-11-2019

ORDER

Per Shri Jinan KR, Member(Judicial)

1. M/s. Vasu Publicity, Operational Creditor, filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution process (in short CIRP) as against M/s. Indian Gem & Jewellery Imperial Private Limited /Corporate Debtor, on the allegation that the Corporate Debtor has committed default in payment of Rs. 8,22,432/- (Rupees Eight Lakh twenty two thousand four hundred thirty two only), as the outstanding operational debt due to the Operational Creditor.

2. The facts, necessary for consideration of this Application, in brief, are the following:

The Operational Creditor had sold advertising space in print media to M/s. Indian Gem & Jewellery Imperial Private Limited on

various occasions. While providing the said services, the Operational Creditor has raised various bills/invoices which lies due and unpaid by the Corporate Debtor. The said invoices were duly acknowledged by the Corporate Debtor. The Operational Creditor has reminded the Corporate Debtor from time to time to clear the outstanding invoices. The Corporate Debtor made false assurances and deliberately escaped from making the payments. The Operational Creditor, was thereby compelled to issue notice under Section 8(1) of the Insolvency & Bankruptcy Code, 2016 in Form 3 of the Insolvency & Bankruptcy Code, 2016, demanding the amount due. The demand notice was delivered on the Corporate Debtor on 13-07-2019. The Corporate Debtor did not send a reply nor paid the unpaid operational debt. Hence, the Operational Creditor filed this Application for initiating CIRP process as against the Corporate Debtor under Section 9 of the Code.

3. To strengthen the said contention, the Operational Creditor has produced the copy of invoices, copy of demand notice, proof of receipt of delivery of notice, copy of ledger account, statement of Bank Account and affidavit in Form C under Section 9(3)(b) of the Code. The Operational Creditor also proposes the name of the Insolvency Resolution Professional and also produced Form 2 and declaration letter for appointment as Interim Resolution Professional.

4. The Corporate Debtor entered appearance and filed the reply affidavit contending in brief the following :

There is no debt due to the Operational Creditor from the Corporate Debtor. There is no default as alleged. There have been several rounds of negotiations and discussions between the Parties, so much so, that the parties had, in principle, agreed to an alternative mode of settlement of their claims in the event the Corporate Debtor was unable to pay its debt within the enlarged period. Such facts have been deliberately suppressed by the Operational Creditor. The Operational Creditor has filed the Application misrepresenting the facts. The Application is liable to be dismissed with costs.

Heard both sides and perused the records.

5. This is an Application filed by the Operational Creditor through its authorised signatory, Mr. MK Bagla. Annexure A proves the authorisation given to him for initiating the CIRP process as alleged by the Operational Creditor. It is alleged that the Corporate Debtor has committed default in payment of Rs. 8,22,432/- (Rupees Eight Lakh twenty two thousand four hundred thirty two only) on account of service rendered by the Operational Creditor to the Corporate Debtor and generating invoices referred to, as Annexure G in the Application. According to the Ld. Counsel for the Operational Creditor, despite repeated demand, the Corporate Debtor did not pay and thereby issued the demand notice, Annexure I. A reference to Annexure I and the track consignment, annexed with the Application, proved delivery of demand notice. Admittedly, there was no reply noticing any pre-existing dispute on the side of the Corporate Debtor. The statement of Bank account also proves that the unpaid

operational debt, as demanded by the Operational Creditor, has not been paid on the side of the Corporate Debtor.

6. The Ld. Counsel for the Corporate Debtor was unable to substantiate that there exists a dispute prior to the date of issuance of the demand notice. On the other hand, the Corporate Debtor indirectly admitted its liability at Paragraph 6 in the reply affidavit filed by the Corporate Debtor.

7. So, being satisfied that there is default in payment of unpaid operational debt and the invoices relied upon on the side of the Operational Creditor being not disputed on the side of the Corporate Debtor, I come to a conclusion that the Operational Creditor has succeeded in proving that the unpaid operational debt, as claimed by the Operational Creditor, is due to the Operational Creditor and despite the demand, the Corporate Debtor failed to pay the same.

8. The requirement to be meted out under Section 9(3) also seen complied on the side of the Operational Creditor and affidavit in compliance of Section 9(3) (b) that there is no notice given by the Corporate Debtor related to a dispute of the unpaid operational debt has been produced. So also, the statement of Bank account in conformity with Section 9(3)( c ) also seen produced. The name of the Insolvency Resolution Professional is proposed on the side of the Operational Creditor. Mr. Ashok Kumar Agarwal is the proposed Resolution Professional, having registration No. IP/N00626. The written communication by the proposed Insolvency Resolution Professional also seen produced. It is Annexure C. On reference to

Annexure C, it is observed that there is no disciplinary enquiry proceeding pending against the proposed Insolvency Resolution Professional. Accordingly, this is an Application fit for admission.

9. In view of the above said facts, this Application is liable to be admitted. Accordingly, the Application is admitted among the following orders :

### **ORDERS**

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Indian Gem & Jewellery Imperial Private Limited /Corporate Debtor, is hereby admitted.

ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 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 (54 of 2002);
  - (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central


Government in consultation with any financial sector regulator.

- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) **Mr. Ashok Kumar Agarwal, an Insolvency Professional, registered with ICSI Institute of Insolvency Professionals, having registration number IP/N00626, E-mail ID : ashokkragarwal@hotmail.com, Mobile No. 9831060452,** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105

days from the insolvency commencement date and follow Regulation 40A strictly.

- x) The Operational Creditor is directed to deposit Rs.2,00,000/- (Rupees Two Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order.
- xi) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xii) List the matter on 13-12-2019 for filing of the progress report.

10. The free copy/certified copy of the Order may be issued to all the concerned Parties, if applied for, upon compliance with all requisite formalities.

  
(Jinan K.R.)

Member(Judicial)

Signed on this, the 13<sup>th</sup> day November, 2019

GOUR\_STENO