



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

**CP (IB) No. 788/MB-IV/2021**

Under Section 9 of the I&B Code, 2016

In the matter of:

**K. Rama Mohan Rao**

...Operational Creditor/Applicant

V/s

**Srichaitanya Students Facility  
Management Private Limited**

[CIN: U55101MH2015PTC265318]

...Corporate Debtor/Corporate Debtor

Order Dated: 18.05.2023

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Operational Creditor(s) : Ms. Devangi, Advocate.

For the Corporate Debtor(s) : Mr. V. Aravind, Advocate.

**ORDER**

***Per: Kishore Vemulapalli, Member Judicial***

1. This is an Application being C.P. (IB) No. 788/MB/C-IV/2021 filed on 10.08.2021 by K. Rama Mohan Rao, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Srichaitanya Students Facility



Management Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

- 1.1 The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 2,60,20,843/-. The first default occurred on 01.09.2018 and the amounts claimed in default is calculated from 01.09.2018 to 31.03.2021.
2. The Operational Creditor submits that he is the absolute owner of the property bearing Sy. No. 183/212 admeasuring 2 Acre 27 Cents (10986.80square yards) situated at Vijayawada Rural Mandal, Gudavalli, Krishna dist. Andhra Pradesh and on 03.10.2015, a Development Agreement cum General Power of Attorney was executed between him and M/s. Sadguru Sai Energies Private Limited (hereinafter referred to as "Lessor 2/ Developer) for development of the site to build a commercial building consisting of stilt, ground, first, Second, Third and Fourth floors on the Operational Creditor's property. As per the said Development Agreement cum General Power of Attorney 40% portion of the premises belonged to the Operational Creditor and 60% to the Developer.
  - 2.1 The Operational Creditor submits that, accordingly, a Lease Deed 22.01.2016 was executed between the Applicant/ Operational Creditor, M/s. Sadguru Sai Energies Private Limited and the Corporate Debtor to construct & let out the Stilt, ground and 4 floors of the building admeasuring 158,880 sq. fits of the above stated property for the purpose of starting Residential Hostel for a lease period of ten years w.e.f.



01.06.2016 on the monthly rent of Rs. 12/- per sqft. with an enhancement clause.

- 2.2 As per the terms of the said Lease Agreement, the term of the lease for a period of 10 years, was to commence from 01.06.2016 or on the date of actual occupation of building by the Corporate Debtor. The monthly Lease rental payable by the Corporate Debtor was Rs. 19,06,560/- (Rupees Nineteen Lakhs Six Thousand Five Hundred and Sixty only). The said rent was divided into 60:40 ratio between the Developer and the Operational Creditor as per the approved terms. After completion of the building, as per the actual measurement, the occupied area is 59,689.68 sf. Ft. and the rent per month @ Rs.12/- per month comes to Rs.7,16,280/- to the share of Landlord i.e. the Operational Creditor
- 2.3 The Operational Creditor further submitted that the Corporate Debtor defaulted in payments of the said lease rents from September 2018 and vide notice dated 13.08.2019, he sent a Demand Notice to the Corporate Debtor u/s. 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of Rs. 2,28,19,590/- (Rupees Two Crores Twenty-Eight Lakhs Nineteen Thousand Five Hundred and Ninety only) towards the unpaid debt. The said amount was calculated from the date of default i.e., 01.09.2018 till 01.08.2019.
3. The Corporate Debtor sent a Reply dated 24.08.2019 to the Demand Notice dated 13.08.2019 sent by the Operational Creditor through which it disputed the claim of the Operational Creditor on the ground that it was contrary to the terms of the Lease Agreement wherein it



was specifically contended that the possession of the leased premises was not given as per the timeline in the Lease Agreement and further, that there were several defects in the construction such as water seepage and improper electrical wiring.

- 3.1 It was further submitted by the Corporate Debtor that the said defects in construction caused burning of air conditioners resulting in losses to the tune Rs.31,80,000/-, and the same was brought to the notice of the Operational Creditor vide the aforesaid communication dated 24.08.2019. It was also stated that a further loss of revenue to the tune of Rs. 7,80,00,000/- was caused as more than 65 rooms were rendered unfit for accommodation due to seepage problem. It is stated that vide communication dated 24.08.2019, Corporate Debtor also informed the Operational Creditor of its intention to vacate the premises on or before 31.05.2020 and accordingly, requested that the rent deposit and advance rent paid by it be refunded after making adjustments of future rent payments. The Corporate Debtor along with the said reply letter also gave a notice of the Termination of the Lease notice.
- 3.2 The Corporate Debtor made part payment of Rs.85,09,400.88/- (Rupees Eight Five Lakhs Nine Thousand Four Hundred and Eighty-Eight paise) to the Operational Creditor on 28.01.2020 through NEFT against the demand of Rs.2,28,19,590/- as on August, 2019. However, some amount was still outstanding and the Corporate Debtor did not vacate the building on 31.05.2020.



- 3.3 The Corporate Debtor further states that after receipt of the aforesaid communication dated 24.08.2019 by the Operational Creditor, the developer and Operational Creditor, i.e. the lessors, approached officials of the Corporate Debtor and requested to continue the lease, agreeing to receive 30% of payable rent from June 2020 to December 2020 and 50% of payable rent from January 2021 to May 2021. It was further agreed by the lessors and Respondent that the lease would continue on a month to month basis in light of the crisis induced by the Covid-19 pandemic.
- 3.4 That subsequently, the Corporate Debtor vide its letter dated 13.05.2021, issued to the Operational Creditor, as well as other lessors, once again informed them of its intention to vacate the leased premises on or before 31.05.2021 and again requested the lessors to refund the rent deposit held by them, after adjusting rent for the period from January 2020 to March 2020, and from June 2020 to May 2021. It is submitted that the total amount of deposit which lessors are liable to refund to Corporate Debtor, after making aforementioned rent adjustments, amounts to Rs. 1,33,75,121.52/-, however, the same has not been refunded till date.
- 3.5 The Corporate Debtor in its reply to the present petition dated 06.08.2022 gave the table of amount receivable by it from the Operational Creditor which is reproduced hereunder-

Particulars	Amount in Rs.	Amount in Rs.
Interest free Rent Deposit		3,00,00,000.00



Rent Advance		3,07,660.43
TOTAL (A)		3,03,07,660.43
100% RENT PER MONTH - MAR-20	24,82,981.24	
JAN 20 to MAR 20 RENT	74,48,943.72	
Less TDS	7,08,840.00	
Net Rent Payable from Jan-20 to Mar-20	67,40,103.72	
Less : Already paid rents	4,08,009.81	
Net Rent Payable per Mar-20 month (B)	63,32,093.91	63,32,093.91
30% RENT PER MONTH	7,44,894.00	
50% RENT PER MONTH	12,41,490.00	
JUN-20 TO DEC-20 - 30% RENTS (744894*7)	52,14,258.00	
JAN-21 TO MAY-21 - 50% RENTS (1241490*5)	62,07,450.00	
TOTAL GROSS RENTS	1,14,21,708.00	
LESS : TDS	8,21,263.00	
Adjusted rent for 12 months ie JUN-20 TO MAY-21 (C)	1,06,00,445.00	1,06,00,445.00
<b>Balance amount Receivable from the Lessors D=(A-B-C)</b>		<b>1,33,75,121.52</b>

3.6 Consequently, the Operational Creditor sent another Demand notice vide Form 3, dated 18.05.2021 for the outstanding due of Rs. 2,60,20,843/- (Rupees two Crores Sixty Lakhs Twenty Thousand Eight Hundred and Forty-Three only) for the outstanding rent payable from 01.09.2018 after considering the part payment received on 28.01.2020. On 22.05.2021, the Respondent got issued another demand Section 8 Demand



Notice, vide Form 3, by the Developer claiming an amount of Rs. 8,56,30,800/- on account of purported unpaid arrears of rent. On 18.06.2021, the Operational Creditor issued another Section 8 Demand Notice, vide Form 3, claiming an amount of Rs. 6,29,22,585/- on account of purported unpaid rent from September 2017 till March 2020.

- 3.7 The Corporate Debtor sent a joint reply on two dates i.e. on 29.05.2021 and 24.06.2021 to the demand notices sent by the Operational Creditor and M/s. Sadguru Sai Energies Private Limited in response to the aforementioned Demand Notices dated 18.05.2021 and 22.05.2021, wherein it disputed their claims and reiterated that the lessors were liable to refund an amount of Rs. 1,33,75,121.52/- to the Corporate Debtor. The Corporate Debtor, vide the same communication also informed the Operational Creditor that, pursuant to communication dated 24.08.2019, the lease deed ceased with effect from 25.08.2019 and vide the said letter dated 24.06.2021, the Corporate Debtor also brought to the notice of the Operational Creditor that it had already disputed its claims vide letters dated 29.05.2021 and 24.08.2019.
- 3.8 The Operational Creditor states that the Corporate Debtor replied to the demand notice issued by the Applicant herein by referring to their transactions with another Operational Creditor.
- 3.9 The Operational Creditor further submitted that as per Form 26AS for the FY 2018-19 and 2019-20, it is evident that the



Corporate Debtor had deducted and deposited the TDS amount. The Corporate Debtor did not make the payment of the lease rents to the Operational Creditor but has deducted the TDS every month.

4. The Corporate Debtor has filed its reply to the present petition dated 06.08.2022 wherein it has stated that as per clause 7 of the Lease Agreement, the Corporate Debtor was required to pay a total amount of Rs. 2,41,00,000/- towards 'interest free rental deposit' which is returnable to the Respondent, at the time of vacation of the leased premises, after the lessee clears all dues to the lessors. In addition to the aforementioned rental deposit, an amount of Rs. 1,60,00,000/- was also paid by the Corporate Debtor towards advance rent, pursuant to Clause 8 of the Lease Agreement and both the aforementioned amounts were to be divided between the developer and the Petitioner in 60:40 ratio. It further states that it deposited entire amounts in respect of the interest free rental deposit and advance rent in the account of the developer i.e M/s. Sadguru Sai Energies Private Limited and thereafter, it was the developer's obligation to pay the Petitioner's share out of the amounts received. The Corporate Debtor states that an additional amount of Rs. 59,00,000/- was also paid to the Developer as a rental deposit from the account of Sri Kalyana Chakravarti Educational Trust, which is a sister concern of the Corporate Debtor, and consequently, the total 'rental deposit' paid, to the lessors by the Corporate Debtor, amounts to Rs. 3,00,00,000/-.
5. The Operational Creditor has filed a Rejoinder dated 02.03.2023 which was served upon the Corporate Debtor on 02.03.2023 vide



email, wherein, it has raised a dispute relating to certain curable defects with respect to the reply filed by the Corporate Debtor- a) no proper authorization in the name of the person who filed the reply on behalf of the Corporate Debtor and absence of time and date of the Affidavit in reply filed by the Corporate Debtor. The Operational Creditor states that the dispute in relation to the liability of the Corporate Debtor to pay the outstanding dues was only raised by the Corporate Debtor after the issuance of demand notice. The Operational Creditor further states that no bank statement has been enclosed by the Corporate Debtor to evidence the payment of the amounts that it claims to have paid to the Operational Creditor and that the Corporate Debtor has not enclosed a single evidence to substantiate that the alleged defects in the construction of building were informed to the Operational Creditor. The Operational Creditor further states that if the Corporate Debtor was suffering the huge loses as it claims, it would have vacated the premises long before 31.05.2021, i.e. the date when it actually vacated the premises.

6. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

6.1 We find that the Corporate Debtor has raised dispute with respect to the defects in the construction of the building carried out in further of the agreement executed by both the parties. However, no evidence of such defects has been communicated by the Corporate Debtor to the Operational Creditor prior to the issuance of demand notice by the Operational Creditor.



- 6.2 We are of the view that an additional amount of Rs. 59,00,000/- which was paid to the Developer as a rental deposit from the account of Sri Kalyana Chakravarti Educational Trust has no relevance to the present case and cannot be said to be appropriated towards the outstanding amount in the present case as it is paid by the sister concern of the Corporate Debtor.
- 6.3 The short point for our consideration is whether pre-existing dispute is discernible or not. We are of the view that dispute raised by the Corporate Debtor is moonshine and a patent feeble argument and it appears to be motivated by the Corporate Debtor to wriggle out of their obligation to clear outstanding liabilities and therefore the defence raised is untenable.
7. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.
8. The Applicant has proposed the name of Mr. Immaneni Eswara Rao, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01224/2018-2019/11943] and Email



Id.- ip.caier@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code u/s 9(4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code.

**ORDER**

This Application being C.P. (IB) No. 788/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by K. Rama Mohan Rao, Operational Creditor/ Applicant against Srichaitanya Students Facility Management Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - a) 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;
  - 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



Operational Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.



- VI. That this Bench hereby appoints Mr. Immaneni Eswara Rao, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01224/2018-2019/11943] and Email Id.- ip.caier@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar  
Member (Technical)  
/LRA Akshata/

Sd/-

Kishore Vemulapalli  
Member (Judicial)