IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

CP(IB) No.1865/KB/2019

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:
Aravali Printers and Publishers Private Limited(CIN:U74899DL1982PTC-014608), a company incorporated under the Companies Act, 1956, having its registered office at W-30, Okhla Industrial Area, Phase II, New Delhi - 110020.

... Operational Creditor

Versus

Saraswaty Press Limited(CIN: U22110WB1987SGC041786), a company incorporated under the Companies Act, 1956, having its registered office at 11, B T Road, Kolkata - 700056.

... ***Corporate Debtor***

Date of hearing: 10.06.2022
Date of pronouncement: 28.06.2022

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via hybrid mode):

For the Operational Creditor	:	Mr. Shounak Mukhopadhyay, Adv Ms. Madhurima Das, Adv Mr. Sayantan Bose, Adv
For the Corporate Debtor	:	Mr. Joy Saha, Sr. Adv Mr. Shaunak Mitra, Adv Ms. Debdatta Ray Chaudhury, Adv

ORDER

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

1. This Court convened *via*hybrid mode.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("***the Code***") **Aravali Printers and Publishers Private Limited**, represented by Mr. Vijay Goel, duly authorised by a Board

Resolution dated 02 April 2019,[1]Aravali Printers and Publishers Private Limited("***Operational Creditor***"),seeking to initiate Corporate Insolvency Resolution Process ("***CIRP***") against Saraswaty Press Limited ("***Corporate Debtor***").

3. The present petition was filed on 30 September 2019, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹4,99,69,172/- (Rupees four crore ninety-nine lakh sixty-nine thousand one hundred seventy-two only). The date of default is stated to be 19 January 2007.

Submission of the Ld Counsel appearing for the Operational Creditor

4. The Operational Creditor is engaged in the business of printing. It was agreed between the parties that the Operational Creditor would provide printing of textbooks and other printing works to the Corporate Debtor.[2]

5. After completion of the service, the Operational Creditor used to raise invoices against the Corporate Debtor.[3] Each invoice corresponded to services already rendered and the same being accepted by the Corporate Debtor. There was consistency in payment by the Corporate Debtor till 19 January 2007; however, no payments were received after the said date.

6. Upon receiving no payment, the Operational Creditor *vide* its demand notice dated 09 September 2019 under Form 3 & Form 4 of the Code, wherein they demanded payment of the due amount. The said demand notice was delivered on 14 September 2019 to the Corporate Debtor.[4]

Submission of the Ld Sr. Counsel appearing for the Corporate Debtor

7. The ledger account of the Corporate Debtor in the books of the Operational Creditor, as relied by the Operational Creditor pertains to the Financial Years 2006 to 2008, such ledger accounts are more than eleven to twelve years old.

[1] Annexure - A/2, at page 16 of the Petition.

[2] Purchase order dated 05 June 2006 at page 19 and 30 March 2007 at page 20.

[3] Billsfrom 2006-07.

[4] Page 33 of the Petition

8. Further, the printing orders were placed on 05 September 2006 and 30 March 2007. The Operational Creditor has unequivocally admitted that no payment was received after 19 January 2007 and despite such admission, the Operational Creditor failed to take any appropriate action within the period of limitation.

Rejoinder by the Operational Creditor to the reply of the Corporate Debtor

9. Between the period January 2007 to February 2019, the Corporate Debtor had acknowledged the existence of debt. The same can be construed from the letters dated 16 July 2008, 18 October 2008, 27 February 2009, 12 June 2009, 03 June 2010, 15 June 2010, 07 April 2011, 18 May 2011, 25 August 2011, 26 June 2015, 20 April 2016, 12 May 2016 and 14 February 2019

Supplementary Affidavit by the Corporate Dated duly notarised on 12 March, 2020

10. The Corporate Debtor is a full-fledged going concern and is not insolvent in any manner. The Corporate Debtor is a profit-making entity fully owned by the Government of West Bengal. The Operational Debt as alleged by the Operational Creditor is neither due nor payable.

11. The Jharkhand Education Project Council ***('JEPC')*** floated a tender for printing and supplying of school texts books from class I to class VIII for the academic year 2006-2007.

12. The Operational Creditor and the Corporate Debtor both were interested in participating in the tender. Therefore, after negotiation, the parties formed a pre-bid alliance by executing a Memorandum of Understanding ***('MoU')*** dated 02 August, 2006. As per the said MoU, the Operational Creditor was to undertake printing and supply a predetermined number of text books to JEPC.

13. Subsequently, the Corporate Debtor submitted its bid and was emerged as the successful bidder. It is pertinent to mention that it was a consortium bid in the nature of joint venture projects between the Operational Creditor and the Corporate Debtor. JPEC was also aware of the arrangements.

14. The Operational Creditor used to print the textbooks as per the requirements of JEPC and would directly supply to JPEC. Payments to the Operational Creditor were to be released by the Corporate Debtor on pro rata basis when JEPC released payments to the Corporate Debtor. Any deduction by the JEPC would be accordingly adjusted from the payments release to the Operational Creditor.

15. Thereafter, JPEC again floated a tender for printing and the parties again formed a pre-bid alliance*vide* MoUdated 14 February 2007. This time also Corporate Debtor emerged as the successful bidder.

16. All the payments to the Operational Creditor were made as per MoUs entered between the parties as on 02 August, 2006 and 14 February, 2007. The claim of the Operational Creditor is baseless.

17. A sum of ₹1.23 crore is due and payable by JEPC to the Corporate Debtor. The Corporate Debtor does not oweany dues to the Operational Creditor and the same has been communicated *vide* letters dated 26 June 2015, 12 May 2016 and 14 February 2019 [page 31, 36 & 38 of the rejoinder].

Analysis & Findings

18. Heard the Ld. Counsel appearing on behalf of the Petitioner and Ld. Sr. Counsel appearing for the Corporate Debtor and perused the records.

19. Admittedly, from the Petition itself it is seen that the date of default is 19 January2007, admittedly again; no payment has been received by the Petitioner after 19 January 2007. The demand notice is dated 09 September 2019.

20. Further, from the rejoinder at page 21, which is a letter dated 30 June 2010, it is seen that only the amount pertaining to provision of Commercial Tax was being withheld in views of the pendency of assessment with Commercial Tax Authority for the sale in question. There is another letter at page 34 from the Corporate Debtor to the Operational Creditor stating that a sum of ₹89,93,152/- representing 59.6% of the total Commercial Tax of

₹1,44,00,571/- was paid on 30 July 2015 to the West Bengal Sales Tax Authority.

21. The Operational Creditor claims that this act is the triggering point for the date of default. However, we do not accept this contention for the reason that non-payment of the Commercial Tax withheld in terms of the Memorandum of Understanding as agreed between the parties cannot constitute an Operational Debt within the meaning of section 5(21) of the Code.

22. It is relevant to call attention to the '*Notice of Motion*' at page 'G', where the Operational Creditor has categorically prayed for an order of amount of ₹4,99,69,172/- (Rupees four crore ninety-nine lakh sixty-nine thousand one hundred seventy-two only).

23. These submissions by the Operational Creditor reflect its intention,*i.e.,* to seek recovery of its dues under the Code. Nevertheless, the rudimentary principle behind the enactment of the Code isto help the distressed Corporate Debtor to stand back on its feet, and not to make this Adjudicating Authority wear the cap of a recovery court. Further, the vakalatnama filed by the Operational Creditor is also not proper, though this is not fatal to the petition itself.

24. In view of the above circumstances, **CP (IB) No.1865/KB/2019** is ***dismissed.*** However, the petitioner is at liberty to pursue its remedies under any other law as may be available to it.

25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

26. File be consigned to record.

BALRAJ JOSHI

Digitally signed by BALRAJ JOSHI
Date: 2022.06.28 20:47:08 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V K

Digitally signed by Rajasekhar V K
DN: c=IN, o=Personal, title=0605, pseudonym=490a45134c9adf68ed2365dbf55b7504ee43a6491c9e489ac8d67bacffde65cc, postalCode=600018, st=Tamil Nadu, serialNumber=f05120aee9b7978ef74f18a3ac75eb59d05e036c92d850593b5c6edc8a8c7396, cn=Rajasekhar V K
Date: 2022.06.28 18:39:37 +05'30'
Adobe Acrobat Reader version: 2022.001.20142

Rajasekhar V.K.
Member (Judicial)

SA,LRA