IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP(IB) No.3269/MB/C-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

Equilink Capital Management Services Limited

[CIN:U67190MH2005PLC155161]

…Operational Creditor

v/s.

Kotak Urja Private Limited

[CIN:U40100MH1997PTC110591]

…Corporate Debtor

Order Delivered on:18.11.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Adv. Mangesh Sawant i/b Arun Panickar

For the Respondent: Ms. Neha M. Shah i/b Maniar Srivastava Associates

ORDER

Per: Rajasekhar V. K. Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Equilink Capital Management Services Limited** [CIN:U67190MH2005PLC155161], a Public Company limited by shares ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Kotak**

Urja Private Limited ("the Corporate Debtor"), [CIN:U40100MH1997PTC110591].

2. The Corporate Debtor is a company incorporated on 10.09.1997 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U40100MH1997PTC110591. Its registered office is at 311 Lotus House 33A, Vithaldas Thackersey Marg, New Marine Lines, Mumbai-400020. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 09.09.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.7,08,000/-(Rupees seven lakh eight thousand only) as principal amount including tax thereon at the rate of 18% per annum as per Invoice bearing No.2019/16/19 dated 15.05.2019 **(Annexure 'D'** to the petition at p.24). The date of default is 15.05.2019.

4. The case of the Operational Creditor is that on 30.11.2018, the Corporate Debtor entered into a Mandate of Authorisation & Consultancy Service in favour of Equilink Capital Management Services Limited to arrange and syndicate Equity facility and to discuss, deal with, negotiate all the financial terms and conditions for such syndication of Equity Participation, **(Annexure 'C'** to the petition at pp.16-23). The mandate provides for consideration inter alia in the form of one-time advisory fee equivalent to 8% of the total value of the transaction plus retainer fee of Rs.12,00,000/- in two tranches of Rs.6,00,000/- each.

5. The Operational Creditor stated that in terms of the said Mandate of Authorisation, an Invoice bearing No.2019/16/19 dated 15.05.2019

(Annexure 'D' to the petition at p.24) for Professional fee of Rs.7,08,000/- was raised.

6. The Operational Creditor further stated that a reminder letter dated 17.06.2019 sent to the Corporate Debtor for payment of Professional fees **(Annexure 'E'** to the petition at p.25). The Operational Creditor further stated that the Corporate Debtor replied to the said reminder letter vide its letter dated 21.06.2019 stating that a sum Rs.7,08,000/- was due and payable towards Professional Fees and acknowledged the liability **(Annexure 'F'** to the petition at p.26).

7. The Operational Creditor stated that they sent another letter dated 08.07.2019 to the Corporate Debtor for payment of dues owed to them **(Annexure 'G'** to the petition at p.27).

8. Thereafter, the Operational Creditor had served a Demand Notice in Form 3 dated 12.08.2019 to the Corporate Debtor (**Annexure 'H'** to the petition at p.28) in terms of section 8 of the IBC. The said Demand Notice has been duly acknowledged with signature and seal by the Corporate Debtor. The Corporate Debtor has not sent a reply to the Demand Notice.

9. The Petition is filed by Mr. Kishore K. Patki, of Equilink Capital Management Services Limited duly authorised by the Board Resolution dated 18.07.2019**(Annexure 'A'** to the petition at pp.12-13).

10. The Operational Creditor has also submitted the copy of statements of accounts issued by HDFC Bank Ltd., M.G. Road, Fort, Mumbai Branch confirming that there is no payment of the relevant unpaid operational debt by the Corporate Debtor during the period from 01.04.2019 to 29.08.2019 (**Annexure 'I'** to the petition at pp.29-53).

11. Ms. Neha M. Shah i/b M/S Maniar Srivastava Associates, Advocates, appeared for the Corporate Debtor and made her submission.

12. We have heard both the parties and perused the record.

13. The Corporate Debtor has filed a reply to the Petition dated 18.10.2019, that it admits the liability. Further it is on record vide letter dated 21.06.2019 stating that a sum of Rs.7,08,000/- was due and payable for the Professional Fees and acknowledged the liability and informed to the Operational Creditor about the financial difficulty and assuring that the debt will be repaid at the earliest.

14. It is noticed from the petition that-

   a) There is unequivocal admission of liability on the part of the Corporate Debtor in its letter dated 21.06.2019 (**Annexure 'F'** to the petition at p.26).
   b) There is no pre-existing dispute regarding the unpaid Operational Creditor of and the principal amount of Rs. 1,08,000/- as per invoice dated 15.05.2019, remains unpaid.
   c) The date of default is 15.05.2019; and
   d) The Corporate Debtor's affidavit in reply dated 18.10.2019 also affirms that it is not in a position to repay the debt. (para 4 of the affidavit in reply)

   Additionally, Mr. Pankaj Kotak, Director of the Corporate Debtor, was present during the hearing on 24.10.2019 and he admitted the liability.

15. The Operational Creditor has proposed the name of Mr. Devarajan Raman, Registration No. IBBI/IPA-02/IP-N00323/2017-18/10928, as Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules,

2016 along with the Certificate of Registration **(Annexure 'B'** to the petition at pp.14-15).

16. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

17. It is, accordingly, hereby ordered as follows: -

    (a) The petition bearing **CP(IB)No.3269/MB/C-IV/2019** filed by **Equilink Capital Management Services Limited,** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Kotak Urja Private Limited [CIN: U40100MH1997PTC110591],** the Corporate Debtor, is **admitted**.

    (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

        (i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium,-

(i) 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;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) 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.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr. Devarajan Raman, Registration No. IBBI/IPA-02/IP-N00323/2017-18/10928,** having address at 12 ICT, SQ, RA Kidwai Road, Matunga, Mumbai-400019, Email: Devarajan.raman@gmail.com, Contact No.:9820931554, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The fee payable to IRP or, as the case may be, the RP 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 IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one 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) The Registry is 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) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. 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.

Sd/-	**Sd/-**
RAVIKUMAR DURAISAMY **Member (Technical)**	**RAJASEKHAR V.K.** **Member (Judicial)**

18.11.2019