

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH,  
KOLKATA

CP(IB) No. 97 /KB/2020

In the matter of:

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

In the matter of:

**Jyoti Maheshwari**, carrying on business under name and style Unique Security Organisation, with its address for correspondence being Mr. Pijush Kanti Ghosal, Mr. Sumit Biswas, Advocates for the Applicant/ Operational Creditor, Room No. 909, 9<sup>th</sup> Floor, 4, Govt Place, North, Kolkata-700001 in the state of West Bengal.

.....Operational Creditor

-Versus-

**Rajprotim Agencies Private Limited**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No-U51109WB2003PTC096541 and its registered office at 49/89, Prince Goulam Mohammad Shah Road, Golf Gardens, Kolkata-700033 in the State of West Bengal.

.... Corporate Debtor

**Date of Hearing : 12<sup>th</sup> November, 2021**

**Date of pronouncing the order: 12<sup>th</sup> January, 2022**

**Coram:**

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

**Shri Balraj Joshi, Member(Technical)**

**Appearances (via video conferencing):**

- For the Operational Creditors:
1. Mr. Sumit Biswas, Advocate
  2. Mr. Rajashree Bhowmick, Advocate
  3. Mr. Pijush Kanti Ghoshal, Advocate
  4. Mr. Sarangam Chakraborty, Advocate

**ORDER**

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

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by Jyoti Maheshwari (sole proprietrix), carrying on business under name and style Unique Security Organisation (Operational Creditor), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Rajprotim Agencies Private Limited (“Corporate Debtor”).
3. The present petition was filed on 7<sup>th</sup> January 2020, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum arising out of the invoices raised by it for services rendered to the Corporate Debtor for an amount of Rs. 81,09,198/-(Rupees Eighty One Lakh Nine Thousand One Hundred and Ninety Eight only) inclusive of interest.
4. ***Submission of the learned Counsel for the Operational Creditor***

4.1 The case of the Operational Creditor is that the Operational Creditor being engaged in the business of providing security guards, provided the Corporate Debtor security personnel on a verbal requirements placed by the Corporate Debtor, for the purpose of guarding the warehouses maintained by the Corporate Debtor in various locations. In lieu of providing services to the Corporate Debtor, the Operational Creditor had raised several invoices to the Corporate Debtor, for the services rendered by it (Annexure ‘C’, Volume 1). The said invoices were duly received and accepted by the Corporate Debtor.

- 4.2 It is submitted that there was no protest or demur by the Corporate Debtor during the period the Operational Creditor was providing its services. The last payment that was received from the Corporate Debtor, against the invoices raised by the Operational Creditor, was made on 21.12.2017, after which no payment was made.
- 4.3 That the Corporate Debtor has a subsisting due of Rs. 81,09,198/- (Rupees Eighty One Lakh Nine Thousand One Hundred and Ninety Eight only) which includes the principal amount of Rs. 68,72,202/- (Rupees Sixty Eight Lakhs Seventy Two Thousand Two Hundred and Two only) along with an added interest 9% per annum. As the principal amount fell due, the operational creditor on 05.12.2019 issued a demand notice under section 8 of the said code demanding payment of the principal amount along with an added interest 9% per annum thereby totaling to Rs. 81,09,198/- . The said notice was received by the Corporate Debtor by speed post on 7<sup>th</sup> December, 2019.
- 4.4 It is submitted that the Corporate Debtor also did not reply to the said demand notice, nor did he make the payment of the due amount. The Corporate Debtor also did not raise any disputes with regard to the claim of the Operational Creditor in the said notice, as under Section 8 (2) (a) of the said code.
- 4.5 It is further submitted that the invoices raised by the Operational Creditor is due and payable since 21<sup>st</sup> December, 2017, after which no payment was made by the Corporate Debtor, against the invoices raised by the Operational Creditor. The Applicant /Operational Creditor has not received any such notice issued by the Corporate Debtor, relating to any existing dispute relating to the operational debt under section 9 (3) (b) of the said code.
- 5 The Corporate Debtor has waived its right to place a valid legal defence against the instant operational claim as the same has not filed any reply to the instant application, despite being given the opportunity by this Adjudicating Authority .

*Findings and Analysis*

- 6 Heard the learned Counsel for the Operational Creditor and perused the record.
- 7 The Operational Creditor has provided an affidavit under section 9(3)(b) on pages 18-19 of the Petition. The requisite bank statements as per requirements mentioned under section 9(3)(c) of the said code, which evidences that no such payment has been received by the applicant Operational Creditor has also been annexed with this instant application. In this regard, the application is complete.
- 8 A copy of the Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 as issued to the Corporate Debtor on 5<sup>th</sup> December, 2019 has been furnished. The said notice was received by the Corporate Debtor but the Corporate Debtor has chosen not to file a reply.

We have perused the petition and noticed that the invoices range between 15<sup>th</sup> December 2017 & 6<sup>th</sup> June 2019. It was a running and continuous account. Even as there was no supply order submitted per-se the fact that the payments have been made by the Corporate Debtor upto December 2017 is a clear acknowledgment of the services rendered. The last payment of Rs. 10,000,000/- (Rupees Ten Lakh Only) was received on 21<sup>st</sup> December, 2017. The interest provided in the invoice is @ 9% per annum. There is no defence to the Section 9 petition from the documents which have been placed on record. The petition is also within limitation.

- 9 In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time.
- 10 It is, accordingly, hereby ordered as follows:-
- a) The application bearing **CP (IB) No. 97/KB/2020** filed by Jyoti Maheshwari, carrying on business under name and style Unique Security Organisation (Operational Creditor), under section 9 of the Code read with rule 4(1) of the

Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Rajprotim Agencies Private Limited, CIN: U51109WB2003PTC096541, the Corporate Debtor, is **admitted**.

- b) There shall be a moratorium under section 14 of the IBC.
- c) 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.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Sandip Mitra**, registration number **IBBI/IPA-001/IP-P00497/2017-18/10885**, email: **sasoso@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. 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 Code.
- f) 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

- h) The Operational Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees three 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) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.
12. **CP (IB) No. 97/KB/2020** to come up on 20<sup>th</sup> April 2022 for filing the periodical report.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Rajasekhar V K**  
Digitally signed by Rajasekhar V K  
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pseudonym=490a45134c9adf68e4  
2365dbf55b7504ee43a6491c9e48  
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postalCode=600018, st=Tamil  
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cn=Rajasekhar V K  
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**Rajasekhar V.K.**  
Member (Judicial)

12.01.2022

SM[LRA]