NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

12. C.P.(IB)-1285(MB)/2021

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SMT. ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **14.07.2022**

NAME OF THE PARTIES: ADECCO INDIA PRIVATE LIMITED

Vs.

WELKIN IT SERVICES PRIVATE LIMITED.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Amiy Kumar, counsel appearing for the Operational Creditor present through virtual hearing. None appeared for the Corporate Debtor.

Heard the ex-parte arguments of the counsel appearing for the Operational Creditor and perused the record. The Corporate Debtor has already set ex-parte vide order dated 10.05.2022. The above company petition is **allowed**. Detail order follow:

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	H.V.SUBBA RAO
Member (Technical)	Member (Judicial)

SKS

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

C.P. No. 1285/IBC/MB/2021

Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w. section 9 of Insolvency and Bankruptcy Code, 2016)

In the matter of

M/s. ADECCO INDIA PRIVATE LIMITED

Having registered office at: Brigade Metropolis, 13th Floor, Summit B, ITPL Main Road, Garudachar Palya, Mahadevapura, Bengaluru, Karnataka - 560048

……**Operational Creditor**

Vs

M/s WELKIN IT SERVICES PRIVATE LIMITED

Having registered office at: Unit No. 102, 1st Floor, Pride Purple Accord, Above Vijay Sales, Baner Rd, Baner, Pune, Maharashtra-411045

…….Corporate Debtor

Order dated : 14.07.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Mr. Amiy Kumar, Advocate

1. This Company petition is filed by M/s *Adecco India Private Limited* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/S Welkin It Services Private Limited* (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 1,20,74,847.79/- (One Crore Twenty Lakhs Seventy-Four Thousand Eight Hundred and Forty-Seven Rupees and Sevety-Nine Paise Only) along with interest @ 18% per annum.

3. <u>Submissions of the Operational Creditor are as follows:</u>

i. The Corporate Debtor and Operational Creditor have formally entered into a Master Service Agreement dated 26.08.2019 (*hereinafter referred to as "MSA"*) for provisioning the staffing support services from the Operational Creditor to support the business operations of the Corporate Debtor from time to time. Resultantly, contract employees were deployed by the Operational Creditor as Associates to cater the business requirements of Corporate Debtor, for a period commencing from 1st August, 2019 to 31st July, 2020 whereby it was agreed that the Operational Creditor would provide the Corporate Debtor with staffing support services as per the request and requirements of the Corporate Debtor, in lieu whereof, and in consideration thereof, all the expenses that were incurred by the Operational Creditor to pay the salary, benefits and all expenses reimbursement to the Associates were to be passed on to the Corporate Debtor along with the agreed service fees.

ii. By virtue of the MSA, Operational Creditor was responsible for the spend/expenses towards all statutory payments including salary, and all benefits and reimbursement of other necessary expense to the Associates, and the Corporate Debtor shall pay as per the invoices submitted for reimbursement of the above spend/expenses incurred, on monthly basis and payable within 30 days from the date of invoice(s) so raised. It is pertinent to state here that MSA further provides for levying delayed interest @ 18% per annum on the unpaid amount. However, the Corporate Debtor failed to honour the same and did not make payment to Operational Creditor.

iii. That for the services rendered, invoices were raised by the Operational Creditor from the period 30.08.2019 to 31.12.2019. Vide email dated 22.10.2019 the Corporate Debtor has admitted the liability to pay and also committed to make entire payments by 25th November 2019 & 29th November, 2019.

iv. Vide email dated 6th November 2019, the Corporate Debtor has further admitted liability to release payment of Rs. 50 Lakhs on 15th November 2019 and another payment of Rs. 25 Lakhs by 25th November 2019. Thereafter, vide email dated 25th November 2019, the

Corporate Debtor has admitted the liability to pay and also committed to make partial payment of Rupees Seventy-Five Lakh (75,00,000/-) on November 28th 2019 and balance payment by 10th December 2019. However, no payments were made. Resultantly, Operational Creditor terminated the MSA on 27.11.2019.

v. That due to default on the part of Corporate Debtor to make the required payment in favour of the Operational Creditor, the Operational Creditor served upon Corporate Debtor, a Demand Notice in Form 3 of Insolvency and Bankruptcy Code, 2016 under Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016 dated 11.03.2020 and the same was delivered on 16.03.2020, despite that the Corporate Debtor has not only failed comply with the demands raised by the Operational Creditor vide Demand Notice, but also chose not to respond/reply despite proper service of the notice.

FINDINGS

1. Heard the counsel appearing for the Operational creditor and perused the material available on record. Since the Corporate Debtor did not appear before this Bench despite service of notice he was set ex-parte vide order dated 08.02.2022 and thereafter the matter was listed on board from time to time and finally listed today for hearing the ex-parte arguments.
2. Heard the counsel appearing for the Operational Creditor. None appeared for the Corporate Debtor. The counsel appearing for the Operational Creditor invited the attention

of this Bench to the Master Service Agreement dated 26.08.2019 entered into between the parties where under the Corporate Debtor agreed to pay the charges for the man power supplied by the Operational Creditor. The counsel appearing for the Operational Creditor also invited the attention of this Bench to the various invoices basing on which he filed the present Company Petition. The counsel appearing for the Operational Creditor also invited the attention of this Bench to the Demand Notice in Form-3 issued to the Corporate Debtor calling upon the Corporate Debtor to pay the amount due under the invoices and the relevant postal receipt and the track report evidencing Service of Demand Notice on the Corporate Debtor.

3. The counsel appearing for the Operational Creditor submitted that the subject matter of invoices pertains to the period from 29.09.2019 to 31.01.2020 and the above Company Petition being filed on 24.01.2022 is within limitation. The Operational Creditor further submits that the Corporate Debtor has neither sent any reply nor paid the amount called upon under the Demand Notice, and thus, he prayed for admission of the above Company Petition.
4. After hearing the submissions and upon perusing the material available on record, this bench is of the considered opinion that the above Company Petition satisfies all the necessary legal requirements for admission. Since the Corporate Debtor remained ex-parte, the claim of the Operational Creditor remained unchallenged. Accordingly, the above company petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -1285(MB)/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *M/S Welkin It Services Private Limited*.

b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Rajendra Kishanrao Joshi** Insolvency Professional, Registration No: IBBI/IPA-002/IP-N01205/2021-2022/14020 email Id rajendrajoshi_cs@yahoo.com Mob: 9822845260 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
ANURADHA SANJAY BHATIA	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**