

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT NO. III**

(IB)-77(ND)2019

**In the matter of**

An application under Section 9 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy. (Application to Adjudicating Authority Rules, 2016)

**In the matter of:**

**M/s Knight Frank India Pvt. Ltd.**

Having Registered Office at:  
Paville House, Near Twin Tower  
Off Veer Savarlar Marg, Prabhadevi,  
Mumbai-400025

**Creditor**

.....Operational

*Versus*

**RAF Stationers Private Limited**

Having Registered Office at:  
Room No. 2,68 Daryaganj,  
New Delhi-110002

**Debtor**

.....Corporate

Order pronounced on: 27.05.2022

***Coram:***

Sh. Bachu Venkat Balaram Das : Member (Judicial)

Sh. Virendra Kumar Gupta : Member (Technical)

**Appearances (via Video Conference)**

For Operational Creditor: *Sh. Arpan Behl & Zain Maqbool, Advocates.*

For Corporate Debtor: *Sh. Piyush Singh & Akshay Srivastava, Advocates*

**ORDER**

**Per: Virendra Kumar Gupta., Member (Technical)**

**Brief Facts Of The Case**

1. The present application has been filed by Operational Creditor, namely M/s Knight Frank India Pvt. Ltd. under Section 9 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "IBC, 2016") for initiation of Corporate



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Insolvency Resolution Process (hereinafter referred to as “CIRP”) against the Corporate Debtor, namely **RAF Stationers Private Limited**.

2. In support of its claim, the operational creditor has placed on record copy of the service agreement dated 08.05.2017 entered into between the Operational Creditor and the corporate debtor for providing services as a broker in regard to lease/ rent of commercial property as well the invoices raised for the service provided for which the payment were not made. In spite of requests by the operational creditor when the amount due was not paid, the operational creditor sent a demand notice dated 21<sup>st</sup> November, 2018 which was duly received by the corporate debtor and the same was replied by the corporate debtor on 04.12.2018 raise implausible grounds. Affidavit in compliance with Section 9(3)(b) and Section 9(3)(c) of IBC, 2016 has also been placed on record.

**Arguments on behalf of the Operational Creditor**

3. Ld. Counsel appearing on behalf of the Operational Creditor submitted pursuant to the engagement agreement dated 08.05.2017 entered into between the Operational Creditor and the corporate debtor, the operational creditor was appointed as a broker with regard to lease rent of commercial property bearing Plot No. B 30A, Sector 85, Noida, UP in which it was agreed between the parties that the Corporate Debtor will pay the Brokerage fee of three months and the amount will be due on signing the definitive agreement with the lessor or on handling over of the possession of premises, whichever is earlier.
4. It is further submitted that a sub-lease agreement dated 29<sup>th</sup> September 2017 was entered into between Corporate Debtor and IMI Norgren Herion Pvt Ltd. for the afore mentioned a property for the services to be provided by the Operational creditor and the rental was fixed as of Rs. 14,03,000/-.
5. It is further stated that subsequently, a tax invoice of Rs. 54,22,572/- dated 29.03.2018 was raised by the operational Creditor towards brokerage fees for lease of the property and the counsel for the operational creditor has relied upon the

various emails sent for processing of the invoice but the corporate debtor failed to make the requisite payment.

6. It is further submitted that the outstanding payment of Rs. 54,22,572/- is still due and no dispute has ever been raised by the corporate debtor prior to the delivery of demand notice under Sec 8 IBC, 2016.

**Arguments On Behalf of Corporate Debtor**

7. In reply to the Operational creditor's application under section 9 of IBC, 2016, the corporate debtor submits service agreement dated 8<sup>th</sup> may 2017 was neither signed nor stamped by the official seal of the Corporate Debtor as the Corporate Debtor has never authorized anyone to execute the said letter by a board resolution of the Corporate Debtor.
8. It is further submitted that the parties entered into the agreement on 08.05.2017 and the invoices were raised on 29.3.2018 i.e. after 11 months from the execution of the engagement agreement, further, it was submitted that the original invoices were never sent to the Corporate Debtor.

**Rejoinder filed by Operational Creditor (Applicant)**

9. In its rejoinder, the Learned Counsel for the Operational Creditor submitted that at the time when the parties entered into the agreement, Mr. Pradeep Arora and Mr. Amritt Lall Arora were on the Board of Directors of the Company and vide email dated 10.04.2017 the terms of the agreement were sent to them and the same was approved by Mr. Pradeep Arora but later, on 20.12.2018, he resigned and, therefore, he is at present not in charge of the affairs of the company.

**Findings & Conclusion**

10. We have considered the submissions made on behalf of both sides.
11. In this case, the very basis of the claim i.e. engagement agreement dated 8<sup>th</sup> May 2017 is being challenged on the ground that the person who signed the engagement agreement was not authorized to do so and the responsible person namely Mr.

Pradeep Arora and Mr. Amrit Lall Arora (Directors of the Corporate Debtor) was not aware of this engagement agreement. However, on the contrary, we find that in the very first mail, the person who is making the above claim is in the loop. Hence, on this basis alone, it cannot be said that there was no awareness of such negotiations and the signing of this agreement.

12. It is further noted that the person who signed the engagement agreement was holding the office of the director of the company. Further, the fact of rendering services is not in dispute. Thus, in our opinion, if we accept the claims on behalf of the Corporate Debtor then it will result in a situation where a Corporate Debtor was rendering services either for free or as a matter of charity or for no consideration. This cannot a situation, where the reputed firm is involved as an Operational Creditor which is one of the leading firms in providing such kind of services. Thus, we hold that there is no merit in the claims made on behalf of the Corporate Debtor and the claim so made does not fall in the category of pre-existing dispute.
13. We further hold in all eventualities, that the undisputed amount of liability would be more than the thresh-hold limit and prescribed u/s 4 of IBC, 2016.
14. The application is otherwise complete and in compliance with all other requirements of Section 8 & 9 of IBC, 2016 r/w Application to (Adjudicating Authority) Rules, 2016.
15. We have also considered the other submissions on behalf of the Corporate Debtor, however, we do not find any merit in those claims as these appear to be afterthoughts and just to avoid the liability to pay the consideration after availing the services. Further, no material has been brought on record to show that no services were rendered by the Operation Creditor. The name of the IRP has not been proposed. It is not mandatory also in case of an application filed u/s9 of IBC, 2016.

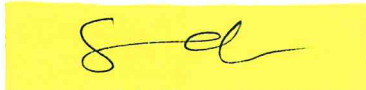
16. As the operational creditor has not proposed the name of IRP. Hence, a duly qualified Insolvency Professional registered with IBBI and eligible for the location of the corporate debtor may be appointed as IRP. Accordingly, we appoint Mr. Sudesh Kumar IBBI/IPA-001/IP-P-02525/2021-2022/13881 from the list of IBBI which is currently in operation for the jurisdiction of this Adjudicating Authority.
17. Accordingly, this application is admitted on the following terms and conditions:-

**ORDER**

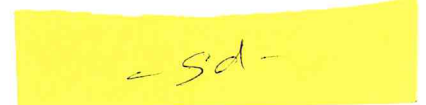
- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor **RAF Stationers Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) This Adjudicating Authority hereby appoint Sudesh Kumar IBBI/IPA-001/IP-P-02525/2021-2022/13881 to act as the IRP under Section 13(1)(c) of the Code.
- iv) The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - d)** The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
  - vi)** The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
  - vii)** The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - viii)** The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
  - ix)** Provided that where at any time during the Corporate Insolvency Resolution Process period if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
  - x)** The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

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- xi)** The Operational Creditor/Applicant is directed to deposit Rs.2,00,000/- (Rupees Two lakh only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to the approval of the CoC and after the constitution of the CoC.
- xii)** Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP, and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii)** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.




**Bachu Venkāt Balaram Das**  
Member (Judicial)



**Virendra Kumar Gupta**  
Member (Technical)

The order is pronounced Under Rule 151 of National Company Law Tribunal Rules, 2016.



**Madhu Narula**  
(Court Officer)