

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA
C.P (IB) No.1898/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

M/s Tech Smart, having its registered office at 324, DLF Tower B, Jasola Distrcit Centre, New Delhi- 110025,

... Operational Creditor

Versus

In the matter of:

S.V. Didit Solution Private Limited , a private Limited Company incorporate under the Companies Act, CIN: U72900WB2018PTC224625, N/35, Swami Vivekanand Road, Champandalimore, PO & PS- Barast, North-24 Parganas, Kolkata- 700124,

...Corporate Debtor

Date of hearing :25/07/2022

Order Pronounced on : 22/08/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Ranjan Kumar Kali, Adv.] For Operational Creditor
2. Mr. Diganta Das,Adv.

ORDER

Per: Rohit Kapoor, Member(Judicial)

1. The Court is convened by hybrid mode.
2. The instant petition has been filed under section 9 of the Insolvency and Bankruptcy by **M/s Tech Smart**, a corporate entity, through its proprietor Ms. Poonam Sabharwal, (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **S.V.Didit Solution Pvt. Ltd.** (CIN: U72900WB2018PTC224625) (hereinafter referred as the Corporate Debtor).
3. The total amount to be claimed in *default by the Operational Creditor is Rs.63,88,182/-(Rupees Sixty Three Lakhs Eighty-Eight Thousand One Hundred Eighty Two Only)* along with interest @ 18% per annum. The *Date of Default* is stated to be as *on 08th July, 2019*.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs. 10,00,000/- (Rupees Ten Lakh only) with paid up Capital as Rs. 1,00,000/- (Rupees One Lakh only).
5. Details of transactions are at page 11 of the application and to support these details documents placed on record have been mentioned in these paragraphs A-1 to A-8.
6. Before filing of this application under section 9 before this Adjudicating Authority on 21st October, 2019, a Notice dated **16th August, 2019** under section 8 of IBC was sent to the Corporate Debtor, which is at page 150 along with Tracking Report of notice having been served upon the Corporate Debtor and this notice has been replied by the Corporate Debtor vide reply dated **19th September, 2019** which is at page 170 of this application.
7. No reply affidavit has been filed by the Corporate Debtor. It is apparent from the record of proceedings, in response to the notice issued by this Adjudicating Authority, the Corporate Debtor appeared on 9th February,

2021 and was directed to file its reply and upload it on the e-filing portal. After that the matter was listed on 8th April, 2021, 6th August, 2021, 23rd November, 2021 and 20th December, 2021 and on 8th February, 2022, 25th March, 2022, 4th May, 2022 and 17th June, 2022. However, the Corporate Debtor did not appear despite another notice being sent by the Registry in terms of the order dated 6th August, 2021. The Operational Creditor has filed its affidavit of service on 5th February, 2022 along with paper publication of service. In view of repeated absence of the Corporate Debtor, it was set *ex-parte* and the matter was accordingly heard on 25th July, 2022.

Findings

8. From the reply of Corporate Debtor to notice dated 19th September, 2019, referred to above, it is apparent that the Corporate Debtor has not disputed the debt as a whole. It is stated in the reply only Rs. 24,59,672/- is due. It is further stated in Para 7 of this reply, there was a financial crisis of the Corporate Debtor Company and he is ready and willing to comply the terms and conditions of service Agreement dated 28th January, 2019.
9. It is also apparent from the record that the Operational Creditor raised invoices on 7th March, 2019, 16th March, 2019, and two invoices on 17th April, 2019 for the amounts mentioned therein which are at page 44 to 48. Page 49 is an email of the Corporate Debtor acknowledging the debt.
10. Suffice it say that there is debt due and there is a default on the part of the Corporate Debtor, from the record including the acknowledgement of debt by the Corporate Debtor. The Corporate Debtor has also failed to appear before this Adjudicating Authority on various dates fixed and also failed to file reply.
11. An Affidavit under section 9(3)(b) of the Code has also been filed by the Operational Creditor and the amount claimed is above the threshold limit of One Lakh applicable at the point of time of filing of this petition. Therefore, this petition is complete in all respects. The Demand Notice as mentioned was duly served by the Corporate Debtor and replied as well by the

Corporate Debtor.

12. In light of the above facts and circumstances, the present petition filed by the Financial Creditor is complete in all respects 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, stipulated at the relevant point of time.
13. Accordingly, it is, hereby ordered as follows:-
- (a) The application bearing CP (IB) No. 1898/KB/2019 filed by *Tech Smart*, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against *S.V. Didit Solution Pvt. Ltd.*, the Corporate Debtor, is *admitted*.
- (b) There shall be a moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016, and moratorium prohibits 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 Act, 2002 (54 of 2002);

- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (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) **Mrs. Rachna Anchalia**, registration number **IBBI/IPA-001/IP-P-01572/2019 -2020/12602**, email: **ca.rachna1978@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 the RP, as the case may be, 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 the RP, as the case may be, 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. No separate

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notice for cooperation by the suspended management should be expected.

- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Financial 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 Financial 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) Additionally, the Financial 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.
14. **CP (IB) No. 1898/KB/2019** to come up on **30.09.2022** for filing the periodical report
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The Order is pronounced on 22nd day of August, 2022

PJ.