S.No.108

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **18-02-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.39/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

Options Infinite Services Pvt Ltd ...**Operational Creditor**

Vs

Innerbeing Wellness Pvt Ltd ...**Corporate Debtor**

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

No representation for Operational Creditor as well as Corporate Debtor.

Orders in **CP(IB) No.39/HDB/2020** pronounced vide separate sheets. In the result, as the Operational Creditor has established debt as well as default, we allow this company petition and this petition is allowed. Accordingly, corporate debtor is put under Corporate Insolvency Resolution Process(CIRP) subject toconditions mentioned herein.

MEMBER (T) **MEMBER (J)**

Srinivas

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I

CP(IB) No. 39/9/HDB/2020

[U/s. 9 of I&B Code, 2016 r/w Rule 6 of I & B (AAA) Rules, 2016]

In the matter of:

M/s. Options Infinite Services Pvt. Ltd.
having its Corporate Office at
905-A, Galleria Tower, Phase-4
Gurugram, Haryana – 122009
Represented by its Director, Mr. Rajul Chaturvedi

.... Operational Creditor

Vs.

M/s. Inner Being Wellness Pvt. Ltd.
Having its Registered Office at
6-3-883/5, Flat No.201-203, 2nd Floor
Venkat Plaza, Punjagutta
Hyderabad – 500 082

... Corporate Debtor

Date of Order: 18.02.2022

Coram:

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Mr.K. Siddharth Rao, Advocate

For the Respondent : Mr. T. Mahesh Kumar, Advocate

Date of Order: 18.02.2022

PER : BENCH

ORDER

I. This is a Petition filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt of an amount of Rs.29,82,390/- (Rupees Twenty Nine Lakhs Eighty Two Thousand Three Hundred and Ninety only) which includes Principal of Rs.28,90,578/- and interest of Rs.91,812/- (interest @ 18% per annum from the date of default i.e. 27.06.2019 to till the date of Demand Notice.

II. The gist of the Operational Creditor's brief is -

i. M/s. Options Infinite Services Pvt. Ltd. hereinafter referred to as 'Petitioner/Operational Creditor' is engaged in the business of supplying sales representative services and managing sales and distribution networks for its clients. M/s. Inner Being Wellness Pvt. Ltd. hereinafter referred to as 'Respondent/Corporate Debtor', inter alia, is engaged in the business of developing and selling millet and quinoa-based wellness products. During the course of business, both the parties on 08.08.2018 entered into a Sales Representative Agreement (for short 'SRA'). According to the SRA, the Operational Creditor is required to develop and service a Sales Network for distribution of Corporate Debtor's products across several mutually agreed upon cities within India. A copy of the SRA is filed as Annexure-4 of the application. For the services rendered by the Operational Creditor, the Operational Creditor raised 56 invoices on various dates between 10.09.2018 to 03.10.2019, out of which, 42 initial invoices were paid by the Corporate Debtor without even a whisper of dispute with regard to the total invoiced amount. The remaining invoices were due for payment.

ii. According to the Operational Creditor, it has sent e-mails from time to time requesting to release the due amount. When the due amount was not paid by the Corporate Debtor after continuous follow up, got issued a Demand Notice dated 29.10.2019 in Form-3, demanding payment of the outstanding debt amount of Rs.29,82,390/- (Rupees Twenty-Nine Lakhs Eighty-Two Thousand Three Hundred and Ninety only) which includes Principal of Rs.28,90,578/- and interest of Rs.91,812/-. In response to the demand notice, the Corporate Debtor sent a reply letter dated 06.11.2019, *inter alia,* stating that –

a) The Demand Notice does not contain any company seal or authorization of the person issuing the Demand Notice;

b) All averments made in Demand Notice regarding liability to pay a sum of Rs.29,32,390/- are not correct;

c) There have been serious disputes regarding the performance of Operational Creditor's contractual obligations;

d) Clause 6.1 of the SRA stipulates that retainer fee shall be payable for all sales solicited by "sales representative pursuant to the terms of this Agreement". The targets to be met were detailed in Schedule 3 to the SRA. As the targets have not been met by the Operational Creditor, the question of making any retainer payments does not arise.

iii. A copy of the Reply notice is filed as Annexure-28 at page nos.115-123 of the application.

III. The Operational Creditor, while contending that the contents of the reply notice are false and untenable submitted that having been left with no further option, filed the instant Application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. It is stated that as the Corporate Debtor has not evinced any interest in filing the Counter despite long opportunity, this Adjudicating Authority, on 01.12.2021 forfeited its right to file the Counter. According to the Operational Creditor, in the absence of Counter by the Corporate Debtor the case of the Operational Creditor stands unrebutted.

IV. Indisputably, despite sufficient opportunity the Respondent did not choose to file counter in the Application, therefore this Tribunal forfeited the Respondent's opportunity to file the counter. No effort has been made by the Respondent to get the said order set aside. Even the reply notice sent did not contain any assertion of non-existence of debt. Therefore, the claim of the Operational Creditor remains unrebutted by the Respondent.

V. Be that as it may, this being an application under Section 9 of I&B Code, the Adjudicating Authority while examining an application under Section 9 of the Act will have to determine –

Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

VI. We have heard the Learned Counsels for both parties and perused the documents.

VII. As already stated, despite sufficient opportunity the Respondent did not choose to file counter in the application filed by the Petitioner or documents, if any, as such its opportunity stood forfeited, consequently, the pleas put forth by the Petitioner in this application remain unrebutted. We have perused the Application, and the annexures filed along with the application. Though the respondent replied to the demand notice of the Petitioner, nothing worth has been stated except merely denying the Operational Creditor's case. Existence of a dispute between the parties prior to the receipt of the demand notice or the record of the pendency of a suit or arbitration proceedings, if any, filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute, have not been pleaded. No correspondence pointing out any deficiencies in rendering services by the Operational Creditor under the SRA are filed by the Corporate Debtor.

VIII. We have also perused the SRA filed as Annexure-4 of the application. Pursuant, to the SRA, for the services rendered, the Operational Creditor has raised 56 invoices on various dates between 10.09.2018 to 03.10.2019, out of which, 42 initial invoices were paid by the Corporate Debtor without even a whisper of dispute. For non-payment of the amount under the remaining invoices the respondent failed to establish existence of any pre-existing dispute.

IX. Therefore, in view of the submissions made and upon considering the record, we are of the firm view that, the Petitioner has established existence of an "Operational Debt" as defined exceeding Rs.1 lakh, and that the operational debt claimed as due and payable by the Corporate Debtor has not been paid besides that there is no existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute. Hence, it is a fit case to admit the application for the purpose of initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

X. We accordingly admit this application.

XI. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from January 1, 2022 to June 30, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Ganapati Ram Appana, having Registration No. IBBI/IPA-002/IP-N00351/2017-2018/11001, e-mail:ganapati.ram1@gmail. comas Interim Resolution Professional. As per the IBBI website, his AFA is valid upto 01.09.2022. The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

XII. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions: -

i. The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

ii. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

iii. 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.

iv. 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.

v. That the order of moratorium shall have effect from the date 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, whichever is earlier.

vi. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.

vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

viii. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

18/02/2022

VEERA BRAHMA RAO AREKAPUDI	**Dr.N.V.RAMA KRISHNA BADARINATH**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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