



**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 879/IB/MB/2020

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule
6 of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rule 2016)

In the matter of

Premnarayan Baliarsingh

Flat No. 603 Vivant – E, Lodha
Slendora, Dhayanderpada,
Godbunder Road, Thane - 400615

..... Operational Creditor

Vs

M/s. Rao Edusolutions Pvt. Ltd.

Reg. Off.: A- 113, 1st Floor,
Boomerang, Chandivali, Near
Chandivali Studio, Andheri East,
Mumbai - 400072

..... Corporate Debtor

Order delivered on: 09.02.2023

Order pronounced on: 01.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Applicant: Mr. Pankaj G Jain, Advocate

Per: Kuldip Kumar Kareer, Member (Judicial)



ORDER

1. This Company Petition is filed by Premnarayan Baliarsingh (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s. Rao Edusolutions Pvt. Ltd. (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed a default to the extent of Rs. 23,85,097/-. This Petition has been filed by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "**Code**") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner was employed with the sister concern of the Respondent namely M/s. Rao IIT Academy ("**the institution**") as a faculty of mathematics vide Letter of Appointment on 30th March 2011, but later the Corporate Debtor decided to avail services of the Petitioner under the terms and conditions of a Service Agreement dated 02 April 2018, for the term of 3 years starting from 01 April 2017 to 31 March 2020, as a "Consultant of Mathematics", for teaching the students of the Corporate Debtor, studying at various centers across the country.
3. It is submitted that per the terms of the said Service Agreement, the Petitioner was to raise the bills on the Corporate Debtor for the monthly Professional fees of the previous month including the applicable GST as per the law by 10th / 11th of the next month. The Corporate Debtor was to pay the said amount after deducting the GST within 10 days of the bills raised i.e. by 18th to 20th of the next month. Thereafter, the Petitioner would pay the GST to the GST department, which would reflect on the website of GST department, enabling the Corporate Debtor to take the credit of GST, and then the Corporate Debtor would release the balance of the GST amount of the previous month's bill. This way the Corporate Debtor paid the bills regularly till March, 2018



4. The Petitioner submits that after March-2018, the bills were raised regularly as per the agreement. However, the Corporate Debtor after taking the credit of the GST amount did not pay the GST amount deducted to the Petitioner, thus leaving a balance of the bills unpaid. The bills from April, 2018 till September-2018, were partly unpaid to the extent of GST amounts and after September-2018, the payments of subsequent bills were delayed by one month, then two months and then four months.
5. The Petitioner after raising bill of September 2018, received the payment for same on 13-November-2018, for October 2018 on 7-February-2019, for November 2018 on March 2019, for December 2018 on 11-April-2019, for January-2019, part amount of Rs.2,70,000/- was paid on 4-May-2019 and balance Rs.75,000/- was paid 12-June-2019.
6. Due to the delay in payment by Corporate Debtor since August 2018, the Petitioner faced tremendous problem in meeting his financial liabilities towards loans and addressed an Email on 10 July 2019 to Vinay Kumar Managing Director of the Corporate Debtor about his mental pressure and his inability to take lectures and opted out of the Service Agreement via email dated 10 July 2019.
7. It is further submitted that even after making continuous reminders to the Managing Director and other officials of the Corporate Debtor, the Corporate Debtor failed to clear the outstanding dues. Thereafter, the Petitioner on 23 December 2019 sent Demand notice to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016. However, the Petitioner neither received any money nor any reply to the said demand notice. Hence this petition.



REPLY OF THE CORPORATE DEBTOR

8. The Corporate Debtor has filed its reply opposing the admission of the present petition. The Corporate Debtor has raised following contentions with regard to the Petition:
9. The Corporate Debtor submits that the Demand notice under Section 8(1) is not as per the format prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Hence deserve to be rejected under Section 9(5)(ii) I of the Code.
10. It is submitted that the Petitioner has breached the Terms of Service Agreement of 3 years as agreed between the Petitioner and the Corporate Debtor. As per the clause 8.1 of the Agreement, the consultant could not discontinue the engagement with the company before a minimum lock in period of three years and even after that, without giving a one-month prior notice in writing to the management.
11. It is submitted that as per the clause 15.1 of the Agreement, the Petitioner is liable for all taxes including Service Tax and Income Tax arising from the compensation and other amounts. However, the Petitioner has included the GST amount payable by him in the amount allegedly outstanding and due from the Corporate Debtor. Therefore, the amount claimed in default is incorrect.
12. It is further submitted that the Petitioner has violated the terms of the Agreement which can be summarized below:
 - The Petitioner has left in between the academic session which starts from first June of one year to the 30th April of the next year.
 - The Agreement could have been terminated by the Petitioner by giving one month notice period after minimum bond period of three years or by depositing salary in lieu thereof subject to the approval of the Management of the Corporate Debtor.



13. It is submitted that the Petition filed by the Petitioner is frivolous, vexatious and filed to extract monies from the Corporate Debtor, which the Petitioner is not entitled to. The Corporate Debtor reserves the right to claim compensation, penalties, legal costs from the Petitioner for the breach of the Agreement. Hence the Company Petition deserves to be dismissed.

FINDINGS

14. We have heard the counsel for the parties and gone through the records.

15. The Counsel for the Operational Creditor has argued that the operational debt of ₹23,85,097/- was outstanding against the Corporate Debtor on account of the services having been rendered by the Operational Creditor. The Counsel for the Operational Creditor has further argued that in the reply filed by the Corporate Debtor, the factum of non-payment of the claim has not been specifically denied. Therefore, the factum of the amount claimed being due against the Corporate Debtor is not disputed at all. Therefore, according to the Counsel for the Petitioner, a strong case for admission of petition under Section 9 is made out in this case.

16. On the contrary, the Counsel for the Corporate Debtor has argued that the petitioner has not come to the court with clean hands as he himself has committed violation of the terms and conditions of the contract between the parties. In this regard, the Counsel for the Corporate Debtor has referred to the Service Agreement dated 2nd April 2018 which provides that the Petitioner would serve the Corporate Debtor for a minimum period of 3 years and even after the lapse of said period of 3 years, the Petitioner would be required to give one month prior notice in writing before discontinuing his services with the Corporate Debtor, as so provided in clause 8.1 of the Service Agreement. The counsel for the Corporate Debtor has further referred to clause 8.2 of the said agreement



which further provides that the agreement could be terminated by the Operational Creditor by giving one month prior notice after the minimum bond period of 3 years or by depositing the salary in lieu thereof subject to the approval of the management of the company.

17. The Counsel for the Corporate Debtor has further contended that since the Petitioner has violated the terms and conditions of the service agreement and has not worked for a minimum period of 3 years, he has caused loss to the Corporate Debtor and is liable to pay compensation and damages to the Corporate Debtor. In the light of this, the Counsel for the Corporate Debtor has prayed for the dismissal of the petition.
18. We have considered the contentions raised by both parties and perused the records.
19. There is no dispute with regard to the fact that the Operational Creditor has been rendering services to the Corporate Debtor with effect from 1st April 2017 following execution of the service agreement dated 2nd April 2018. It is not disputed that as per the Service Agreement, the Operational Creditor was to render services for a minimum lock in period of 3 years and even after completion of 3 years, the Operational Creditor could terminate the contract by giving one month prior notice or by depositing salary in lieu thereof. It is also not disputed that the Corporate Debtor left the services before the inclusion of 3 years lock in period. In the given circumstances, it has to be seen as to whether despite the breach of contract committed by the Operational Creditor, the latter is still entitled to invoke the provisions of Section 9 of the Code on account of non-payment of service dues which are covered under the definition of operational debt.
20. In this regard, the stand taken up by the Operational Creditor that the Corporate Debtor stopped paying him in full from April 2018 onwards and the bills issued after April 2018 were only partly paid. The Operational Creditor has further claimed that the payment of September 2018 was



received on 13th November and that of October 2018 was received on 7th February. Similarly, payments of November 18 and December 18 were paid on March 19 and April 19. Operational Creditor has further placed on record Table-A showing the default in payment of the monthly dues by Operational Creditor which aggregates ₹25,76,035/-. Even if the interest amount of about Rs. 3.8 lakhs which is not included in the total amount due, is not taken into reckoning the outstanding dues comes to more than ₹20 lakhs.

21. We have gone through the reply in total filed by the Corporate Debtor. There is no denial in the reply of the fact that the amount claimed by the Operational Creditor was not outstanding. In addition to this, the Corporate Debtor has not placed on record any documents showing the exact amount of payments made by the Corporate Debtor to the Petitioner. It appears the Corporate Debtor has deliberately withheld the record of payment made to the Petitioner for which an adverse inference has to be drawn against it.
22. It is well settled that if a fact is not specifically denied in the reply, it is deemed to have been admitted by the opposite parties. Therefore, it can be safely held that the Corporate Debtor was in default in payment of more than Rs. 20 lakhs towards the Operational Creditor, as claimed in the petition.
23. The entire defense of the Corporate Debtor hinges upon the terms and conditions of the service agreement. It has been claimed that the Petitioner has breached the terms of the said contract. He left the services before the lock in period of 3 years and that too without any notice. However, in our considered view, the breach of contract has not been a part of the Petitioner alone. It is evident that the Corporate Debtor failed to pay the monthly fees to the Petitioner which was also a condition of the contract to be abided by the Corporate Debtor. Non-payment of monthly dues from time to time by the Corporate Debtor also amounted to breach of contract. Therefore, the Corporate Debtor cannot be heard harping that the



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Petitioner has committed breach of contract by not completing the mandatory period of three years and therefore, he is not entitled to invoke Section 9 petition.

24. Under the circumstances, we are of the considered view that if the Petitioner was not being paid as per the terms and conditions of the contract, the Operational Creditor was well within its right to leave the services even before lock in period. In addition to this, the Corporate Debtor have not assigned any valid reasons for non-payment of monthly fees to the Operational Creditor.
25. As a result of the above discussions, it is held that there has been an operational debt and default on the part of the Corporate Debtor and under the circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code. It is ordered accordingly in following terms:

ORDER

- a. The above Company Petition No. 310/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Rao Edusolutions Pvt. Ltd.**
- b. **Mr. Vikas Gopichand Khiyani**, having registration No. IBBI/IPA-001/IP-P-02738/2022-2023/14194, having email Id- cavikas.khiyani@gmail.com, having address - Flat no. 103, 1st Floor, Palm Acre CHS Ltd, Sunder Nagar, Kolekalyan Village, Kalina, Santacruz East, Mumbai Suburban, Maharashtra -400098, having Mobile Number- 9975001490, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.



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- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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.



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- 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.
- k. Accordingly, CP 879 of 2022 is **admitted**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)