



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - V

ITEM No. 1
IB/245/ND/2022

IN THE MATTER OF:

**M/s. Educomp Infrastructure &
School Management Limited**

.... Operational Creditor

VERSUS

M/s. Millenium Education Foundation

.... Corporate Debtor

Order under Section 9 of IBC, 2016.

Order pronounced on 04.07.2023

Coram:

**MR. MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide, separate sheets.

IB/245/ND/2022 **Stands admitted.**

Sd/-

**DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)**

Sd/-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V**

Company Petition No. (IB)-245(ND)/2022

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

In the matter of:

M/s. Educomp Infrastructure & School Management Limited

... Applicant/ Operational Creditor

VERSUS

M/s. Millenium Education Foundation

.... Respondents/ Corporate Debtor

CORAM:

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on:04.07.2023

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

The instant company application is filed on behalf of M/s. Educomp Infrastructure & School Management Limited ('applicant') through Chairman of Monitoring Committee, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 6 of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Millennium Education Foundation bearing CIN: U80904DL2014NPL269753 on the ground that the Corporate Debtor committed a default in payment of Rs.3,44,39,925/- .

2. The Corporate Debtor i.e., M/s. Millennium Education Foundation bearing CIN: U8090DL2014NPL269753 is incorporated on 01.08.2014 under the provisions of the Companies Act, 2013 having its registered office situated at Flat No. 633, T/F, LIG, Sector 18, Phase 2, Dwarka, New Delhi-110078. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor as provided in sub-section (1) of Section 60 of the Code.
3. Succinctly stated, facts of the case as mentioned in the Company Application, which are relevant to the issue in question and averred by the applicant are that the Applicant and the Corporate Debtor had entered into a Collaboration Agreement dated 20.10.2014 wherein it was agreed that the applicant being the owner of the Plot at the location in Sector 119, Noida, UP shall sub-license the logo and the brand 'The Millennium School' to the Corporate Debtor in consideration of the Brand License fees payable to the Applicant.



4. Further, the Applicant stated that in accordance with the covenants of the Collaboration Agreement, the Applicant had raised 5 (five) invoices upon the Corporate Debtor aggregating Rs.3,44,39,925/- i.e., (i) Invoice dated 14.11.2018 amounting Rs.34,27,440/- (ii) Invoice dated 07.03.2019 amounting Rs.30,09,881/- (iii) Invoice dated 09.08.2019 amounting Rs.52,35,061/- (iv) Invoice dated 23.06.2021 amounting Rs.41,81,011/- (v) Invoice dated 01.11.2021 amounting Rs.9,83,250/-. It was stated that the last part payment of Rs.9,83,250/- was received from the Corporate Debtor on 01.11.2021. Also, the Applicant had sent various payment reminders vide e-mails dated 16.10.2021, 03.11.2021, 25.11.2021 and 16.12.2021 to the Corporate Debtor.

5. The Applicant stated that the members of the Monitoring Committee of the Applicant in its 12th Meeting held on 09.11.2021 had decided to take necessary actions against the Corporate Debtor as available under the Insolvency and Bankruptcy Code, 2016. The Applicant had issued the statutory Demand Notice under Section 8(1) of the Code, 2016 to the Corporate Debtor on 31.12.2021 demanding the payment in respect of the unpaid operational debt of Rs.3,44,39,925/-. The Corporate Debtor had filed its reply dated 13.01.2022 to the statutory demand notice issued wherein the Corporate Debtor had raised untenable grounds and also invoked the arbitration clause as well unilaterally appointed a sole



arbitrator. Hence, the Applicant prays for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.

6. Per contra in the reply filed by the Corporate Debtor, the Corporate Debtor has espoused that the present application being filed by the Chairman of the Monitoring Committee on behalf of the Corporate Debtor is not maintainable as the chairman does not have proper authority to represent the corporate Debtor.
7. Further, the Corporate Debtor stated that the proceedings under Insolvency and Bankruptcy Code, 2016 are not maintainable against the Corporate Debtor as the Corporate Debtor is a company registered under Section 8 of the Companies Act, 2013 with a charitable objective of imparting and promoting education. It was further stated that the Section 8 Company by their very nature are registered in furtherance of charitable and /or social and/or cultural objectives and are bound to reapply profits (if any) to the said objective. Therefore, the legislature could not have intended to subject Section 8 Company to process under IBC as it is very unlikely that Section 8 companies would receive interest from Resolution Applicant given their nature and the same would tantamount to directly relegating such companies to liquidation which is not the objective of IBC.



8. The Corporate Debtor stated that the amount claimed by the Applicant under the present application seeks its genesis from the Clause 3.1 of the Collaboration Agreement whereby the Corporate Debtor had agreed to pay to the Applicant a certain percentage of the Tuition Fees as 'Brand License Fees'. However, the said 'Brand License Fees' as agreed to be paid by the Corporate Debtor to the Applicant under the said Collaboration Agreement was later found to be in contravention of the Central Board of Secondary Education's ('CBSE') Affiliation Bye Laws. Therefore, the present application filed for claiming the operational debt arising out of illegal Collaboration Agreement is not maintainable.

9. Moreover, the Corporate Debtor stated that there is a pre-existing dispute in respect of the amount claimed by the Applicant and the arbitration proceedings are pending before the sole arbitrator being appointed by the Hon'ble High Court vide order dated 13.05.2022 in the Arb. Petition 326/2022 filed by the Corporate Debtor under Section 11 of the Arbitration and Conciliation Act, 1996.

10. On behalf of the Applicant, a Rejoinder has been filed to the reply filed by the Corporate Debtor, wherein the submissions of the Corporate Debtor are rebutted. In respect of authority of the Chairman of Monitoring Committee of the Applicant to file the present application, it was submitted that the Adjudicating Authority, Chandigarh vide order dated 14.12.2020 had



recorded that Monitoring Committee shall supervise the management of affairs of Applicant and implementation of the Resolution Plan. Moreover, it was stated that with the unanimous approval of the Monitoring Committee, Mr. Ashwini Mehra, as the Chairman of the Monitoring Committee, was authorized to continue running the Applicant with respect to all operational matters as were in place during the CIRP of the Applicant.

11. It was further stated that the proceedings under the IBC are maintainable against the Companies incorporated with charitable objects and Not For Profit companies. Also, Section 3(8) of the IBC provides that a "corporate debtor" means a 'corporate person' who owes a debt to any person and as per Section 3(7) of the IBC provides that "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013. To support the contention, the applicant had placed reliance on coordinate Bench of **NCLT, Mumbai Judgement dated 10.06.2020 in C.P.(IB)/3976/2018; Bee Athletic Private Limited vs. DSK Shivajians Football Club Private Limited: and coordinate Bench NCLT, Kolkata Judgement dated 13.03.2020 in C.P. (IB)/2084/2019; Avani Oxford Owners Association versus Oxford Facilities Management.**

12. The Applicant reiterated that there is no pre-existing dispute between the parties and the Corporate Debtor vide its reply to Demand Notice dated 13.01.2022, which was received by the Applicant on 14.01.2022, had



unilaterally invoked arbitration and filed petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Delhi seeking appointment of an arbitrator, all post issuance of Demand Notice. Therefore, all the disputes sought to be engineered by the Corporate Debtor, if any are post issuance of Demand Notice sent under Section 8 of the IB Code, 2016 by the Applicant and therefore, have no sanctity under the domain of the Code, 2016.

13. Furthermore, the Applicant stated that Applicant/ EISML is not bound by any CBSE Bye laws, notification, circulars, and Orders. To support the contention, the applicant had placed reliance on the Hon'ble Supreme Court Judgement in **St. Mary's Educational institute vs. Rajendra Prasad Bhargava, [Civil Appeal no. 5789 of 2022]** wherein it was held that CBSE is not a statutory body, nor the regulations framed by it have any statutory force.
14. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.
15. Further, the Corporate Debtor had raised the question on the maintainability of the instant application on the technical ground that the



chairman of the Monitoring Committee does not have proper authority to represent the corporate Debtor.

16. From the records and submissions, we observe that the Applicant i.e., M/s. Educomp Infrastructure and School Management Limited had underwent the Corporate Insolvency Resolution Process ('CIRP') under Section 10 of the Code, 2016 vide the Ld. Adjudicating Authority, Chandigarh order dated 25.04.2018. The Resolution plan submitted by Mr. Pramjit Gandhi ('Successful Resolution Applicant') was approved by the Adjudicating Authority, Chandigarh Bench vide order dated 14.12.2020. The present Application under Section 9 of the Code, 2016 is originally filed through the chairman of the Monitoring Committee of the Corporate Debtor.
17. The order dated 14.12.2020 wherein the resolution plan of the applicant is approved records that, "the Monitoring Committee so constituted shall supervise the management of affairs of Corporate Debtor by the Resolution Professional and implementation of the Resolution Plan." Further, as per the minutes of the First Meeting of Monitoring Committee held on 21.12.2020, the Chairman of Monitoring Committee was authorized to continue running the Applicant /EIMSL with respect to all operational matters as were in place during the CIRP of the Applicant. The Monitoring Committee in its 14th Meeting held on 24.01.2022 had after discussions



and in continuation with 12th and 13th Monitoring Committee discussions had specifically resolved as follow:-

“All seven lenders stated that they were in favor of filing the application for initiation of CIRP against MEF, while the RA's representative stated he had no specific instructions on the matter.

The lenders noted the outstanding defaults by MEF and significant amounts pending at their end which exceeded IBC threshold.

The MC further noted that this matter had been discussed in earlier MC meetings as well and demand notices were issued pursuant thereto. As Chairman of MC, Mr. Mehra has the authority to take action against defaulters to safeguard the rights of the CD both under the plan as well as earlier MC Minutes.”

18. Accordingly, on a co-joint reading of the minutes of meeting of Monitoring Committed, we are of the view that the chairman of the monitoring committee has proper authority to represent the corporate Debtor in the present application. Moreover, the Applicant had filed an application (I.A./2326/2023) wherein it was submitted that the Resolution Plan of the Corporate Debtor has been fully implemented on 31.03.2023 and accordingly prayed for substitution of Mr. Pramjit Gandhi (‘Successful Resolution Applicant’), being the director of newly constituted Board of Directors of the Applicant as the authorized representative of the applicant in the place of the chairman of the Monitoring Committee. This Adjudicating Authority vide order dated 27.04.2023 had allowed the said



application for substitution of the Authorized Representative. Therefore, the technical ground taken by the corporate Debtor is not sustainable.

19. Again the contention of the Corporate Debtor that the proceedings under Insolvency and Bankruptcy Code, 2016 are not maintainable against the Corporate Debtor as the Corporate Debtor is a company registered under Section 8 of the Companies Act, 2013 is to be examined in the light of the provisions of the IBC, 2016 and Regulations. On a reading of Section 3(7) of the Insolvency and Bankruptcy Code, 2016 that defines a “corporate person”, it is amply clear that the definition under Section 3(7) inter alia, includes a “company” under Section 2(20) of Companies Act’ 2013. Section 2(20) of the Companies Act, 2013 defines ‘Company’ as a company incorporated under the Companies Act, 2013 or under any previous company law.

20. Further, Section 2(a) of the IB Code, 2016 provides that the provisions of the Code, 2016 shall apply to, “any company incorporated under the Companies Act 2013 (18 of 2013) or under any previous company law for the applicability of the Code, 2016”. Accordingly, the Insolvency and Bankruptcy Code, 2016 does not create a difference based on the objectives or nature of the company. Thus, clearly, Section 8 Companies are also covered under the Code, 2016 as a ‘Corporate Person’ and therefore,



Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor herein.

21. The Corporate Debtor had raised the contention of pre-existing dispute on the ground that the Sole Arbitrator was appointed and arbitration proceedings are pending. Considering the series of events, it is observed that the statutory Demand Notice under Section 8 of IB Code, 2016 was issued on 31.12.2021 and was duly replied by the Corporate Debtor on 13.01.2022 whereas, the notice invoking the arbitration is dated 28.01.2022, the petition by Corporate Debtor was filed on 11.03.2022 before the Hon'ble High Court of Delhi under Section 11 of the Arbitration and Conciliation Act, 1996. Thus, the arbitration was invoked much after the issuance of the Demand Notice dated 31.12.2021 to the Corporate Debtor.

22. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353”**, the Hon'ble Supreme Court held that the 'existence of the dispute' and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be and observed:

“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on nonpayment of a debt, any part whereof has become due and payable and has not been repaid),



deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). **Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.”**

23. From the aforesaid decision, it is clear that the existence of ‘Dispute’ must be ‘pre-existing’ i.e. it must exist before the receipt of the demand notice. If it comes to the notice of the Adjudicating Authority that the ‘operational debt’ is exceeding the pecuniary threshold limit of Rs. 1 Crore and the Application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a ‘Dispute’ between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid ‘operational debt’, the Application under Section 9 cannot be rejected and is required to be admitted.



24. Further, the corporate debtor had failed to bring on record any material to indicate that there are pre-existing disputes in existence prior to the issuance of demand notice under Section 8 of the Code, 2016. Moreover, on a perusal of the corporate debtor's reply dated 13.01.2022, we observe that the corporate debtor had not raised any dispute in terms of the essential ingredients of Section 8(2) of the Code, 2016 and the corporate debtor had specifically raised issue with regard to the validity of the Collaboration Agreement dated 20.10.2014. When an Agreement is executed by both the parties with their consent, thereafter one party cannot be allowed to say that it was not a valid agreement in terms of CBSE Byelaws and by itself cannot be termed as 'dispute'.

25. Be that as it may, without going into the merits of the validity of the Collaboration Agreement vis-a- vis CBSE Byelaws, we are of the considered view that the use of the logo and Brand 'The Millennium School' being sub-licensed by the Applicant to the Corporate Debtor has been admitted by the Corporate Debtor and therefore, the said act on the part of the Corporate Debtor tantamount to waiver of the violations if any with regard to the CBSE byelaws. The Hon'ble Supreme Court in Judgement '**St. Mary's Educational institute vs. Rajendra Prasad Bhargava, [Civil Appeal no. 5789 of 2022]**' have categorically laid down that CBSE is only a Society registered under the Societies Registration Act, 1860 and not a statutory body. The Hon'ble Supreme Court has further stated that, CBSE



Bye laws cannot have any statutory force. Therefore, the collaboration agreement entered by the parties (if it is not in conformity with CBSE Regulation) cannot be termed as an 'illegal contract' as contended by the Corporate Debtor.

26. Furthermore, the outstanding invoices to the tune of Rs.3,44,39,925/- itself are admitted on the part of the corporate debtor and therefore, the Corporate Debtor is estopped from escaping its liability towards the outstanding operational debt.

27. Thus, having regard to the conspectus of facts of the present case and the judgments cited (supra), this Adjudicating Authority is of the considered view that the Corporate Debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5)(i) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)- 245/(ND)/2022) stands admitted and the CIRP is hereby commenced against M/s. Millenium Education Foundation.**

28. The Applicant in Part-III of the application has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoints Mr. Hans Raj Chugh having Registration Number IBBI/IPA-001/IP-P00698/2017-2018/11182 and e-mail id: hansrajchugh@ashm.in



as an Interim Resolution Professional (IRP) for corporate debtor from the Panel of Insolvency Professionals as forwarded by IBBI. The appointed IRP is directed to submit his consent in Form-2, valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.

29. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Hans Raj Chugh to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional as per the provisions of the Code and Regulations.

30. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) 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;



(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;

(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.

(e)The IB Code 2016 also prohibits Suspension or termination of any 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, 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.

31.It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

32. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation



under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

33. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
34. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
35. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **C.P.(IB)/245/2022 stands admitted.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. MAHENDRA KHANDELWAL)
MEMBER (J)**