

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT II
KOLKATA**

CP (IB) No. 246/KB/2021

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Value Ideas Investment Services Private Limited
[CIN: U65999MH2010PTC200264]

...Operational Creditor

Versus

Oneview Corporate Advisors Private Limited
[CIN: U74999WB1976PTC030545]

...Corporate Debtor

Order reserved on: 05 August 2022

Order pronounced on: 01 November 2022

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Operational Creditor : Ms. Dipali Patel, Advocate

Mr. Moiz Rafique, Advocate

For the Corporate Debtor : Mr. Sailesh Mishra, Advocate

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Value Ideas Investment Services Private Limited (“Operational Creditor”), a company incorporated under the provisions of the Companies Act, 1956 and represented by its Director, Mr. Manish Kumar Bansal, seeking to initiate Corporate

Insolvency Resolution Process (“CIRP”) against Oneview Corporate Advisors Private Limited formerly known as Guinness Corporate Advisors Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a company limited by shares incorporated on 24 May 1976, having CIN: U74999WB1976PTC030545, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 18, Deshapriya Park Road, 2nd Floor, Kolkata- 700026, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 13 August 2021 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 1,17,36,575/- (Rupees One Crore Seventeen Lakh Thirty Six Thousand Five Hundred and Seventy Five only).
5. The learned Counsel for the Operational Creditor states as follows: -
 - a. The Operational Creditor is in the business of consulting services and the Operational Creditor and Corporate Debtor were in business since mid-2015 and the Corporate Debtor had agreed to pay 35% of the total fees received from the customers after third party expenses on all IPO’s initiated/closed or value added by the Operational Creditor.
 - b. The Corporate Debtor started to delay payments from March 2018 but emails were sent with a promises of Payment. It was *vide* email dated 30 January 2019 wherein the Corporate Debtor stated that there was no agreement and no amount pending.
 - c. *Vide* emails dated 14 September 2018, 17 September 2018 and 01 November 2018, the Corporate Debtor has confirmed the

corporate clients assigned to the Corporate Debtor as well as the email correspondences dated 26 October 2018 and 17 December 2018.

- d. Invoices were raised to the Corporate Debtor for the FY 2017-18 and FY 2018-19 which are outstanding. The last payment was made on 15 October 2018.
- e. A demand notice under section 8 of the Code was issued on 29 May 2021 and was received by the Corporate Debtor 05 June 2021.
- f. The Corporate Debtor replied to the Demand Notice dated 09 June 2021 and was received on 22 June 2021.
- g. The Corporate Debtor in its Affidavit-in-reply dated 20 December 2021 has stated that the amount **is undisputed [check]** by the Corporate Debtor.
- h. The transactions are towards Professional and Business Development Consultancy Services rendered by the Operational Creditor to the Corporate Debtor.
- i. On the assertion of the Corporate Debtor that the petition is not maintainable as it is a financial service provider, the learned Counsel placed reliance on *Apeejay Trust v. Aviva Life Insurance Co. India Ltd.*¹ (paragraphs 11 and 12) wherein the learned NCLT, New Delhi Bench held that

“...the Corporate Debtor cannot use the provisions of Section 3 of the Insolvency and Bankruptcy Code, 2016 as a blanket cover

¹ (2019) 217 CompCas 427

to claim exclusion from IBC Proceedings on the ground that it is a financial service provider.”

- j. The learned Counsel submitted that the learned NCLT, New Delhi Bench admitted an application for initiation of CIRP against a Corporate Debtor which is a Financial Service Provider (“FSP”) appears to be that the intention of the legislature in drafting the Code was to only exempt or keep out claims against FSPs so long as the admitted debt was in relation to or arising out of the Financial Services as defined in the Code being provided by the FSPs. The Operational Debt in question is nowhere related to any kind of Financial Service as mentioned in the Code. Hence, the present Company Petition is well within the ambit of the Code.
 - k. The Corporate Debtor is a Merchant Banker authorised by the Security Exchange Board of India (“SEBI”) as per section 3(18) of the Code however it is relevant to note here that the order of SEBI dated 31 July 2019 restrained the Corporate Debtor herein and its members from accessing the securities for “misappropriating client securities, falsifying books of accounts, non-settlement of funds of clients etc.” amounting to Rs.212.17Crore.
 - l. SEBI on 06 May 2021 has declared the Corporate Debtor as a “Defaulter” .
6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:
- a. Copies of invoices dated 30 March 2018 to 20 March 2019; annexed to the petition and marked as Annexure D (Colly.) at pages 59-64

- b. Copies of email correspondences; annexed to the petition and marked as Annexure 'E' at pages 65, Annexure G at Page 71, Annexure H (Colly.) at Pages 72-112.
7. The Corporate Debtor filed its reply affidavit affirmed on 20 December 2021 wherein it states as follows:
 - a. The Corporate Debtor is a financial service provider as defined under section 3 (17) of the said code dealing in professional services (as defined under section 3 (16) of the said code), related to financial product being securities (as defined under section 3 (15) of the said code), as having been engaged in business of providing financial services in terms of authorisation issued and registration granted by a financial sector regulator, being the SEBI.
 - b. It is submitted by the learned Counsel that the CIRP of a financial service provider is governed by "Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019" and the same came in effect from 15th November, 2019. The learned Counsel referred to Rule 5 (1)(a) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 wherein it has been stated that no CIRP shall be initiated against a FSP which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. The present Company Petition has not

been filed by the appropriate regulator, hence the same is liable to be dismissed.

- c. The Corporate Advisors Private Limited in the present Company Petition does not come within the definition of Corporate Debtor as defined under the Code and the judgment relied on by the Operational Creditor is not applicable in the present Company Petition as it is not binding on this Adjudicating Authority and secondly, the order was passed before the implementation of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. Thirdly, the order is contrary to the intent of the statute.
- d. In support of the above contention, the learned Counsel placed reliance on *Randhiraj Thakur v. Jindal Saxena Financial Services Private Limited and Ors.*² and *The Capital Court v. PHC Holding Private Limited.*³
- e. The application allegedly filed under section 9 of the said Code, does not comply the mandatory provision of section 9(3) of the Code. In the present case the alleged claim were all along, disputed and the said dispute were also agreed by the Operational Creditor in several emails, but no affidavit to that effect was filed by the Operational Creditor.
- f. Notice of dispute has been duly received by the operational creditor, and no proof of the alleged services provided to the Respondent or entitlement of the alleged claim has been referred or annexed to the said application.

² Company Appeal (AT)(Ins.) Nos. 32 & 50 of 2018

³ Company Appeal (AT) (Ins.) No. 26 of 2019

- g. In the reply of the said alleged demand notice it was emphatically denied that the particulars of alleged unpaid operational debt exists.
- h. It is most humbly submitted that the date of default, and the computation of default as allegedly mentioned in the said application are baseless and without any supporting evidence/documents/correspondences. Rather the correspondences made between the parties would show that no payment is due and payable to the applicant herein.
- i. It is most humbly submitted that, a calculation was worked out with the Applicant herein on or about in 1st week of February 2019, stating that the amount being receivable from the Financial Creditor to the Respondent. In the said work sheet the alleged claim made in attached Proforma invoices no. GCAPL/01, GCAPL/02, GCAPL/03 was dealt with as settled/paid, and as far as the claim made in the alleged Proforma invoice no. GCAPL/04, GCAPL/05 & GCAPL/06 is concerned the same has been dealt as follows
- I. Proforma invoice no. GCAPL/04 refers to a mandate of “Heranba Industries”, but the fact remains that the said mandate was never materialized / executed by the Respondent and as such any entitlement of the applicant cannot and does not arise.
- II. Proforma invoice no. GCAPL/05 relates to the mandates which are not complete and hence the question of claiming any demand for the same by the applicant does not arise.

- III. Proforma invoice no. GCAPL/06 relates to the market making (which can only be done by member of stock exchange), but the fact remains that the respondent company is not a member of stock exchange and as such not entitled to market making. Hence, the question of any entitlement for the said alleged invoice cannot and does not arise. Accordingly it can safely be construed that the claim made in the said application is baseless, totally false and without any kind of genuineness, and is liable to be dismissed with exemplary costs.
- j. It is most pertinent to mention that after such discussion of receivables by the respondent from the applicant, the applicant was satisfied with the same and never claimed the said alleged dues (as claimed herein). It is pertinent to mention that by an email dated 26 January 2019 the applicant herein drafted a letter to be issued by the respondent and asked the respondent to type the same on the letterhead to which the respondent has never agreed, thereafter by an email dated 30.01.2019, the respondent very specifically denied such alleged claim made by the applicant, and stated that “I am not aware of any such arrangements or commitments made from me or GCAPL”. After the said receipt of the said mail the said applicant never demanded such alleged amount which can also be clear from further email correspondences like 8 February 2020, when the applicant made communication for non-receipt of previous certificate/credit but never demanded the alleged amount claimed in the instant application. It would also be pertinent to mention that in emails dated 7 April 2020 to 27 June 2020 the applicant is making several correspondences with the respondent of a

different nature and different aspect of business without demanding any claim as made in the instant application.

- k. The respondent had all along denied the invoices as alleged by the applicant nor has ever been accepted, sealed or signed by the respondents as has been falsely alleged in the application, nor the applicant has refer to any documents/evidence for veracity of the same, as such there exists no valid contract between the respondent and the applicant, nor there exists any unpaid invoices.

Analysis and Findings

8. We have heard the learned Counsel for the Operational Creditor and the learned Counsel appearing for the Corporate Debtor.
9. The main issue to be considered is whether this petition is maintainable under section 9 of the Code. It is pertinent to note that the Corporate Debtor is a Financial Service Provider⁴ as is evident from the Registration Certificate that has been filed. The Hon'ble NCLAT has reiterated time and again and had taken the same stand which is reflected in *Saumil A Bhavnagri v. Nimit Builders Private Limited and Ors.*, **MANU/NL/0557/2019** that the definition of Corporate Person in Section 3(7) of IBC specifically provides that it shall not include "any financial service provider.
10. The Corporate Debtor is a Financial Service Provider and hence, in view of the above, we reject C.P. (IB) No. 246/KB/2021. Needless to say the Operational Creditor is at liberty to resort to other remedies that may be available to it under other law.

⁴ Annexure A at Page 5 of the Affidavit in reply

11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 01st day of November 2022.