IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) No.34/ALD/2021

In the matter of
An application under Section 9 of Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

And

In the matter of:
Experis IT Private limited
Having Registered Office at:
J -3 Block GP,
Sector V, Salt Lake, Kolkata
West Bengal- 700091 **…Operational Creditor**

Versus

Ridge Links Private Limited
Having Registered Office at :
Plot No. B-27, 1st Floor, sector 65, Noida,
Gautam Budh Nagar,
Uttar Pradesh-201301 **…………Corporate Debtor**

Order reserved on 25.04.2022

Order pronounced on :23.05.2022

Coram :

Sh. Rajasekhar V.K.	:	Member (Judicial)
Sh. Virendra Kumar Gupta	:	Member (Technical)

Appearances (via Video Conference)

For Operational Creditor	:	*Sh. Shubham Agarwal, Adv.* *Sh. Aditya Pandey, Adv*
For Corporate Debtor	:	*Ex-parte v.o.d 14th March, 2022*

O R D E R

Per: ***Sh. Virendra Kumar Gupta, Member (Technical)***

1. The present application has been filed by Operational Creditor, namely ***Expreris IT Private Limited,*** under section 9 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "IBC, 2016") for initiation of Corporate

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Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor, namely, ***Ridge Links Private Limited***.

2. In this application, the right to file the reply has been close *vide* order dated 03.01.2022 and the corporate debtor had been set *ex parte vide* order dated 14.03.2022. Thus, matter was heard *ex parte* against the corporate debtor. Hence, this matter was reserved after hearing the arguments of Ld. Counsel appearing on behalf of Operational Creditor and material on record.

3. The facts, in brief, are that the operational creditor and the corporate debtor entered into agreement on 01.11.2017 for providing consultation services and as per the agreement, the corporate debtor was liable to make payments within the period of 30 days after the receipt of invoice. The operational Creditor has supplied services to the corporate debtor worth ₹1,43,98,354/-, out of which part payment of ₹38,07,912/- was made and a sum of ₹1,05,90,442/- is still outstanding against the corporate debtor. In spite of requests the amount due was not paid, hence, the operational creditor sent a demand notice dated 26.02.2020, which was duly received by the corporate debtor and the Corporate Debtor replied to the demand notice on 09.03.2020 taking the plea that in the agreement entered into between the parties, it has been stated that, in case, any dispute arises between the parties, the same shall be referred for arbitration and stated that the corporate debtor have not raised any dispute with respect to the existence of amount of debt due. Affidavit in compliance of Section 9(3)(b) of IBC, 2016 has also been placed on record.

4. It is further submitted that the first unpaid invoice by the corporate debtor towards service provided by the Operational Creditor is delivered on 28.08.2018 and the debt fell due on 28.09.2018 and the part payments made on various dates establishes the acknowledgement of debt on behalf of the corporate debtor.

5. It is further stated that there is no dispute ever raised between the Operational creditor and the corporate debtor regarding the payment of the outstanding dues as claimed by the Operational Creditor. Existence of arbitration clause is no bar for initiating insolvency proceedings, where debt is admitted.

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6. We have considered the submissions made on behalf of the operational creditor and material on record.

7. It is seen from the records that notice of default under Section 8 has been delivered and affidavit under Section 9(3)(b) of IBC has also been filed and debt fell due on 08.09.2017 and this application has been filed on 12.10.2018 so the application is found well within the limitation.

8. The contention raised in reply to the demand notice by the corporate debtor with regard to the invocation of the Arbitration Clause in the agreement cannot be accepted. Initiating an Arbitration proceeding is entirely dependent on parties, the said clause can be invoked at the discretion of both the parties and as per the arbitration agreement the corporate debtor wanted to invoke arbitration clause, however, there is no condition in IBC that if arbitration clause is there then without having recourse to arbitration, no proceeding can be imitated under this Code thus, there is no embargo on the Operational creditor to initiate the Arbitration proceeding, or for that matter, to file any application in other fora. Therefore, we reject the contention made by the corporate debtor.

9. It is noted that the application filed under section 9 is complete and complies with the requirements of the relevant provisions of IBC, 2016 read with Rules and Regulations made thereunder. The outstanding amount is more than the threshold limit of one crore rupees. The application is also well within the limitation. There does not exist any dispute within the meaning of provisions of Section 8 & 9 of IBC, 2016.

10. The Operational Creditor has not proposed the name of any person to function as Interim Resolution Professional. Therefore, this Bench will appoint a person from the panel of names made available to it by the Insolvency & Bankruptcy Board of India.

11. Thus, the application, on the face of it, is liable to be admitted.

12. Accordingly, this application is admitted on the following terms and conditions:

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i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor ***M/s Ridge Links Private Limited*** is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) This Adjudicating Authority hereby appoint Mr. Rajeev Ranjan Singh [RegNo. IBBI/IPA-002/IP-N00707/2018-2019/12418],having address at Flat No.14049, 16 Avenue,Gaur City-2 ,Greater Noida West ,Gautam Buddha Nagar,Uttar Pradesh ,201310 email: rajeevranjan6476@gmail.com to act as the IRP under Section 13(1)(c) of the Code.

iv) The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following :-

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 (54 of 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.

vi) The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vii) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

viii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

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ix) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

13. The Operational Creditor/Applicant is directed to deposit Rs.2,00,000**/-** (Rupees Two lakh only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

14. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.

15. List the matter on 25.07.2022 for filing of the progress report.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Rajasekhar V K — Digitally signed by Rajasekhar V K Date: 2022.05.23 18:39:31 +05'30'

Virendra Kumar Gupta
Member (Technical)

Rajasekhar V.K.
Member (Judicial)