

FREE OF COST COPY

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 582(ND)/2020

IN THE MATTER OF:

SPARTA GLOBAL PROJECTS PVT. LTD.
B -6, SECTOR 44
NOIDA
GAUTAM BUDDHA NAGAR
UTTAR PRADESH - 201301

...OPERATIONAL CREDITOR

VERSUS

KUGD SERVICES PRIVATE LIMITED
7, KHULLAR FARMS
MANDI ROAD
MEHRAULI
NEW DELHI - 110030

.....CORPORATE DEBTOR

SECTION: U/S 9 OF IBC, 2016

Order Delivered on: 13.10.2022

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Applicant/Operational Creditor: Adv. Arjun Agarwal,
Adv. Rajiv Virmani, Adv. Swati Bhardwaj

For the Respondent/Corporate Debtor: None Present

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Arjun Agarwal
19/10/2022

ORDER

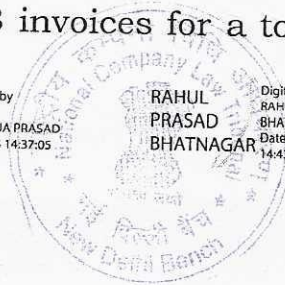
PER SHRI P.S.N. PRASAD , MEMBER (JUDICIAL)

1. The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.
2. The facts mentioned in the application in brief are as follows: -
 - i. That the Operational Creditor was approached by the Corporate Debtor for availing services related to manpower supply. Pursuant to the same, the parties entered into a service agreement on 24.11.2016.
 - ii. That as per the service agreement, the Operational Creditor would provide the service and accordingly raise the invoices to the Corporate Debtor. Furthermore, Annexure E ('Schedule of Fee') of the Service Agreement stated that payment has to be provided within 30 days from the date of invoice and in case of a delay beyond 30 days from the date of the invoice, the Corporate Debtor would be liable to pay an interest amount calculated at 18% per annum.
 - iii. That the Operational Creditor provided services between the months of January, 2017 to January, 2018 and raised 13 invoices for a total amount of Rs.

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96,78,791/-. From May, 2017, the Corporate Debtor defaulted in making payments.

- iv. That, till date, only made part payment of Rs. 75,61,704/- out of Rs. 96,78,791/- has been made, last payment being made on 19.07.2018. Accordingly, a payment of Rs. 21,17,087/- along with an accrued interest of Rs. 7,02,894/- (till 31.07.2019) remains unpaid.
- v. The Operational Debt fell due on 07.06.2017, 09.07.2017, 06.08.2017, 07.12.2017, 11.01.2018 & 11.02.2018 considering payment time of maximum 30 days as per the invoice issued by the Operational Creditor.
- vi. That a Demand Notice dt. 07.08.2019 u/s 8 of the Code was issued to the Corporate Debtor through speed post on 08.08.2019 and through speed post and email on 26.12.2019. No reply has been given disputing the unpaid debt.
3. The Applicant had filed IA 3718/2022 and on perusal of the Application, it was observed that this Tribunal has dismissed the captioned petition vide order dated 21.02.2022. The Applicant has preferred an appeal against the aforesaid order of dismissal of petition passed by this Tribunal before the Hon'ble NCLAT. Vide order dated 08.09.2022, the Hon'ble Appellate Tribunal has set aside the order dated 21.07.2022 with directions to this Tribunal to pass an order of admission and other consequential order. Therefore, this Tribunal, vide order dated

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05.08.2022, has restored the captioned petition and notice was issued to the Corporate Debtor.

4. That, vide order dt. 29.08.2022, the matter was proceeded ex-parte.
5. In the light of the aforesaid facts, we find that the Service Agreement was executed between the Operational Creditor and the Corporate Debtor on 24.11.2016 and invoices were raised in accordance of that. The copy of the invoices and the ledger account clearly substantiate the Operational Creditor's claim that the Corporate Debtor has defaulted on repayment. The date of default is 11.02.2018 and the present application was filed on 19.02.2020 which depicts that the application is within the limitation period. Further, we have also observed that the Corporate Debtor has neither replied to the Demand Notice nor has appeared before this Tribunal despite the issuance of notice. It is pertinent to mention that the Corporate Debtor has not availed the opportunities provided by this Adjudicating Authority to defend the arguments made by the Operational Creditor.
6. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the Applicant and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates** CIRP on the Corporate Debtor with immediate effect.

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7. The Applicant has not proposed the name of IRP. Accordingly, this Adjudicating Authority, hereby appoints Mr. Dharmendra Kumar, Reg. No: IBBI/IPA-003/IP-N000112/2017-18/11264 (Email: kumard36@hotmail.com, Mobile No.: 9973603517) to act as Insolvency Resolution Professional from the empanelled list made available by IBBI vide its communication no. IP-12011/1/2020-IBBI/1903/3754 dated 30.06.2022. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
8. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate and initial expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP. The operational creditor may fix the IRP fee and expenses, if not done so far.
9. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
10. 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),

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(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.

11. It is hereby clarified that 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

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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, concession, clearances or a similar grant or right during the moratorium period.

12. 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 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.

13. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact 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

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17/10/2022
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
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Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. 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 an appropriate order. 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 his 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.

14. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)



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