(2022) 09 NCLT CK 0071

In the National Company Law Tribunal

Case No : C.P. (IB) 862 (MB)/ 2019

Gracious Communication Pvt. Ltd — APPELLANT

Vs

Vijaygroup Housing Pvt. Ltd — RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 13, 14, 14(1), 31(1), 33
Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 6

Citation : (2022) 09 NCLT CK 0071

Hon'ble Judges : P. N. Deshmukh, Member, (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Esha Malik, Pradip Patil

Final Decision : Allowed

Judgement

Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by Gracious Communication Pvt. Ltd. (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Vijaygroup Housing Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs.28,10,030/- (Rupees Twenty- Eight Lakhs Ten Thousand Thirty Only) together with interest @ 21% per annum from 20th December 2018 till payment and/or realization of the debt.

3. The Operational Creditor is engaged, inter alia, in the business of providing

Advertising services while the Corporate Debtor is a Real Estate Developer. The Corporate Debtor approached the Operational Creditor for availing various advertisement services pursuant to which several advertisements were released by the Operational Creditor from time to time. The Operational Creditor thereafter raised Nine (9) invoices for the work done and the same were accepted and acknowledged by the Corporate Debtor without any reservations as to rates, quality or any other factor. The Corporate Debtor was liable to make the payment towards the said invoices immediately on issuance of the same and in the event of delay, the Corporate Debtor is bound to pay interest @ 21% per annum from the due date till actual payment. The said invoices are duly annexed to this Petition.

4. The Operational Creditor sent a Demand Notice dated 20th December 2018 calling upon the Corporate Debtor to pay an amount of Rs.28,10,030/- including the interest on the principal amount. The Corporate Debtor neither responded to the said Notice nor made any attempts to clear their payment liabilities despite several requests made by the Operational Creditor. Hence, this Petition was filed on 28th February 2019. No Reply has been filed by the Corporate Debtor to this Petition. Copies of Ledger Account of the Corporate Debtor and proof of payment of TDS by the Corporate Debtor have been attached to this Petition along with a copy of the Demand Notice.

FINDINGS

5. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. It is evident from the Ledger records and other Financial Statements annexed to this Petition that an aggregate operational debt of Rs.28,10,030/- exists and remains unpaid till date. We note that despite providing the Corporate Debtor with several opportunities to file their Reply and written submissions against this Petition, no such Reply has been filed. The date of default is recorded as the due date of the last invoice which is noted as 25th May 2017 and therefore the Petition is not barred by limitation. Additionally, no pre-existing disputes had arisen before the issuance of the Demand Notice. The failure of the Corporate Debtor to reply to the Demand Notice and the Petition clearly amounts to admission of guilt and reflects the reluctance of the Corporate Debtor to fulfil their obligations.

6. The Operational Creditor has thus successfully demonstrated and proved the debt and default in this case and has also proved that there is no credible reason for the Corporate Debtor to put the payment of the invoices on hold indefinitely. We, therefore, conclude that this Petition satisfies all the necessary requirements for admission under Section 9 of the Code.

7. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -862 (MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Vijaygroup Housing Pvt. Ltd.

b. This Bench hereby appoints Mr. Alok Kumar Murarka, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P001934/2019-20/13006 as the Interim Resolution Professional having email address as ipalok.murarka@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost 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 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.

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 concerned Registrar of

Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

