
(2022) 09 NCLT CK 0075
In the National Company Law Tribunal
Case No : C.P. No. 537/IBC/MB/2020

Guideline Finance Private Limited

APPELLANT

Vs

Zisafe Consultancy Services Private Limited

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

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

Citation : (2022) 09 NCLT CK 0075

Hon'ble Judges : H.V. Subba Rao, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Kavisha Shah

Final Decision : Allowed

Judgement

H.V. Subba Rao, Member (Judicial)

1. This Company petition is filed by Guideline Finance Private Limited (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Zisafe Consultancy Services Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a sum of Rs. 16,84,685/- (Rupees Sixteen Lakhs Eighty Four Thousand Six Hundred Eighty Five only) being an Operational Debt due and payable by the Corporate Debtor.

2. The brief facts of the case are as follows:

i. The Operational Creditor states that on 20.02.2019 the Corporate Debtor issued an Engagement Letter to the Operational Creditor through which he was appointed as the Financial Advisor of the Corporate Debtor. As per the Engagement Letter it was agreed between the parties that the Respondent to pay

an amount of Rs. 5,00,000/-(Rupees Five Lakhs only) per month to the Operational Creditor as consultancy fees which shall be payable by the Corporate Debtor in 7 (seven) days from the receipt of the invoice.

ii. The Operational Creditor vide its letter dated 15.05.2019 to the Corporate Debtor reminding the Respondent to make a payment of Rs. 10,00,000 (Rupees Ten Lakhs only) towards invoices raised on 02.04.2019 and 04.05.2019 as the Corporate Debtor has defaulted in paying the same within 7 (seven) days of the receipt of the letter.

iii. The Operational Creditor even after the default continued to provide its services to the Corporate Debtor and raised invoice on 06.06.2019 on the Corporate Debtor. The Operational Creditor once again addressed a letter dated 20.06.2019 to the Corporate Debtor to make the payment of the invoices of the last 3 (three) months totalling to an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs only).

iv. Further, on 22.06.2019 the Corporate Debtor addressed a letter to the Operational Creditor, unequivocally and without demur acknowledged the outstanding amount and payable to the Operational Creditor. The Corporate Debtor after admitting the amount in default requested the Operational Creditor to grant sometime to make the payment.

v. On 01.07.2019 the Corporate Debtor issued a letter of termination since the Corporate Debtor had been persistently defaulting in honouring its commitments and there was not even a part payment from the amount in default. The Operational Creditor asked the Corporate Debtor to honour the outstanding payments within a period of 15 (fifteen) days from the receipt of the notice.

vi. On 15.01.2020 the Operational Creditor issued demand notice to the Corporate Debtor, calling upon the Corporate Debtor to pay a sum of Rs. 16,84,685/-(Rupees Sixteen Lakhs Eighty Four Thousand Six Hundred and Eighty Five only) comprises of principle amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) along with Rs. 1,84,685/- (Rupees One Lakh Eighty Four Thousand Six Hundred Eighty Five only) as interest applied @ 18% p.a. on the amount from the date of default till 15.01.2020. The Corporate Debtor has failed to reply to the demand notice issued by the Operational Creditor dated 15.01.2020.

vii. Therefore, the Operational Creditor has filed the present application under Section 9 of the I.B. Code, 2016 to recover the total debt amount of Rs. 16,84,685/- (Rupees Sixteen Lakhs Eighty Four Thousand Six Hundred and Eighty Five only).

3. The Corporate Debtor appeared through Advocate Ms. Minal Pawar, who did not choose to file any reply even after taking number of adjournments and therefore the Corporate Debtor was set ex-parte vide order dated 29.11.2021.

4. Heard the counsel appearing for the Operational Creditor. The Ld. Counsel appearing for the Operational Creditor invited the attention of this Bench to the

invoices dated 02.04.2019, 04.05.2019 and 06.06.2019 annexed to the Company Petition as Annexure - C basing on which the above Company Petition was filed. He has also invited the attention of this Bench to the Demand Notice dated 15.01.2020 and the proof of delivery of the Demand Notice on the Corporate Debtor which is annexed to the Company Petition as Annexure - F. The Corporate Debtor having received the Demand Notice did not send any reply nor paid the amount to Operational Creditor.

5. The Operational Creditor has also suggested the name of the Interim Resolution Professional in the Company Petition.

6. After hearing the submissions and upon perusing the material available on record, this Bench feels that the Petitioner has successfully demonstrated the existence of "debt" and "default" committed by the Corporate Debtor in this case. Since the Corporate Debtor did not file any reply, the claim of Operational Creditor remained unchallenged. Since the date of default is on 12.06.2019, the above Company Petition being filed on 07.02.2020 is well within limitation. Thus, Company Petition satisfies all legal requirements for admission.

7. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) 537 (MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Zisafe Consultancy Services Private Limited.

b. This Bench hereby appoints CA Naren V. Sheth, Insolvency Professional, Registration No: IP/P-00133-IBBI/IPA-001/IP-P00133/2017-18/10275, having Registered Address at: 1014, Prasad Chamber, Tata Road No. 1, Opera House, Mumbai - 400004 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

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 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; 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 Registrar of Companies, Mumbai, 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.