
(2020) 03 NCLT CK 0045

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : (IB) No. 2482/(ND) Of 2019

Tek Advertising And Management Private Limited APPELLANT
Vs

Crayons Advertising Private Limited RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 5
Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 14, 15, 17, 18

Citation : (2020) 03 NCLT CK 0045

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Manish Singh, Anang Shandilya

Judgement

Dr. V.K. Subburaj, Member (T)

1. This is an application filed by the Applicant M/s. Tek Advertising and Management Private Limited seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent Crayons Advertising Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 1,37,30,959/- (Rupees one crore thirty seven lakh thirty thousand nine hundred and fifty nine only) towards the material supplied by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant is involved in the business of providing advertising goods and services.
- ii. The applicant has supplied goods and services to the Respondent since 23.04.2016 under Bills cum Tax invoices raised for supply of such materials.

iii. The applicant submitted that he followed the process of outstanding amount of payment through the emails on several intervals of time from the month of July, 2017 to May, 2019.

iv. The applicant has submitted that the Respondent accepted its liability and has further sent the confirmation for the payment of Due amount but alleges that no such amount was paid by the Respondent.

v. The Applicant issued Demand Notice in the form of Form-3 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 24.06.2019 calling upon the Respondent to clear the amount of default i.e. Rs. 1,37,30,959/-. The Respondent upon receipt of the Demand Notice dated 24.06.2019 issued a reply which was received by the applicant dated 04.07.2019.

vi. The applicant submitted the E-mail communication from 14.07.2017 to 28.05.2019 held between the applicant and the respondent where the respondent has acknowledged the debt.

vii. The Respondent issued a reply in response to the applicant's demand notice dated 24.06.2019 in which the respondent has made the following contentions:

a. That the respondent has not received the invoices, balance sheets, accounts statements.

b. That the tender for providing services to information and public relations Department, Government of Bihar was sanction in favor of our client for a period of two years vide work order dated 03.08.2016, the tender involved preparation of a publicity vehicle for spreading the ideology and message of Mahatma Gandhi by way of multimedia technologies through highly equipped vehicles.

c. That during the period of 12.04.2017 to 15.05.2017 there are inadequacies on the part of applicant in the performance and execution of the services as per the route chart which resulted in the non-execution of a number of programs by the applicant.

d. The Respondent states that even after countless grievances and reminders the applicant failed to perform the services as promised in the districts of Muzzafarpur, Nalanda, Nawad, Sharasha, Gaya, Banka, Saupaul, Motihari, Aurangabad, Betiyah etc. in the State of Bihar.

e. The respondent further stated that an amount of Rs. 80,72,878/- has already been paid to the applicant in lieu of the services actually provided by the applicant. The outstanding dues of Rs. 46,94,040 are disputed due to the deficiency of services on part of the applicant.

2. We have heard the Ld. Counsel for the Operational Creditor and perused the averments made in the application as well as the documents enclosed with the application. Ld. Counsel for the Operational Creditor submitted that although the notice was delivered upon the Corporate Debtor, none appeared on behalf of the

Corporate Debtor and therefore, vide order dated 08.11.2019 the counsel for the operational creditor was permitted by the Hon'ble Tribunal to serve private notice on the corporate debtor at its registered office address through all modes. However, despite service of notice by all modes, none appeared on behalf of the Respondent and as a result the Respondent was proceeded ex-parte on 28.11.2019. We have heard the arguments made by the counsel for the Applicant and perused the documents filed by him. The counsel for the Operational Creditor further submitted that after the delivery of Demand Notice, reply was received from the Corporate Debtor stating the pre-existence of dispute between the parties. On perusal of Corporate Debtor's reply to the demand notice, no documentary evidence was submitted by the respondent to establish the pre-existence of dispute along with that none appeared on behalf of the corporate debtor even after service of notice through all modes. Since, The Applicant has established the existence of debt and default on the part of the Respondent and the Respondent has not availed the opportunities provided by this Tribunal to defend the arguments made by the Applicant. In view of the above situation, this Adjudicating Authority admits this petition and initiates CIRP on the Respondent with immediate effect.

3. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

"(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

4. The interim resolution professional ("IRP") proposed by the Applicant is Mr.

Pranav Kumar, Address: 3F, CS-70, Third Floor, Ansal Plaza, Sector-1, Vaishali, Ghaziabad-201010 (Email -pranav@pranavkumar.com), Reg. No: IBBI/IPA-002/IP-N00263/2017-18/10776 and is being confirmed by this Bench. 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.