

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 4427/IB/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Haren Sanghvi & Associates

Office No. 9, 2nd Floor, Dariya Building,
D.N. Road, Hutatma Chowk, Fort,
Mumbai, Maharashtra - 400001

**..... Operational Creditor/
Petitioner**

Vs

**CDigital Arts & Crafts Private
Limited**

Ground Floor, 69/72, West More Building,
Sir, Pochkanwala Road, Worli Colony,
Mumbai, Maharashtra – 400030.

..... Corporate Debtor

Order Pronounced On: 12.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Adv. Shamiana i/b Adv. Rakesh Sawant

For the Respondent: Adv. Suyesha Kakarla i/b M/s. Apex Law Partners

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Haren Sanghvi & Associates** hereinafter called as the ("**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **CDigital Arts & Crafts Private Limited** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 37,07,175/-.
2. The Operational Creditor is a Chartered Accountancy firm providing Accounting and Management Advisory Services to various business and Corporate clients including the Corporate Debtor.
3. The Corporate Debtor engaged the services of the Applicant to attend to its various Accounting needs, on the fees and terms as per the mutual terms from time to time. Accordingly, the Applicant provided the aforementioned services in the FY 2016-2017, FY 2017-18 and FY 2018-19 and raised 6 invoices, payable within 10 days of the receipt of the same. However, the Corporate Debtor failed to make any payment towards the said invoices even beyond the due date.
4. The Applicant has provided services of accounting and management services to the Operational Debtor and against the said services the Applicant had raised the following Invoices:
 - i) Invoice No.661/16-17 dated 20/02/2017 for Professional Fees rendered towards VAT Appeal for the FY 2007- 2008 for an amount of Rs.86,250/- annexed herewith as Exhibit "C".

ii) Invoice No.659/16-17 dated 20/02/2017 for Professional Fees rendered towards VAT Appeal for the FY 2010- 2011 for an amount of Rs.86,250/- annexed herewith as Exhibit "D".

iii) Invoice No.660/16-17 dated 20/02/2017 for Professional Fees for the VAT Assessment Order for the period of FY 2009-10 for an amount of Rs.11,50,000/- annexed herewith Exhibit "E".

iv) Invoice No.656/16-17 dated 20/02/2017 for Professional Fees for Assessment Order for FYS 2007-08, 2009-10, 2010-11 and 2011-12 for an amount of Rs.4,02,500/- annexed herewith as Exhibit "F".

Invoice No.113/16-17 dated 21/07/2016 for filing an Appeal before Dy. Commission of Sales Tax for the period of FY 2011- 12, for an amount of Rs.86,250/- annexed herewith as Exhibit "G".

vi) Invoice No.112/16-17 dated 21/07/2016 for filing an Appeal before Dy. Commission of Sales Tax for the period of FY 2005- 06, for an amount of Rs.86,250/- annexed herewith as Exhibit "H".

vii) MSME Interest amount of Rs.47,860 payable as on 31/03/2017 under section 15 and 22 of the MSME Act,2016

viii) MSME Interest amount of Rs.3,78,712/- payable as on 31/03/2018 under section 15 and 22 of the MSME Act, 2016

ix) MSME Interest amount of Rs.4,50,667/- payable as on 31/03/2019 under Section 15 and 22 of the MSME Act, 2016

5. Date from which the payment of each invoice fell due:

- i) The due date for Invoice No.661/16-17 Dated 20/02/2017 is 02/03/2017.
- ii) The due date for Invoice No.659/16-17 dated 20/02/2017 is 02/03/2017.
- iii) The due date for Invoice No.660/16-17 dated 20/02/2017 is 02/03/2017.
- iv) The due date for Invoice No.656/16-17 dated 20/02/2017 is 02/03/2017.
- v) The due date for Invoice 113/16-17 dated 21/07/2016 is 31/07/2016.
- vi) The due date for Invoice No.112/16-17 dated 21/07/2016 is 31/07/2016.

6. On the failure of the Corporate Debtor to make the aforesaid payments under the Invoices issued to the Corporate Debtor, the Applicant sent numerous emails during the period of 2016 to 2019, to the Corporate Debtor, but to no avail. From the conduct of the Corporate Debtor, the Applicant realized that the Corporate Debtor is in no position to make the payments towards the services rendered and therefore, it addressed a Demand Notice dated 04.11.2019 in prescribed Form 3 under the provisions of the Insolvency and Bankruptcy Code, 2016.
7. Till date there is no response from the Corporate Debtor in respect of the Demand Notice dated 04.11.2019 even after a lapse of more than 10 days. Hence, present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Reply filed by the Corporate Debtor

8. The Corporate Debtor submitted that the Company Petition is hopelessly barred by the law of limitation under the section 238A of Insolvency Bankruptcy Code, 2016 read along with Article 137 of Limitation Act, 1963 and on this ground alone, the present Application deserves to be dismissed with costs.
9. It is further submitted that there is no cause of action arisen in favour of the Operational Creditor to file the present Insolvency Petition against the Corporate Debtor as no amount is due and payable by the Corporate Debtor to the Operational Creditor as alleged. Hence on this ground itself, the present Company Petition needs to be dismissed.
10. It is further submitted the Operational Creditor has not disclosed the existence of dispute with respect to the alleged claim of the Petitioner with a mala fide intention to snatch order from this Hon'ble Tribunal by keeping the Tribunal in dark and on this ground alone, this Petition is liable to be dismissed.

11. It is further submitted that the Operational Creditor is a registered partnership firm and have not provided any documents/information regarding the Operational Creditor being a registered partnership firm. In Support of Affidavit, it is stated that Mr. Haren Sanghvi is a Partner of the Operational Creditor. However, no details regarding the registration of partnership firm is provided in the Company Petition. The Operational Creditor has no right to file the present Company Petition as the Operational Creditor has not disclosed any information of it being a registered partnership.

12. It is further submitted that the Operational Creditor provided the services of Accounting and Management Advisory to the Corporate Debtor and the Corporate Debtor have made the payment to the services provided by the Operational Creditor on the regular basis. Hereto annexed and marked as "Exhibit A" is a copy Ledger Account from the year of 2004 to 31st March 2020. It is pertinent to note that the invoices raised by the Operational Creditor in the year 2017 for the services provided in the year of 2007-2008, 2009-2010, 2010-2011 and 2011-2012 are not forming the alleged debt of the Corporate Debtor. It is also submitted that the invoices annexed by the Operational Creditor are not even supported by the alleged professional assignment undertaken and/or alleged work completed by the Corporate Debtor. Hence the said Company Petition is not tenable and is bad in law and the same deserves to be dismissed with costs.

Rejoinder:-

13. With respect to paragraph nos.1 and 2, the Petitioner denied the contents and contentions therein in toto and state that the petition is filed within time and there is no delay in filing the same. The petitioners have from time to time sent ledger confirmation to the Respondent and also the invoices which at no point of time were disputed in any communication by the Respondents. The Respondents and the petitioners were dealing with each other on account basis

and, therefore, every event of ledger confirmation would extend the limitation of the invoices further.

14. With respect to paragraph no. 4, the contents and contentions therein are denied in toto. There is no dispute in respect of claims of the Operational Creditor. The Corporate Debtor by making vague allegation seeks to escape the consequences of the present petition as the Corporate Debtor has not disclosed any disputes as contemplated under the provisions of section 8 (2) of the Insolvency and Bankruptcy code, 2016.

Findings:-

15. We have heard the Counsel for the Petitioner and have gone through the records.

16. The invoices raised by the Petitioner for having rendered accounting and management services to the Corporate Debtor. The detail of the invoices as under:-

i) Invoice No.661/16-17 dated 20/02/2017 for Professional Fees rendered towards VAT Appeal for the FY 2007- 2008 for an amount of Rs.86,250/- annexed herewith as Exhibit "C".

ii) Invoice No.659/16-17 dated 20/02/2017 for Professional Fees rendered towards VAT Appeal for the FY 2010- 2011 for an amount of Rs.86,250/- annexed herewith as Exhibit "D".

iii) Invoice No.660/16-17 dated 20/02/2017 for Professional Fees for the VAT Assessment Order for the period of FY 2009-10 for an amount of Rs.11,50,000/- annexed herewith Exhibit "E".

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17. In the reply, the Respondent/Corporate Debtor has set up the case of complete and absolute denial. According to the Corporate Debtor, no payment as claimed in the Petition is due nor the invoices relied upon by the Petitioner find mention in the ledger of the Corporate Debtor which proves that the same were never issued to the Corporate Debtor and the same have been subsequently prepared by the Operational Creditor. It has also been pointed out by the Corporate Debtor, the invoices could not have been raised in the years 2016 and 2017 in respect of certain appeals of 2007-08, 2009-10,2010-11 etc.

18. We have thoughtfully considered the aforesaid contentions raised by the Counsel for the Corporate Debtor but have found the same to be devoid of any force or substance. Merely because there is reference in the invoices that the appeals were for the year 2007-08, 2010-11 etc., it cannot be presumed that the invoices were subsequently raised. To reinforce its contention, the Corporate Debtor has not placed on record any document pertaining to the appeals referred to in the invoices to show as to exactly when the same were disposed of or decided by the concerned Authority. Similarly, simply because in the ledger account (Exhibit-A) of the Corporate Debtor, if the invoices are not reflected, it does not mean that the same were not validly issued by the Operational Creditor or that the services were not rendered by the Operational Creditor.

19. It is further pertinent to point out that the Corporate Debtor was served with a notice dated 04.11.2019 but the said notice was not responded to by the Corporate Debtor which means that the contents of the notice were not

controverted nor any pre-existing dispute was raised on behalf of the Corporate Debtor.

20. In the reply filed by the Corporate Debtor, it has been claimed that the Petition is barred by limitation. As stated above, the invoices were issued between 21.07.2016 and 20.02.2017 and except the invoices dated 21.07.2016, the four invoices are within time. Since the Petition was filed in the year 2019 when the threshold limit at that time was Rs. 1 lakh, the Petition can be admitted in respect of the remaining 4 invoices which are of the value of more than Rs. 1 lakh.

21. Another objection raised by the Corporate Debtor is with regard to the fact that it has not been proved as to whether the Petitioner firm is registered under the provisions of Indian Partnership Act or not, even this contention is not sustainable considering the fact that it is well settled that there is no requirement or a pre-condition that a firm must be registered in case it wants to file a petition under Section 9 of the Code.

22. No other points have been raised.

23. As a result of the foregoing discussion, we are of the considered view that the Petitioner has been able to establish that there is existence of "**debt**" and "**default**" committed by the Corporate Debtor in this case.

24. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- A. The above Company Petition No. (IB) 4427 of 2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **CDigital Arts & Crafts Private Limited.**

- B. Since the Operational Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench hereby appoints **Mr. Lalit Zaverchand Shah**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-02007/2020-2021/13102, having Email id lalitshahca@gmail.com 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. (2) 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.
- K. Accordingly, the C.P.(IB) 4427 of 2019 is **admitted**.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)