

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V

CP No. 775/(IB)-MB-V/2021

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

**Piyush Jani, Resolution Professional for
Reward Business Solutions Private
Limited**

.....Petitioner/Operational Creditor

Vs

Sporta Technologies Private Limited

.....Corporate Debtor

Order Dated: 09.02.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)
Madhu Sinha, Hon'ble Member(Technical)

Appearances in Hybrid Mode:

For the Petitioner:

For the Corporate Debtor: Adv. Dhruva Gandhi a/w Ms. Anuja
Jhunjhulwala i/b M. Mullah Associates (PH)

ORDER

Per: Reeta Kohli, Member (Judicial)

This Company Petition is filed by **Piyush Jani, Resolution Professional of Reward Solutions Private Limited** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on **22.06.2021** seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Sporta Technologies Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 7,61,08,246/-**. **The default occurred since March 2020.**

Brief Facts and Submission by the Petitioner:-

1. Reward Business Solutions Private Limited being the owner of Unit Nos. 801 and 802, Tower B, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel Mumbai 400013 entered into Lease and License Agreement dated 27.12.2019 with the Respondent granting lease of the property on certain terms and conditions.
2. In terms of the agreement, the Respondent was granted license for a period of 5 years with a monthly license fee of Rs. 49,83,636/- (Rupees Forty-Nine Lakh Eighty-Three Thousand Six Hundred and Thirty-Six) for the initial 3 years and Rs. 57,31,181/- (Rupees Fifty-Seven Lakhs Thirty-One Thousand One Hundred and Eighty-One) for the remaining 2 years. The possession of the unit in bare shell condition was handed over to

the Respondent. The Respondent was not to pay any rent from 27.12.2019 to 27.03.2020 and was required to pay the rent as per Lease Agreement from 28.03.2020 onwards.

3. In addition, the electricity charges, CAM Charges, etc. were to be paid by the Respondent. The Agreement had a lock-in period of 33 months i.e. till 27.09.2022 the Respondent could not terminate the agreement. The case of the Applicant is that right from the beginning, the Respondent failed to pay the license fee. Having been left with no option, on 20.04.2021 the Demand Notice was issued under section 8 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 of the Code for outstanding license fee from 28.03.2020 to 27.04.2021 amounting to Rs. 7,61,08,246/- (Rupees Seven Crore Sixty-One Lakhs Eight Thousand Two Hundred and Forty-Six). The Respondent failed to comply with the Demand Notice and hence the above said Company Petition was filed by the Petitioner.
4. In its Reply to the Demand Notice vide letter dated 30.04.2021, the Respondent claims that it lost its rightful opportunity to negotiate the License Fees due to the impact of the on-going Covid-19 Pandemic and confusion with regards to ownership of the leased premises with the Petitioner or a third party named Mangalam Vanijya Private Limited (**Hereinafter referred to as "MVPL"**). Furthermore, the Respondent also received a copy of the Provisional Attachment Order dated 27.11.2020 of the Directorate of Enforcement in relation to the leased premises.
5. The Petitioner fairly admits the fact that pending amount falls within the period stipulated under Section 10A of the Code however this objection had not been taken by the Corporate Debtor in its reply. Also, no amount has been paid by the Corporate Debtor pursuant to the Demand Notice sent by the

Operational Creditor and up to the time the premises were vacated by it.

6. The Petitioner relies on the judgement of the Hon'ble NCLAT in **Jaipur Trade Expocentre Private Limited (Jaipur Trade) v. Metro Jet Airways Training Private Limited Company Appeal (AT) (Insolvency) No. 423 of 2021** in which it was held that unpaid license fee would be considered as an operational debt under section 5(21) of the Code. Thereby, justifying that the Petitioner is an Operational Creditor and the Default amount is an Operational Debt as per the provisions of the Code.

Submissions by the Corporate Debtor:

1. The Ld. Counsel for the Corporate Debtor had taken preliminary objection of the debt falling within the period stipulated under Section 10A leading to non-maintainability of the petition. It is the case of the Respondent that the Petitioner had relied upon an invoice dated 31.03.2020 and two other invoices both dated 01.04.2020 for License Fees for the period from 28.03.2020 to 24.03.2021. Furthermore, the Petitioner is not an Operational Creditor and the alleged claim is not an Operational Debt as per the provisions of the Code which further adds to grounds of rejecting the present petition.
2. It is also the case of the Respondent that the petition is also not maintainable on the ground that Mr. Naresh Jain, the erstwhile Director of the petitioner and a shareholder of MVPL had filed a Section 7 Application. MVPL is therefore, Financial Creditor and the petitioner in the present case is made the Corporate Debtor in CP. No. 1168 of 2020.
3. The Corporate Debtor also states that the present Petition is nothing but an abuse of the process of law and as such, the

appointment of the Insolvency Professional (IP) vide an Order dated 18.02.2021 in CP. No. 1168 of 2020 is collusive between the Operational Creditor and MVPL. On this ground alone the application deserves to be dismissed with cost.

4. It is also the case of the Respondent that the petition is also not maintainable on the ground that Mr. Naresh Jain, the erstwhile Director of the petitioner and a shareholder of MVPL had filed a Section 7 Application. MVPL is therefore, Financial Creditor and the petitioner is made a Corporate Debtor in CP. No. 1168 of 2020.
5. In addition to the above stated, the other argument is that there is a genuine pre-existing dispute. In view of the same also, the present petition is not maintainable. To substantiate his arguments, reference was made to the following documents placed on record:-
 - Email dated 29.05.2020 which is a communication from the Operational Creditor to the Corporate Debtor stating that the Operational Creditor had taken loan from MVPL. MVPL and Operational Creditor intended to enter into a Tripartite agreement with the Corporate Debtor to which the Corporate Debtor objected on 15.06.2020. In its reply dated 15.06.2020 itself, the Operational Creditor submitted that MVPL has all the rights over leased premises and had urged the Corporate Debtor to honour the contractual commitment by paying to MVPL. This communication had itself put MVPL in the place of the Operational Creditor for the purpose of payment of rent so far as the Corporate Debtor is concerned. MVPL had written to Operational Creditor stating that the Corporate Debtor is in breach of the license payment and stated that the amount due should be paid to the MVPL's bank account.
 - On 18.06.2020 Corporate Debtor had written to Operational Creditor seeking clarification with respect to the control of the leased premises. MVPL also wrote to Corporate Debtor on

19.06.2020 stating that if original amount due, i.e. the license fee for the months of March and April 2020 is not paid, they shall be constrained to initiate the process for default as per the license agreement.

- On 07.09.2023, the Corporate Debtor vide a letter to MVPL and the Operational Creditor, mentioned that it has come to its knowledge from reliable sources that various enquiries are being conducted by the investigating agencies in relation to the nexus of Mr. Naresh Jain having been involved in the fraud committed by Yes Bank and while these investigations are going on there is a letter issued by Enforcement Directorate directing that the premises should not be transferred. The Corporate Debtor further mentioned that the Advocates for the prospective buyer of the leased premises had issued a Public Announcement on 14.03.2020 for confirming title of the said premises. There were various objections received in relation to the title of the said property to which clarifications were sought from Mr. Naresh Jain but in vain. This made it amply clear to the Corporate Debtor that there exists uncertainty over the title of the said premises. There is also a possibility that MVPL is not an independent entity and is acting at the behest of the Operational Creditor and could be a benami holder of the leased premises.
- On 08.09.2020, both the Operational Creditor and MVPL vide two separate emails to the Corporate Debtor requested the Corporate Debtor to pay all the outstanding amount in the Bank Account of the Operational Creditor within 7 days of the receipt of their emails.
- A copy of the Provisional Attachment Order dated 27.11.2020 of the Directorate of Enforcement in relation to the leased

premises as per which, the leased premises was attached by the Enforcement Directorate being proceeds of crime.

This chain of correspondences clearly show that the Operational Creditor and MVPL themselves directed the Corporate Debtor to make the payment first to MVPL and then to the Operational Creditor thereby continuously changing stance in the full course of events.

Findings

1. After having heard the Counsels of both the parties and perusing the documents placed on record, it is evident that Mr. Naresh Jain the erstwhile Director of the Operational Creditor is a Shareholder of MVPL and also the fact that the address of the Operational Creditor and MVPL is also the same. However, without making any observations/comments on the above said fact, for the purpose of admitting a Section 9 petition, we confine ourselves to the necessary ingredients required to admit Section 9 petition. What is primarily necessary is the existence of legally payable "*Debt*" and corresponding "*Default*".
2. On perusal of the submissions of both the parties and particularly in light of the Lease and License Agreement dated 27.12.2019, we are of the considered view that the Corporate Debtor had financial obligations towards the Operational Creditor which it failed to comply with. There is no dispute in relation to the same. In fact the Financial liability stands admitted by the Corporate Debtor.
3. In view of the fact that the Corporate Debtor has already acknowledged its liability, it cannot be permitted to take undue advantage by withholding the License Payment purely on the ground of whom it should have been paid to. Given the peculiar facts of the case, the Corporate Debtor chose not to fulfil its

financial obligations even after the issuance of the Demand Notice dated 20.04.2021 by the Operational Creditor. The Corporate Debtor, in exercise of its due diligence and reasonable prudence should have made the payment then and logically saved itself from the rigours of consequent CIRP.

4. This Hon'ble Tribunal in pursuance of its Summary Jurisdiction is constrained to take into account only the existence of an admitted debt and corresponding default which is clearly satisfied by the facts of the present case. It is pertinent to note that emails brought on record by the Corporate Debtor only show the presence of dispute qua the payee of the debt. The existence of debt is nowhere disputed. The above stated mandatory ingredients, thus supersede the merits of the emails brought on record by the Corporate Debtor.
5. Thus, in view of the above stated facts and the settled law, we are of the considered opinion that the Respondent is very much a Corporate Debtor and the Petitioner has successfully demonstrated the existence of **“operational debt” and “default”** committed by the Corporate Debtor along with absence of any pre-existing dispute between the parties in consonance with the relevant provisions of the Code. Thus, it is concluded that the Company Petition satisfies all legal requirements for admission including the pecuniary, territorial and subject matter jurisdiction and the same is also filed well within the limitation period of 3 years. Considering the above facts, we are of the considered view that this Petition deserves to be **admitted** under Section 9 of the Code.

ORDER

- a. In view of the aforesaid findings, the above Company Petition No. 775/IBC/MB/2021 is hereby **admitted** and thereby initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Sporta Technologies Private Limited.
- b. Since there is no proposal for the name of Interim Resolution Professional by the Petitioner, Madan Bajrang Lal Vaishnawa having Registration Number IBBI/IPA-001/IP-P-02011/2020-2021/13052 is appointed as the Interim Resolution Professional from this Tribunal's Panel.
- c. The Petitioner 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.
- 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, CP 775 of 2021 is admitted.

SD/-

**MADHU SINHA
MEMBER (TECHNICAL)**

SD/-

**REETA KOHLI
MEMBER (JUDICIAL)**

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