

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI**

C.P.No.IB-446/(ND)/2017

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

**TAKKSHILL ENTERPRISES
Through Managing Partner
Ms. Sonia Singh
R/o at Flat No. C-2/605,
Nirmal Chhaya Society,
VIP Road, Zirakpur, SAS Nagar,
Mohali-140603
Also at, 21-Ground Floor, LIG Flats
Near Improvement Trust Office
C Block, Ranjit Avenue,
Amritsar, 140603**

.....Operational Creditor/APPLICANT

**IAP COMPANY PVT. LTD.
Incorporated under The Companies Act, 1956
R/o at House No. 353/1
Near Golak Dham Temple,
Main Road, Bijwasan, New Delhi-110061
Also at, 3rd Floor, Ansal Palam Triangle,
Sector 23, Palam Vihar
Gurgaon, Haryana-122017**

.....Corporate Debtor/RESPONDENT

Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

**Counsel for the Petitioners:
Counsel for the Respondents:**

**Mr. Saurabh Nangia, Advocate
Mr. Mohit Chaudhary, Advocate
Ms. Garima Sharma, Advocate**

ORDER

1. The above petition has been filed under the provisions of Sections 8 and 9 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC,2016) by M/s Takkshill Enterprise (for brevity "Operational Creditor/ Applicant"), representing that it is a firm registered with the Registrar of Firms, Punjab and is engaged in the business of providing trained and certified manpower and in the course of its business had supplied manpower to support with the UIDAI (Aadhar enrollment process) to IAP Company Pvt. Ltd. (for brevity "Corporate Debtor/Respondent) a company incorporated under the provisions of Companies Act, 1956 and having its registered office at Bijwasan, New Delhi to the extent of Rs.1,83,40,349/-. That the present case arises out of the Memorandum of Agreement dated 04.11.2012 executed between the Operational Creditor and the Corporate Debtor and pursuant to the said agreement, payments have become due on the dates set out in the invoices annexed at Annexure – II-B of the petition. It is also represented by the said Takkshill Enterprise that the respondent was empaneled as an agency with UIDAI for enrolling Indian Citizen to obtain Aadhar number. The Operational Creditor was engaged by the Corporate Debtor for providing trained and certified manpower to support with the enrollment process as per the agreed terms and condition. It is averred in the petition that invoices for the period 01.12.2012 to 31.10.2015 were issued by the Operational Creditor to the Corporate debtor for the work performed in accordance with the Memorandum of Agreement. It is also represented by the Ld. Counsel that the Corporate Debtor has remitted amount aggregating to Rs. 89,31,440.50/- to the Operational Creditor as payment due under the invoices thereby leaving a balance of Rs. 94,089,908/-. Subsequent to the above, it is averred by the Operational Creditor that on 30.09.2015 on account of Corporate Debtor failing to pay the

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dues even after repeated intimations, a letter dated 30.09.2015 for the termination of the Agreement dated 04.11.2012 was sent to the Corporate Debtor by the Operational Creditor in accordance with the Clause 13(1) of the Memorandum of Agreement thereby withdrawing its services with effect from 31.10.2015. Thereafter, an email dated 21.06.2017 was sent by the Operational Creditor asking for the full payment of dues within 15 days failing which legal action would be initiated for the recovery of dues. In response to the email of the Operational Creditor, a reply via email dated 23.06.2017 was received from the Corporate Debtor seeking further time to pay the dues. Since the payment of the balance amount was pending for long, a statutory demand notice dated 28.08.2017 was issued by the Operational Creditor as required under the provisions of IBC,2016 wherein the amount in default in a sum of Rs.94,08,908/- was demanded along with contractual rate of interest at 18% per annum and also calling upon the Corporate Debtor to repay the unpaid Operational Debt in full within 10 days or to demonstrate that the amount claimed as in default has been paid or in the alternative to provide for the existence of any dispute in relation to the unpaid Operational Debt. The said notice was duly received by the Corporate Debtor on 31.08.17 and the receipt of the same has been placed on record.

2. In view of lack of response by way of payment of the amount claimed in default or notice of dispute being issued to the Operational Creditor on the part of the Corporate Debtor, the present application has been preferred under Section 9 of IBC,2016 read along with attendant rules seeking for the initiation of Corporate insolvency Resolution Process (CIRP) as against the Corporate Debtor wherein an amount of debt in a sum of Rs.94,08,908/- along with the interest at 18% per annum is claimed as the amount in default from 30.09.2015 when the termination letter was issued and payments were demanded but not

paid. The advance copy of the application was served by hand to the Corporate Debtor on 17.10.2017 and that the proof of service has also been placed on record.

3. Pursuant to the directions of this Tribunal, a reply affidavit dated 17.11.2017 has been filed by the Authorized Representative of the Corporate Debtor to the statutory demand notice submitting that certain amount is outstanding in relation to the business between the companies. As per the reply sent by the Corporate Debtor, it is also represented that the business of the Corporate Debtor is not doing well due to unplanned & unanticipated changes in business scenarios & customer policies and due to which Corporate Debtor is unable to settle accounts of third party including that of Operational Creditor. However, the Corporate Debtor also submitted that the above mentioned position of the Company should not be treated as an admission of the dues.
4. That the Operational Creditor has filed an additional affidavit dated 06.11.17 producing Banker's Certificate issued by Axis Bank, Gurdaspur, Punjab, in terms of Section 9(3)(c) of Insolvency and Bankruptcy Code, 2016 and Registration Certificate reflecting the registration of Partnership firm with the Registrar of Firms.
5. That an application (CA no. 83/C-III/2017) for early hearing was filed by the Operational Creditor via diary no 2850 on 23.11.17 in view of apprehension that the Corporate Debtor is attempting to dispose off its asset. In proof of the disposal of immovable property, a copy of an advertisement of sale was placed on record. Thereafter, this Tribunal on the date of hearing on 28.11.2017, directed the Corporate Debtor to file the latest financial statement duly certified along with the detailed schedules as well as any pending litigations filed by the Financial Creditors against the Corporate Debtor.

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6. That the Corporate Debtor had filed an affidavit on 07.12.2017 in compliance of the order dated 28.11.2017 producing latest audited financial statement as on 31.03.2017 along with the detailed schedules and the provisional statement as at 31.10.2017, list of assets of the Corporate Debtor as well as stating that there are no pending litigations. However, it is mentioned that the Corporate Debtor have received a paper book in some other matter invoking section 9 of IBC, 2016.
7. That the Corporate Debtor have filed a Board Resolution dated 18.01.2018 as directed by this Tribunal which states that the board has agreed that the process of revival shall begin under the aegis of NCLT.
8. In the circumstances mentioned above and since the Corporate Debtor have admitted the claim as made by the Operational Creditor and a default of debt due to the Operational Creditor is also in existence remaining unsatisfied, this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.
9. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Dharmendra Kumar, No.IBBI/IPA-003/IP-N000112/2017-2018/11264, email: kumard36@hotmail.com, Mobile: 9973603517, as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to

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Adjudicating Authority) Rule, 2016 in relation to specifically the Corporate Debtor and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- (a) 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;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the corporate debtor 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.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

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

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

10. The Applicant is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of IBC, 2016 to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
11. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.


D → Sdr
28/02/18
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

U.D.Mehta/M
28.02.2018