

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

**Company Petition No. (IB)- 365(PB)/2023**

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

**IN THE MATTER OF:**

**M/s Wellnex Global Services India LLP ... Operational Creditor**

**Vs.**

**M/s. Pacer Secure Services Limited .... Corporate Debtor**

**ORDER PRONOUNCED ON: 02.04.2024**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the OC : Mr. Ramneek Mishra, Adv.

For the CD : Ms. Deepa Malik, Adv.

**ORDER**

1. The instant application is filed on 22.06.2023 by **M/s Wellnex Global Services India LLP (Applicant / Operational Creditor)** having **LLP Identification number AAM-2303** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code / IBC**) read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) with a prayer to initiate Corporate Insolvency Resolution Process

for **M/s Pacer Secure Service Private Limited (Respondent / Corporate Debtor)** for making default in payment of outstanding amount of **INR 1,67,40,000/- (Rupees One Crore, Sixty Seven Lacs, Forty Thousand Only)** comprised of Principal amount to the tune of INR 1,35,18,375/- (Rupees One Crore, Thirty Five Lacs, Eighteen Thousand, Three Hundred and Seventy Five Only) and interest @ 24% from 01.11.2022 to 25.02.2023 to the tune of INR 4,68,855/- (Rupees Four Lacs, Sixty Eight Thousand, Eight Hundred, Fifty Five Only). We note here that the interest amount seems to have been wrongly calculated, however since the very principal amount is above threshold of INR 1 crore, the wrongly calculated interest may not be relevant.

2. The Respondent Company **M/s Pacer Secure Service Private Limited**, is a company registered under the Companies Act 1956, having **CIN: U74920DL2011PTC228319** and registered office situated at Plot No. 62, Block C, Dwarka Vihar Kakrola- Najafgarh Road, Behind Delhi Jal Board, New Delhi, Najafgarh, Delhi- 110043, India. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

### 3. **SUBMISSIONS MADE BY THE APPLICANT**

- a. Applicant has been engaged in the business of providing Deep Cleaning and Antimicrobial Solutions (Disinfectant Services) and maintenance of personnel.
- b. Applicant and Respondent had entered into a service agreement dated 01.11.2022, with regard to '*providing deep cleaning and antimicrobial (disinfectant services) and maintenance of personnel*'. As per the Agreement, the Applicant was under an obligation to provide manpower / employees to the Corporate Debtor and payment was to be made within 7-10<sup>th</sup> day of each month.

- c. Pursuant to the said service agreement, the Applicant raised invoices on various dates for **total amount to the tune of INR 1,35,18,375/-**.
  - d. These invoices were raised by the Applicant against the manpower provided and accepted by the Corporate Debtor without any objection. Out of the total INR 1,35,18,375/-, the Respondent has paid INR 3,46,612/-.
  - e. The Applicant issued various reminders to the Respondent for payment of INR 1,35,18,375/-, but the same has not been paid. Thus, outstanding principal amount is stated to be INR 1,35,18,375/-, which is supported by the ledger account maintained by the Applicant for Respondent.
  - f. Further Applicant also claims an interest @ 24% p.a. for a period from 01.11.2022 to 25.02.2023 on the aforesaid principal amount, which aggregates the outstanding dues to the tune of INR 1,67,40,000/- including interest. However, as noted above, the interest amount of INR 4,68,855/- seems to have been wrongly calculated.
  - g. Since no payments were forthcoming from the Respondent, the Applicant issued a notice under section 8 of the IBC, which has been refused to be accepted by the Respondent. Neither the Applicant has received a reply to the notice nor any payment as demanded in the notice. Hence the Applicant has filed the Application under section 9 of the Code.
4. Both the Applicant as well as Respondent have filed their affidavit dated 16.10.2023 and 31.10.2023 respectively to the effect that there is no collusion among the parties. Additionally, the Reply via affidavit dated 31.10.2023 furnished by the Respondent states as follows:
- a. That as per Service Agreement dated 01.11.2022 with the Applicant, Respondent was to provide disinfectant services. Under terms of this contract, Applicant would provide manpower to Respondent and Respondent in turn would pay the full (100%) salary to all employees between 7th-10th day of each calendar month.
  - b. Respondent had made part-payment of INR 3,46,612/- (Rupees Three Lakh, Forty-Six Thousand, Six Hundred-Twelve only), leaving

Respondent with unpaid debt of INR 1,31,71,763/- (Rupees One Crore, Thirty-One, Lakh Seventy-One Thousand, Seven Hundred and Sixty-three).

- c. The Respondent has not made wilful default and default occurred only on account of lack of adequate finances. Also, owing to COVID19 situation in 2022, Respondent faced severe revenue declines and financial losses, as a result of which the financial coffers of the Respondent are totally empty.
  - d. The Respondent admittedly had not made any replies to the demand notice and reminders sent for payments by the Applicant.
5. Relevant Documents relied upon by the Applicant:
- a. Service Agreement dated 01.11.2022 as Annexure A-2;
  - b. Tax Invoices as Annexure A-3 (Colly);
  - c. Ledger statement of the Operational Creditor as Annexure A-4; and
  - d. Notice under section 8 dated 02.03.2023 of the Insolvency & Bankruptcy Code 2016 as Annexure A-5.

### **Analysis and Findings**

6. We have heard Ld. Counsel for the parties and perused the averments made in the application, affidavits and relevant documents on record.
7. We see that the parties had entered into an agreement dated 01.11.2022, whereby 'scope of work' was decided as follows:

#### *1. SCOPE OF WORK*

*PACER hereby agrees to provide clients to Wellnex to whom services pertaining to the Goods & Services can be provided by Wellnex at the price specified in Clause 2 below.*

#### *2. PRICING OF GOODS & SERVICES AND PAYMENT TERMS*

*2.2 Invoicing shall be done by Wellnex, to PACER*

*2.3 PACER hereby undertakes that all payments due to Wellnex under this Agreement shall be paid \_ through wire transfer in terms of Clause 2.5 and 2.6 below, to*

such bank account as may be by Wellnex, through normal banking channels.

2.5 PACER hereby agrees and undertakes that in the event it is responsible for making payment to Wellnex for the services to be provided by Wellnex to the Referred Clients, PACER shall make 50% (fifty per cent) payment of the services in advance to Wellnex at the time of placing order for services and shall make remaining 50% (fifty per cent) payment of the services within a period of 10 days from the date of providing services by Wellnex to the Referred Clients.

2.6 PACER hereby further agrees and undertakes that in the event the Referred Client is responsible for making payment to Wellnex for the services to be provided by Wellnex to the Referred Client, PACER shall be fully responsible for clearance of invoices from the Referred Clients to the Wellnex and in the event that any invoice of Wellnex is not cleared by the Referred Client, within the time period provided in the agreement(s) executed by Wellnex with the Referred Client(s), PACER shall be under an obligation to either get the invoice amount cleared from the Referred Client(s) within a period of 10 (ten) days thereafter or itself and hold harmless the Wellnex for the invoice amount.

8. Further Applicant claims to have raised invoices for total sum of INR 1,35,18,375/- which has not been honoured by the Respondent. We note that some of the supporting invoices are undated and unnumbered. We however, see that invoices have not been disputed by the Respondent.
9. Towards clear admission of debt, Respondent in affidavit dated 31.10.2023, states as follows:

*3. That the OC company has entered into an agreement on 01.11.2022 with CD for providing manpower and disinfectant services, pursuant to the same OC has raised various invoices from December 2022 to February 2023 of totaling Rs.1,35,18,375/- (Rupees one crore thirty-five lakh eighteen thousand three seventy five only) and is in receipt of only Rs.3,46,612/- (Rupees Three lakhs forty six thousand six hundred twelve only).*

Further relevant portion of the affidavit, is extracted herein below :

3. That between/around 9-12-22 to 25-02-2023, the Operational Creditor raised tax invoices for supplying manpower to us. Material particulars & dates are recorded below:

SL NO	DATE	TAX INVOICE
1.	09-12-2022	1591525
2.	19-12-2022	1476475
3.	30-12-2022	1438125
4.	25-1-2023	1591525
5.	30-1-2023	1476475
6.	31-1-2023	1438125
7.	3-2-2023	1476475
8.	15-02-2023	1591525
9.	25-02-2023	1438125
<b>CUMULATIVE PAYMENT</b>		<b>13518375</b>

3.1.1 That in the continuation to preceding averment, I say we have made a part-payment of Rs-3,46, 612/- (Three Lakh Forty Six Thousand Six Hundred Twelve only), leaving us with unpaid debt of Rs-1,31,71,763/- (One Crore Thirty One Lakh Seventy One Thousand Seven Hundred Sixty three Rupee).

10. We see that there is clear admission by the Respondent as to the invoices so claimed to be raised and also that total sum of INR 1,35,18,375/- was payable by the Respondent to the Applicant out of which, the Respondent has claimed to have made a part-payment of INR 3,46,612/-, leaving it with unpaid principal debt of INR 1,31,71,763/- as on date.
11. We at this stage find it relevant to mention that we vide order dated 11.09.2023 we had directed the parties to file separate affidavit stating therein specifically that the instant proceedings are not collusive. Pursuant thereto, separate non-collusion affidavit dated 16.10.2023 and 31.10.2023 have been filed by the operational Creditor and Respondent respectively.
12. In view of the above, we are inclined to admit the Application. No order as to cost.

13. It is accordingly, ordered as follows: -
- a. The Application bearing no. **C.P.(IB)-365(PB)/2023** filed under section 9 of the Insolvency and Bankruptcy Code 2016 for initiation of Corporate Insolvency Resolution Process is **ADMITTED**.
  - b. We declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code 2016. The necessary consequences of imposing the moratorium shall follow.
  - c. The Applicant has not proposed the name of the Interim Resolution Professional. Section 9 of the Insolvency and Bankruptcy Code 2016 does not make it mandatory for the Operational Creditor to propose the name of the Interim Resolution Professional. Therefore, this Adjudicating Authority appoints **Mr. Rajesh Gupta** having registration number IBBI/IPA-002/IP-N01169/2021-2022/13948 contact no.: 9999595795 and email id: [rguptafcs@gmail.com](mailto:rguptafcs@gmail.com) as an Interim Resolution Professional of the Corporate Debtor from the available list of panels of Resolution Professionals as maintained by the IBBI. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order. Accordingly, **Mr. Rajesh Gupta** is appointed as IRP.
  - d. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section 9 of the Code. The expression immediately means within three days from the date of appointment as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
  - e. During the CIRP period, the management of the Corporate Debtor shall vest in the Interim Resolution Professional (IRP)/ Resolution Professional (RP) as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their

knowledge to the IRP within one week from the date of receipt of this order.

- f. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Adjudicating Authority hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
  - g. The IRP or the RP as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
  - h. The Operational Creditor shall deposit a sum of INR 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
  - i. In terms of the Insolvency and Bankruptcy Code 2016, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP, and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
  - j. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
14. File be consigned to record storage (current).

Let copy of the order be served to the parties.

**Sd/-**  
**RAMALINGAM SUDHAKAR**  
**PRESIDENT**

**Sd/-**  
**AVINASH K. SRIVASTAVA**  
**MEMBER (TECHNICAL)**