

NATIONAL COMPANY LAW TRIBUNAL,

COURT-V, MUMBAI BENCH

C.P. (IB) No. 645/IBC/MB/2020

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

Richa Pruthi

Proprietor of System Tech

Having registered office at:

System Tech, WZ-249A, Sant Garh, Main Outer Ring Road, New Delhi- 110018

.....Operational Creditor/Petitioner

Vs

Wadhawan Global Hotels and Resorts Private Limited

Registered office at:

4th Floor, HDIL Towers, Anant Kanekar Marg, Bandra-East, Mumbai, Maharashtra 400051 India.

.....Corporate Debtor

Order reserved on: 24.01.2023

Order pronounced on: 17.03.2023

Coram:

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

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner: Mr. Amit Tungare, Advocate.

For the Corporate Debtor: None.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by **Richa Pruthi, Proprietor of System Tech** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Wadhawan Global Hotels and Resorts Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default on 20th December, 2019 to the extent of Rs. 22,07,388/- with regards to the outstanding payments to the Petitioner. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner is a Proprietary firm of the Proprietor, Ms. Richa Pruthi engaged in the business of Interior Works and Designing. The Corporate Debtor is engaged in the business of running hotels and resorts at various sites. The Corporate Debtor approached the Petitioner for interior works and designing for its upcoming hotel property at Pune for which work orders were issued by the Corporate Debtor in favour of the Petitioner. The Petitioner performed its part of the work at the project site of the Corporate Debtor and raised regular invoices for the work completed.
3. The outstanding amount payable against the invoices raised as per the Demand Notice dated 25th April, 2019 is Rs. 82,07,388.00/-. After the service of said demand notice, the Corporate Debtor paid an amount of Rs. 25,00,000/- by way of post-dated cheques. After

making the said payment, the outstanding amount payable by the Corporate Debtor was Rs. 57,07,388.00/-.

4. Since the Corporate Debtor was unable to pay the outstanding dues to the Petitioner, a petition u/s 9 of IBC, 2016 against the Corporate Debtor (CP No 2879 of 2019) was filed before NCLT Mumbai. The Hon'ble Tribunal vide order dated 11th November 2019 admitted the said petition and set in motion the Corporate Insolvency Resolution Process against Corporate Debtor i.e. Wadhawan Global Hotels & Resorts Pvt. Ltd. However, during the ongoing CIRP, the directors of the Corporate Debtor agreed to settle the dues of the Petitioner and thus, entered into Consent Terms dated 28th November, 2019.
5. As per the consent terms entered into between the parties, the Corporate Debtor i.e. Wadhawan Global Hotels Resorts Pvt. Ltd. issued Four Cheques dated 20th December 2019 bearing No. 4314744, 4314745, 4314746, 4314747 for the amount of Rs 5,00,000/- each. After much follow up with the officers of Corporate Debtor, Corporate Debtor transferred an amount of Rs 5,00,000/- on 23rd December 2019, Rs 5,00,000/- on 24th December 2019, Rs 2,00,000/- on 27th December 2019, Rs 1,00,000/- on 31st December 2019, Rs 1,00,000/- on 3rd January 2020 and Rs. 1,00,000/- on 6th January, 2020. For the Instalment dated 20th December 2019, there still remains the balance of Rs 5,00,000/- to be paid by Corporate Debtor.
6. The subsequent instalments for the amount of Rs 17,07,388/- were due on 31st December 2019 for which Corporate Debtor had issued Four Cheques. However, the Corporate Debtor requested Petitioner not to deposit the above cheques dated 31st December 2019 as the Corporate Debtor was to transfer the amount due on the said cheques through NEFT. The Corporate Debtor transferred only an amount of Rs 1,00,000/- on 3rd January 2020. Thus, the outstanding amount of Rs 22,07,388/- was payable as per the

consent terms. Further, all the said cheques deposited by Petitioner in its bank account “Yes Bank Ltd.” got dishonoured on 15th January 2020. Hence, this Petition.

Findings:

7. Heard the Counsel appearing for the Petitioner and perused the material available on record. There is no representation on behalf of the Corporate Debtor.
8. Even the daily order dated 01.12.2021 notes that one Mr. Mohit Khanna, Ld. Counsel appearing on behalf of the Corporate debtor undertook to pay the balance amount and a clear direction was given that if he fails to pay the balance amount, the matter will be admitted. Despite clear directions, the Corporate Debtor failed to pay the balance amount and also did not appear on two occasions. Thus, the Corporate debtor was set ex-parte vide order dated 08.03.2022.
9. After hearing the submissions of the Counsel for the Petitioner, this Bench is of the view that the Corporate Debtor did not comply with the payment schedule as per the consent terms. Further, it appears that the Corporate Debtor does not seem to have any intention to honor the consent terms.
10. The Corporate Debtor also did not make any representation before this Bench and also did not file any reply or raise any objection to the present application. The Corporate Debtor, in view of the settlement, had accepted the breach of consent terms dated 28th November, 2019. Further, the date of default in the present case is 20.12.2019 i.e. the date of the one of the unpaid cheques and the Petition was filed on 20.02.2020, which is very much within the limitation. In view of the same, this Bench is of the view, the material on record has proved the ‘existence of debt’ and ‘default’ on the part of the Corporate Debtor.

11. Since the debt and default on the part of the Corporate Debtor being proved and also by looking at the consent given by an Insolvency Professional, we hereby admit this petition.
12. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of Operational Debt to the tune of Rs. 22,07,388/- giving a cause of action to the Petitioner to invoke the provisions of Section 9 of the Code. Hence, owing to the inability of the Corporate Debtor to pay its dues, therefore we are of the considered view that this Petition deserves to be admitted. It is ordered accordingly in following terms:

ORDER

- a. The above Company Petition No. 645/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Wadhawan Global Hotels and Resorts Private Limited.**
- b. **Mr. S. Gopalakrishnan**, having registration No. IBBI/IPA-002/IP-N00151/2017-2018/10398, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process 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.

- 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 (IB) No. 645 of 2020 is **admitted**.

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)