NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J) CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 07.08.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/190/9/2022
NAME OF THE COMPANY	Zorek Education Technologies Pvt Ltd
NAME OF THE PETITIONER(S)	Options
NAME OF THE RESPONDENT(S)	Zorek Education Technologies Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this petition is admitted.

Sd/MEMBER (T)

Sd/MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH-II

CP (IB) No.190/9/HDB/2022

[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]

Between:

M/s.Options

Rep. by its Managing Partner Mr. Pawan Kumar Kedia, H.No. C, 5-9-12/1, Ground Floor, Samrat Complex, Commercial Bloc, Saifabad, Hyderabad - 500004

... Operational Creditor

And

M/s. Zorek Education Technologies Private Limited 2-1-290/5/1, Nallakunta, Hyd – 044, lane, Opp. Vijayabank Nallakunta, Hyderabad, A.P TG 500044 India.

...Corporate Debtor

Date:07.08.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial) Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Operational Creditor : Ld. Counsel Mr. Y. Suryanarayana For the Corporate Debtor : Ld. Counsel Mr. G. Sai Prasen

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

The instant Petition has been filed by M/s.Options (hereinafter referred as Operational Creditor) under section 9 of the IBC for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. Zorek Education Technologies Private Limited (hereinafter referred as Corporate Debtor).

1. Petition/Application:

- 1.1. The Operational Creditor entered into an Agreement (**Annexure 1**) dated 14.02.2019, with the Corporate Debtor for printing of Pre-Primary and Primary Text Books for the year 2019-2020. The total quantity of books to be printed and supplied was 5,65,000 at the value of Rs.3,08,93,184/-. The payment was required to be made in 13 (thirteen) equal installments of Rs.23,76,398.80 starting from 31.07.2019 and ending on 31.07.2020. The Corporate Debtor was also required to pay interest @ 24% for any delay in the payment.
- 1.2. It is claimed that Operational Creditor has supplied all the books as per the contract, but the Corporate Debtor paid only Rs.1,63,49,000/-. Therefore, the latter is liable to pay balance amount of Rs.1,40,68,097/- and interest @ 24% from 20.04.2019 till 31.10.2021 amounting to Rs.1,91,46,476/- and the total amount claimed is Rs.3,32,14,573/-.
- 1.3. The Operational Creditor issued demand notice (**Annexure 4**) dated 01.02.2022, demanding a sum of Rs.3,32,14,573/-.

2. Counter/Reply:

The Corporate Debtor by filing reply has not denied about the execution of the agreement but submitted as below:

2.1. The Operational Creditor has failed to discharge its obligation in terms of quantity and quality as per the agreement dated 14.02.2019. The Operational Creditor had not supplied the books as contracted and further the books were also not of good quality. The non-receipt of goods was also

- communicated to the Operational Creditor on many occasions and therefore there is breach of contract between both the parties.
- 2.2. Non-delivery of the books is also clear from the challans filed by the Operational Creditor as some of the books were delivered to the entity named M/s.Matrusri and not to the Corporate Debtor.
- 2.3. In total, the Corporate Debtor received 2,60,000 books against 5,65,000 books and for this, the Corporate Debtor has already paid a sum of Rs.1,45,44,184/-.
- 2.4. Hence, the dues of Rs.3,32,14,573/- claimed by the Operational Creditor is not correct. The Corporate Debtor has also made reference to the decisions by Hon'ble Supreme Court of India in *Mobilox Innovation Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353 and Rajratan Babulal Agarwal v. Solartex India Private Limited 2022 SCC Online SC 1395* to bring home the point that the present Petition is without any merit because there is existence of a dispute between both the parties.

3. Rejoinder:

In the rejoinder, the Operational Creditor has reaffirmed and reasserted the contentions made in the Petition and further averred:

- 3.1. The Corporate Debtor has not raised any dispute till the issuance of the demand notice by the Operational Creditor. For the first time, the dispute has been raised by filing the counter.
- 3.2. It is denied that all the books as per agreement were not supplied to the Corporate Debtor.

3.3. On the question of delivering the goods to M/s.Matrusri, it is clarified that the directors of the Corporate Debtor are the partners in the said firm. The address of the said firm is also the same as that of the Corporate Debtor and this is clear from the delivery challans which have stamp of M/s.Matrusri. The delivery challans were sent by the Operational Creditor in the name of the Corporate Debtor but the same were accepted by M/s. Matrusri. The Operational Creditor has also raised the issue that if the Corporate Debtor had released the payment of Rs.1,63,49,000/-, then there would be no question of the goods not being received by the said company.

4. Findings:

- 4.1. In pursuance of agreement (**Annexure-1**), the Operational Creditor was to supply 5,65,000 Pre-Primary and Primary Text Books for the year 2019-2020 at a total consideration of Rs.3,08,93,184/- to the Corporate Debtor. As per Clause 3.3 of the agreement, the Operational Creditor was to submit one invoice for each shipping cycle/finalized delivery by giving details about the goods and price.
- 4.2. The case of the Operational Creditor is that 5,65,000 number of books was supplied vide invoices **Annexure-2**, and the Corporate Debtor paid only Rs.1,63,49,000/- against Rs.3,08,93,184/-. On the other hand, the case of the Corporate Debtor is that only 5,65,000 books were received and the payment of Rs.1,45,44,184/- has been paid to the Operational Creditor.
- 4.3. Ld. Counsel for the Operational Creditor has rebutted the stand of the Corporate Debtor about not receiving the entire lot of books by submitting that that the books were either received by the representative of the Corporate Debtor on its behalf or by the firm M/s.Matrusri whose partners are the directors in the Corporate Debtor. Therefore, there is no discrepancy

in the record and accordingly, the Operational Creditor has not paid the due amount as claimed in the Petition.

- 4.4. Ld. Counsel for the Corporate Debtor has repelled the stand of the Operational Creditor by contending that the payment has already been made for the books which had been supplied and the delivery challans relied upon by the Operational Creditor show that most of these were received by M/s.Matrusri and not by the Corporate Debtor. Further, M/s.Matrusri was not asked to receive the books on behalf of the Operational Creditor.
- 4.5. There is no doubt that major chunk of delivery of books was received by M/s.Matrusri. Upon the examination of the invoices issued in the name of the Corporate Debtor, we found that total of 5,05,341 books were delivered by the Operational Creditor and out of this, the Corporate Debtor has acknowledged delivery of only 57,124 books, but the books were received either on behalf of the Corporate Debtor by its representative or by M/s.Matrusri. In both instances, an Assistant Manager of the Corporate Debtor and a witness to the agreement dated 14.02.2019 (Annexure-2), signed the delivery challans about receiving the books. Additionally, the addresses of the Corporate Debtor and M/s.Matrusri are one and the same. The summary of the delivery acknowledgment of books by the Corporate Debtor as per the invoices submitted are enumerated below in the Tabular Form:

S.	Invoice No and	Books	Delivery Accepted by	Amount (Rs)
No	Date	Delivered		
1.	OP/19-20/2974	7154	Zorek Educational	4,11,012.76/-
	(22.05.2019)	(1040+1060+10	Technologies Pvt	
		50+4004)	Limited	
2.	OP/19-20/1740	13907	Zorek Educational	11,75,339.96/-
	(05.07.2019)	(5026+8881)	Technologies Pvt	
			Limited	

3.	OP/19-20/18934	36063	Zorek Educational	18,32,629.08/-
	(21.03.2009)	(9026+9010+90	Technologies Pvt	
		27+9000)	Limited	
	Total	57,124 Books		34,18,982/-

- 4.6. Thus, if the stand of the Corporate Debtor is accepted that M/s.Matrusri has not accepted the books on its behalf, it failed to explain as how as per record only 57,124 books, the costs of which is Rs.34,18,982/-, were received contrary to the admission in the counter that only 5,65,000 books against the payment of Rs.1,45,44,184/- were received.
- 4.7. Keeping in view the discrepancy in the plea of the Corporate Debtor and the fact that the Operational Creditor is able to show delivery of books and receipt of payment, we are of the opinion that the books were received either by the Corporate Debtor directly or through M/s.Matrusri whose address is also the same as that of the Corporate Debtor. The signatory for the delivery of books in the delivery challans on behalf of Corporate Debtor or M/s.Matrusri in most cases is the same person, who is also signatory to the agreement (Annexure-2).
- 4.8. Coming to the point raised by the Corporate Debtor that there is existence of dispute between both the parties prior to be issuance of demand notice (Annexure-4), it is settled that when there is existence of real dispute, provisions of IBC cannot be invoked. Here, we want to refer to the decision of Hon'ble Supreme Court in *Transmission Corporate of Andhra Pradesh Limited vs Equipment Conductors and Cables Limited (2019) 12 SCC 697* that there must not only be a dispute before issuance of demand notice but it must also be genuine one. The Corporate Debtor has also referred to the decision in *Mobilox (supra) and Rajratan (supra)* to substantiate his contention, where after going through various judgments, it was laid down in para 51:

51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

(own emphasis)

- 4.9. Within the parameters of the above decisions, it becomes clear that the present dispute is hypothetical, illusory and spurious. When the stand of the Operational Creditor is clear as what number of books has been supplied and how much amount has been received from the Corporate Debtor, the latter has failed to furnish evidence to rebut it.
- 4.10. The dispute was also raised after the issuance of the demand notice. In Para No.9 of the counter, the Corporate Debtor has claimed that non-receipt of goods was intimated to the Operational Creditor on many occasions but there is nothing on record to prove this fact. There is not even iota of evidence to prove that the Corporate Debtor has any time before the filing of the counter has raised such issue. On the other hand, the Operational Creditor is able to prove that the books were supplied vide Annexure-2 and only a part of the payment was received which is also confirmed from the record.

4.11. For succeeding under Section 9 of IBC, strict rule for debt and default is sine qua non. The Operational Creditor is able to prove all the mandatory requirements of law and accordingly, this Petition is allowed.

ORDER

- i. The Operational Creditor has proposed the name of **Mr. Malireddy Ramana Reddy** as Interim Resolution Professional and he has given his consent in Form-2 and as per IBBI website and his authorisation for assignment is valid upto 30.06.2025. Accordingly, we appoint **Mr. Malireddy Ramana Reddy** as Interim Resolution Professional, having Registration No. IBBI/IPA-003/ICAI-N-00308/2020-2021/13452, e-mail id: ramanareddycsrp@gmail.com, Mobile No., 9059779006.
- ii. The IRP is directed to take charge of the Respondent/Corporate Debtor's Management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
- iii. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in Section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:
 - i. 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 or law, tribunal arbitration panel or other authority;

- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
- iii. 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 Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- iv. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Subsection (1) of Section 14 shall not apply to such transactions, agreements. or other arrangement as may be notified by the Central

Government in consultation with any operational sector regulator or any other authority.

- v. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
- vi. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
- vii. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
- viii. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
 - ix. Accordingly, this Petition is admitted.

Sd/-

Sd/-

(SANJAY PURI) MEMBER (TECHNICAL) (RAJEEV BHARDWAJ) MEMBER (JUDICIAL)

Apoorva