



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
C.P (IB) 266 /KB/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:

SHREE SHYAM MOTION PICTURES PRIVATE LIMITED.

...Operational Creditor/Applicant

Versus

SPICY ENTERTAINMENT AND MEDIA LIMITED

...Corporate Debtor/Respondent

Order pronounced on: 5/11/2024

Coram:

Bidisha Banerjee: Member (Judicial)

D. Arvind: Member (Technical)

Appearances (via Hybrid)

Kuldip Mullick, Adv

} for the Operational Creditor

Meenakshi Manot, Adv

Shashi Aggarwal,FCS



ORDER

Per: Bidisha Banerjee, Member (Judicial)

Brief Facts:

1. The company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **SHREE SHYAM MOTION PICTURES PRIVATE LIMITED.** (herein after referred to as Operational Creditor/ Applicant) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **SPICY ENTERTAINMENT AND MEDIA LIMITED** (herein after referred to as the Corporate Debtor/ Respondent).
2. The Applicant is a **company incorporated on 06/03/2008, under Companies act, 1956, CIN: U92100WB2008PTC123767**, having Registered Office at 7/1A, Grant Lane, 4th floor , Room No 401, Kolkata -700012.
3. The Respondent is a Company incorporated on 15/11/2012 under the Companies act, 1956. Its CIN is L22219WB2012PLC188312. The Registered Office of the company is at OFC No. 12, Block A3, Gages Garden, Premises No 106 Cows Ghat Road, Shibpur, HMC Ward No. 36 Kolkata Howrah WB 711102. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
4. The principal amount claimed to be in default is Rs 8,20,00,000/- (Rs eight crore and twenty lakhs only).
5. The default is claimed to be have occurred on 27/05/2023.



Submission of the Applicant

6. The Operational Creditor is a company engaged in the business of Motion, Picture, Radio, television and other entertainment activities.
7. The Corporate Debtor is media and entertainment company. It offers end to end integrated services including production, Post production and Media and Creative services to production houses, Studios and broadcasters.
8. The Applicant is right holder of 12 (twelve) Cinematographic Films. The list of 12 Cinematographic Films is as follows:
 - I. ASTITVA
 - II. DIL NE JISE APNA KAHAN
 - III. BUDDHA MAR GAYA
 - IV. DUS KAHANIYA
 - V. NANHE JAISALMER
 - VI. ALADIN
 - VII. PAATHSHALA
 - VIII. PANKH..... the Unberable lightness of being
 - IX. THE GREAT INDIAN BUTTERFY
 - X. GOLYON KI RASLEELA-RAM LEELA
 - XI. DEKH TAMASHA DEKH
 - XII. WEDDING PULLAV



9. By virtue of agreement dated 15/02/2019, the Applicant for consideration of Rs 10,00,000/- (Rs ten crore only) exclusive of applicable taxes sub license right, granted licenses for theatrical right in favour of Corporate Debtor on outright basis for the term and licensed territory (i.e East Punjab known as Indian film trade) . The term of license right granted was from 15th February 2019 to 1st March 2021. The Corporate Debtor has accepted and acknowledged the theatrical right to its full satisfaction without any dispute.
10. As per the addendum to the agreement dated 15-02-2019 the payment with respect to the licensed right in terms of the original agreement was to be paid within 180 days after the completion of licensing term i.e 31/08/2021.
11. The Applicant raised invoice on 16/03/2019 for Rs 11,20,00,000/- (Rs eleven crore twenty lakh only). However the Corporate Debtor has paid an amount of Rs 3,00,00,000/- (Rs three crore only). Thus, an amount of Rs 8,20,00,000/- is still outstanding.
12. The operational Creditor issued a Balance Confirmation Letter dated 27/05/2023 to the Corporate Debtor upon which the Corporate Debtor has confirmed a balance of Rs. Rs 8,20,00,000/- due to the Corporate Debtor. Thus the Corporate Debtor has admitted its liability.

Submission by Respondent



13. The Corporate Debtor/Respondent has refuted the statements and has submitted the following:

- I. The Corporate Debtor has denied that Demand Notice dated 09.09.2023, was served on them through speed post and email. Further the Corporate Debtor has denied that any amount is payable by it.
- II. The Corporate Debtor has denied that vide agreement dated 15.02.2019, any theatrical right was given to it.
- III. The Corporate Debtor has also denied that any addendum dated 15-02-2019 was executed between the Operational Creditor and Corporate Debtor.
- IV. The Corporate Debtor has denied its liability to pay Rs 8,20,00,000/- to the Applicant / Operational Creditor.
- V. The Corporate Debtor has further denied that it has issued any balance confirmation to the Applicant containing confirmation of any sum due towards the Applicant.

Analysis and Finding

14. We have heard the learned counsels appearing on behalf of the Operational Creditor as well as the Financial Creditor and pursued the records.

15. Upon perusal of record, we discern the following:

- I. The Notice dated 27/09/2023 was duly served upon the Corporate Debtor.



- II. The learned counsel of the Corporate Debtor on 28th June 2024 has submitted before this Tribunal that the settlement talks are going on between the Corporate Debtor and Operational Creditor, thereby admitting the default on the part of the Corporate Debtor.
- III. In addition, the Operational Creditor has issued a Balance Confirmation Letter dated 27/05/2023 to the Corporate Debtor and the Corporate Debtor has confirmed a balance of Rs. Rs 8,20,00,000/- due to the Corporate Debtor. Thereby acknowledging the debt and its liability to repay to the Operational Creditor. The relevant extract of the documents is as under-

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

C.P (IB) 266/KB/2023



Annexure 12

To : Spicy Entertainment and Media Ltd
68, R.K.Chatterjee Road,
(Kasba) Rash Behari Connector, 3rd Floor,
Kolkata-700042

From: Shree Shyam Motion Pictures P Ltd.,
7/1A, Grant Lane, 4th Floor Room No:401,
Kolkata-700012
GSTIN/UIN : 19AALCS6639K1ZK

GSTIN/UIN : 19AACCL3789N1ZP

Dear Sir/Madam,

Sub: Confirmation of Accounts
1-Apr-21 to 31-Mar-22

Date: 27-May-23

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
1-Apr-21	Opening Balance	8,20,00,000.00			

Shree Shyam Motion Pictures (P) Ltd.

Authorised Signatory / Director

8,20,00,000.00

8,20,00,000.00

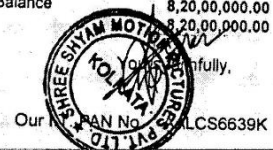
Closing Balance

8,20,00,000.00

8,20,00,000.00

Spicy Entertainment and Media Limited
We hereby confirm the above

I.T. PAN No. 19AACCL3789N1ZP
Authorised Signatory



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C.P (IB) 266/KB/2023

To : Spicy Entertainment and Media Ltd
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From: Shree Shyam Motion Pictures P Ltd.,
7/1A, Grant Lane, 4th Floor Room No:401,
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GSTIN/UIN : 19AALCS6639K1ZK

GSTIN/UIN : 19AACCL3789N1ZP

Dear Sir/Madam,

Sub: Confirmation of Accounts
1-Apr-22 to 31-Mar-23

Date : 27-May-23

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
1-Apr-22	Opening Balance	8,20,00,000.00			

8,20,00,000.00

8,20,00,000.00

Closing Balance

8,20,00,000.00

8,20,00,000.00

Spicy Entertainment and Media Limited
I/We hereby confirm the above

I.T. PAN No. AADGCS6639K1ZK
Director / Authorised Signatory



Yours faithfully,

GSTIN No. : AALCS6639K

Shree Shyam Motion Pictures (P) Ltd


Authorised Signatory / Director



IV. The authenticity of the balance confirmation document has not been disputed and in fact Corporate Debtor was engaged in settlement talks with the Operational Creditor as could be seen from our order dated 27/06/2024.

16. Therefore, under the facts and circumstances stated above and in terms of the unequivocal and irrevocable admission and acknowledgement of debt and default by the Corporate Debtor /Respondent, We are of the considered view that the Applicant has been able to establish that there is an existence of an “operational debt” that is “due and payable” and there is a “default” committed by the Corporate Debtor, in excess of threshold limit prescribed under IBC, 2016. The Petition is also not barred by limitation.
17. In the light of the enumerations supra, the application bearing **CP (IB) 266/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- I. The Application filed by the **SHREE SHYAM MOTION PICTURES PRIVATE LIMITED (OPERATIONAL CREDITOR)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby,



admitted for initiating the **Corporate Insolvency Resolution Process** in respect of **SPICY ENTERTAINMENT AND MEDIA LIMITED. (CORPORATE DEBTOR).**

II. As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.


III. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 (54 of 2002);*
- d. *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that 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, concession, clearances or a similar grant or right during the moratorium period;]



- IV.** 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.
- V.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VI.** The Applicant has not proposed any name as the “IRP”. Hence, we appoint **Mr. Deepak Saruparia, Registration No IBBI/IPA - 001/IP-P-00660/2017-2018/11689,**
Email: Saruparia.d@gmail.com , Phone No. 9322699995 as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- VII.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 9 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- VIII.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the 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, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- IX.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- X.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- XI.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- XII.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email



immediately, and in any case, not later than two days from the date of this Order.

- XIII.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- XIV.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- XV.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- XVI.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
18. Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.



19. Post the matter on **23 /12/2024** for filing the Periodical Progress Report by the IRP/RP.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 5th day of November, 2024

NKS(LRA)