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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 224/9/NCLT/AHM/2019

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.07.2019**

Name of the Company: Harmony Multimedia Pvt. Ltd.
V/s.
Karington Club & Resort Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None is present for the parties.

The Order is pronounced in the open court, vide separate sheet.



**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 10th day of July, 2019

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 224/9/NCLT/AHM/2019

In the matter of:

M/s. Harmony Multimedia Private Limited
905, Vishwakarma Arcade
Majura Gate
Ring Road
SURAT 395 003
Gujarat State

Petitioner
[Operational Creditor]

Versus

M/s. Karington Clun and Resort Limited
Shop No. 415, Silver Stone Arcade
Singapore Causway Road
Katargam
SURAT 395 004
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 10th July, 2019.

Coram: Hon'ble Ms. Manorama Kumari, Member (J).

Appearance:

PCS Mr. Dhiren R. Dave for the applicant.

ORDER

1. That, the instant application is filed by Mr. Rajesh Manubhai Desai, Director of the applicant/operational creditor M/s. Harmony Multimedia Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to trigger Insolvency Resolution Process against M/s. Karington Club and Resort Limited (hereinafter called as respondent/corporate debtor).

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2. That, the applicant/operational creditor M/s. Harmony Multimedia Private Limited is a company registered under the Companies Act, having its registered office at 905, Vishwakarma Arcade, Majura Gate, Ring Road, Surat 395 003 is engaged in the business providing publication service.
3. That, the respondent/corporate debtor M/s. Karington Club and Resort Limited is a company incorporated under the Companies Act on 06.08.2018 and having its registered office at Shop No. 415, Silver Stone Arcade, Singapore Causway Road, Katargam, Surat 395 004, Gujarat State, having identification No. U55109GJ2018PLC103537. That, authorised share capital of the corporate debtor is Rs. 5,00,000/- and paid up share capital is Rs. 1,00,000/-.
4. It is submitted by the applicant that, it had released various advertisements for and on behalf of the corporate debtor in local daily newspapers for its proposed club as per summary of bills placed at Annexure II-D to the application. That, default occurred from 10th day of every bill date and calculated in calculation sheet attached to the application.
5. It is submitted by the advocate appearing on behalf of the applicant that, since the respondent company failed to clear the outstanding payment, the applicant was compelled to issue demand notice to the corporate debtor dated 18.02.2019, through authorised representative, whole time

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Company Secretary duly authorised by Board of Directors of the applicant company vide Board Resolution dated 18.02.2019, calling upon the respondent to make payment of **Rs. 20,30,843.75 (Rupees twenty lacs thirty thousand eight hundred forty-three and paise seventy-five only)** which includes **interest amount of Rs. 3,30,843.75 (Rupees three lacs thirty thousand eight hundred forty-three and paise seventy-five only).**

6. The applicant has submitted copies of the following documents in support of the claim: -

Sr. No.	Particulars	Page No.
01	Notice in form 3 issued to the corporate debtor	8-21
02	Invoices	22-26
03	Ledger account of corporate debtor	27
04	Cheque and cheque return memo	28-29
05	Working for computation of interest amount and dates of default	30-30
06	Proof for TDS payment made by applicant to corporate debtor on total bills amount	31-31
07	News paper advertisement	32-38
08	Reply of corporate debtor to the demand notice	39-43
09	Bank certificate	44-44
10	Affidavit in support of application in accordance with IB Code	45-46
11	Affidavit	48-49
12	Board Resolution	51-51

Findings:

7. On perusal of the record, it is found that despite issuance of notice by the applicant as also by Registry of this bench, the respondent did not bother either to file any reply or to represent its case in person/through advocate. The material available on record shows that the respondent had issued reply to the demand notice through its advocate by letter

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dated 09.03.2019 inter alia claiming that the respondent had paid an amount of Rs. 8,93,599/- through RTGS, whereas, the records made available with the application shows that cheque dated 16.10.2018 issued by the respondent in favour of the applicant on ICICI Bank for even amount has been returned by the bankers of the applicant – HDFC Bank with remarks that “insufficient funds”. On one hand the respondent claims that an amount of Rs. 8,93,599/- has been paid by RTGS, whereas, on the other hand the applicant says that cheque issued by the respondent has been dishonoured. Moreover, the respondent has not produced on record to substantiate its claim for having made such payment by RTGS.

8. On perusal of the material available on record it is found that, though the respondent has raised a dispute vide its letter dated 9th March, 2019, claiming that the respondent had made payment of Rs. 8,93,599/-, such claim is not supported by any document.
9. While examining an application under Section 9 of the Act, will have to determine the following: -
 - (i) Whether there is an “operational debt” as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)

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(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

10. In view of the aforesaid discussions and before rejecting and/or admitting the application, we must refer to the legislation guide on Insolvency Law of United Nations Commission on International Trade Law. One of the things the Legislative Guide spoke about was whether the debt is subject to a legitimate dispute or set off, in an amount equal to or greater than the amount of the debt.

11. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and in support of that operational creditor has placed copy of the invoices at page No. 22 to 260 to the application. As per the track report submitted by the applicant it appears that the notice has been served upon the respondent on 10.04.2019. Therefore, service is complete and the dispute



raised by the respondent is not supported by any document. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.

12. That, the Application filed by the Applicant is complete in all respects.
13. The applicant/operational creditor has not proposed the name of Interim Insolvency Professional. This adjudicating Authority hereby appoint Shri Manish Kumar Bhagat, 103-104 Panchdeep Complex, Mithakhali Six Road, Navrangpura, Ahmedabad (mbhagat2003@gmail.com) having registration No. IBBI/IPA-001/IP-P00856/2017-2018/11438 to act as an interim resolution professional under Section 13(1)(c) of the Code.
14. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating

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Authority directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

15. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

16. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of subsection (1) of Section 14 of the Code: -

- (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 of 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 right 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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(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.

17. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
18. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.
19. This Petition stands disposed of accordingly with no order as to costs.
20. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority