

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 150
CP(IB) 224 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Harmony Multimedia Pvt Ltd
V/s
Karington Club & Resort Ltd

.....Applicant

.....Respondent

Order delivered on ..27/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

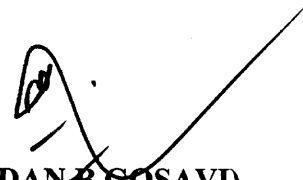
For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The matter is fixed for pronouncement of order.

The order is pronounced in the open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No. 224/NCLT/AHM/2019

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

HARMONY MULTIMEDIA PRIVATE LIMITED

905, Vishwakarma Arcade, Majura Gate
Ring Road,
SURAT 395 003
Gujarat State

..... **Operational Creditor**

Versus

KARINGTON CLUB AND RESORT LIMITED

Shop No. 415, Silver Stone Arcade
Singapore Causway Road
Katargam
SURAT 395 004
Gujarat State

..... **Corporate Debtor**

Order Reserved on: 20.09.2021
Order Pronounced on: 27.09.2021

**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance:

For Operational Creditor: Learned PCS Mr. Dhiren Dave

For Corporate Debtor : None

ORDER**[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]**

1. This application has been filed by Operational Creditor, namely, Harmony Multimedia Private Limited under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) against the Corporate Debtor, namely, Karington Club & Resort Limited. The amount of debt has been claimed at **Rs. 20,30,843.75 (Rupees twenty lacs thirty thousand eight hundred forty-three and paise seventy-five only)** which include interest amount of Rs. 3,30,843.75.
2. The facts, in brief, are that the Operational Creditor released various advertisements for and on behalf of the corporate debtor in local dailies for its proposed club as per the summary of various invoices (page 22-26) raised by the applicant on the respondent, however payment was not made, hence, this application was filed. No one appeared on behalf of the Corporate Debtor and reply has not been filed. The Operational Creditor has claimed that it had released various advertisements for and on behalf of the corporate debtor in local dailies during the period from

17.08.2018 to 17.10.2018 and default occurred from 10th day of every bill.

3. On perusal of record it is found that, in support of its claim, the operational creditor has placed on record copy of invoices, copy of ledger account, working for computation of interest and date of default, copy of affidavit of service of notice under Section 8 of IBC, 2016 and other documents.
4. On perusal of the records it is also found that the instant petition filed on 18.03.2019 was admitted and disposed of on 10.07.2019. Subsequently, on 19.07.2019, the operational creditor filed IA No. 430 of 2019 under Section 12A of the Insolvency and Bankruptcy Code, 2016 seeking withdrawal of instant IB petition and for recalling the process of Corporate Insolvency Resolution in respect of the corporate debtor showing the reason that the corporate debtor has given an undertaking to clear the dues and has given eight post-dated cheques to settle the claim amount. Said IA No. 430 of 2019 was allowed and disposed of on 16.10.2019. Since the respondent failed to honor the cheques as per the undertaking, the operational creditor, on 06.11.2020, under Rule 44 of the NCLT Rules, 2016 filed IA No. 865 of 2020 for restoration of instant petition which came to be allowed and disposed of on 24.03.2021. Accordingly, this application has been filed.

5. The corporate debtor filed affidavit in reply to the demand notice issued by the applicant inter alia claiming that the outstanding amount of the operational creditor has to be settled partly by cash and partly by way of membership card of the corporate debtor. However, no evidence of such understanding between the operational creditor and the corporate debtor is brought on record. Even in the settlement agreement/undertaking dated 18.07.2019 entered into between the parties, no such stipulation exists, hence, this argument does not help the cause of corporate debtor. As far as the aspect of ascertainment of claim amount is concerned, the same shall be determined by the IRP/RP as per IB Code, 2016.
6. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor. Further, such debt is due and payable and a default has occurred in repayment thereof.
7. The name of IRP has not been proposed which is not mandatory in case of an application filed under Section 9 of IBC, 2016. Hence, we shall appoint an IRP from the list approved by IBBI. The petition is otherwise complete and defect free.

8. In view of the above discussion, we admit this application and order as under:

ORDER

1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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 assets 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

2. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the

Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

3. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. Jigar Bhatt, having Registration No: IBBI/IPA-001/IP-P01917/2019-20/13005** **having Email Address: jigarb.jigarb@gmail.com** and having office at B-101, Citadel, Off. C.G. Road, Navrangpura, Ahmedabad 380 009 to act as an IRP under Section 13(1) (c) of the Code. The IRP is directed to file request/applications which he is required to file with the Adjudicating Authority as per provisions of IBC, 2016 read with CIRP Regulations, 2016.
4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any


personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate. IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

5. This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.
6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 2,00,000/- (Rupees two lacs Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of

Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

8. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
9. Accordingly, CP (IB) No.224/9/NCLT/AHM/2019 is allowed.
10. List the matter on 15.11.2021


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)