

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP.No.41(IB)/MB/2018

Under section 9 of IBC, 2016

In the matter of

Aram Services
"Sun Beam", SahrdaSadan,
Near Alankar Cinema
Opp. Railway Station
Surat, Gujarat

..... Petitioner

Vs.

R. K.Associates & Hoteliers Pvt Ltd.
Opp. Railway Station, Station Road
Durg, Chattisgarh – 491 001.

.....Respondent

Order delivered on: 11.05.2018

Coram:

Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Mr. Dhiren Akbari, Advocate
For the Respondent : None present.

Per Ravikumar Duraisamy, Member (T)

ORDER

1. It's a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 by an Operational Creditor, namely, Aram Services (hereinafter referred as 'the Creditor') against the Corporate Debtor, namely, R. K. Associates & Hoteliers Pvt Ltd (hereinafter referred as 'the Debtor'), on the ground that the Debtor defaulted paying principal amount of Rs.1,10,64,530/- along with interest @ 18% per annum, amounting to ₹1,56,185 aggregating to total amount of Rs.1,12,20,715/- towards the bills raised against the services provided by the Operational Creditor. In view of the same, the Creditor herein filed this Petition for initiation of Corporate Insolvency Resolution Process against this Corporate Debtor.



2. The case of the Petitioner is that the Debtor was awarded contract for comprehensive linen management work by commercial department of Western Railways, IRCTC (Indian Railways). Paid Up Share Capital of the Corporate Debtor as per MCA record is ₹ 11,79,83,530/- (Rupees Eleven Crores Seventy Nine Lacs Eighty Three Thousand Five Hundred Thirty Only). The Debtor sub-contracted the work to the Creditor herein for providing bed roll and comprehensive linen management for the specific Indian Railways trains. As per the understanding between the Creditor and the Debtor, the Creditor was providing regular services and was raising the bills on monthly bills for the services rendered to the Debtor and the Debtor in turn raised the bill to the Indian Railways. Copies of the various bills raised by the Creditor upon the Debtor and thereupon by the Debtor on Indian Railways have been annexed to the Company Petition. Operational Creditor also required to make payment of royalty @ ₹ 75,000/- (Rupees Seventy Five Thousand Only) per month to the Corporate Debtor. After submitting both the bills, concerned Railway Departments settles the bill after verifying the actual occupancy in the specific train route and accordingly make payment to the Debtor. Upon settlement of the bills, Creditor makes final entry in the Ledger Account of the Debtor by the amount settled by the Indian Railways. The Creditor therefore submits that the figure mentioned in the Ledger account are the figures which are settled by the Indian Railways and the same are due and payable by the Debtor.

From May 2008, Operational Creditor started to provide services to the specific Indian Railways trains for supplying bed rolls in the trains on behalf of Corporate Debtor and the details of amount outstanding are as given below.

Year	Outstanding Amount (₹)
2008-09	2554998
2009-10	1317890
2010-11	1856673
2011-12	3168969
2012-13	-1448736
2013-14	2666130
2014-15	948606
Total	11064530

3. The Creditor further submits that after making various requests and follow up with the Debtor to make payment of the outstanding amount the Debtor failed and negated to make the payment despite having admitted the outstanding bills and amount. Therefore, the Creditor issued legal notice on 23.3.2015 under Section 433 of the Companies Act, 1956 demanding the then outstanding amount. The Debtor has not made any reply to the said notice. The Debtor thereafter, made payment of Rs.15,00,000 on 19.3.2016 and the same was accounted in the Ledger Accounts and adjusted against the interest accrued on the long overdue outstanding amount.

4. Creditor further submitted that far as issue of limitation is concerned, the claim of the Operational Creditor arises out of various outstanding Invoices staring from 07.04.2013 till 05.11.2014 due and payable on different dates. Applicant has made averment that they are maintaining the running account of the Corporate Debtor and produced Ledger Account of Corporate Debtor in books of Account of Operational Creditor staring form 01.04.2008 till 31.03.2017 and Bank statements starting from May, 2014 till September, 2016 (Affidavit dated 10.04.2018). Applicant has also produced emails admitting the debt and also produced Bank Certificate showing the part payment of Rs.15,00,000/-dated 19.03.2016. In view of the above evidence on record, the claim of the Applicant is well within the limitation period as on date of the present Application.

5. Finally, the Creditor issued statutory notice under Section 434 of the Companies Act, 1956 on 15.10.2016, claiming the outstanding amount along with interest but the Debtor failed and negated to pay the said demand and has not made any reply to the said Notice. Having seen all these developments the Creditor sent notice under Section 8(1) of the Insolvency & Bankruptcy Code, 2016 on 25.9.2017 making the claim mentioned in the Company Petition against the Debtor herein.

6. For this Creditor has placed bills raised on Debtor, Ledger Account of Debtor in books of Account of Creditor, Copies of letters dated 18.12.2014, 25.11.2014, 20.11.2014, 24.5.2013, 30.3.2013 written by Creditor to Debtor requesting to make payment, copies of various emails dated 18.07.2013, 25.10.2013, 22.01.2014, 12.07.2014 and 14.08.2014 sent by the Corporate Debtor admitting the debt (**Exhibit-A7**) and various legal notice. Till date of filing present Application, Corporate Debtor has neither paid the amount demanded in the said notice nor replied to the same.

7. No Reply is received from the side of the Corporate Debtor

8. The operational creditor has recommended Mr. Jitesh Gupta as IRP and requested the Adjudicating Authority to appoint him as IRP. Accordingly, the Adjudicating Authority after receipt of confirmation and form-2, dated 11.05.2018 hereby appoints Mr. Jitesh Gupta, having IP registration Number IBBI/IPA-002/IP-N00144/2017-18/10380 as Interim Resolution Professional.

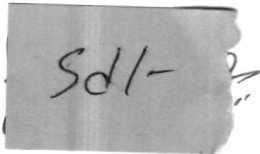
9. This Bench is satisfied that the Petitioner/Creditor has furnished all the material as stated under Section 9 of the Code, including Bank Certificate issued by the Bank as envisaged under the Code. This Petition clearly reveals that there is a debt as defined in Section 3(11) of I&B Code 2016, also there is default in this case within the

meaning of Section 3(12) of I&B Code, 2016, therefore this Bench hereby admits this petition filed under Section 9 of I & B Code, 2016, declaring moratorium U/s 14 of the code with consequential directions as mentioned below:

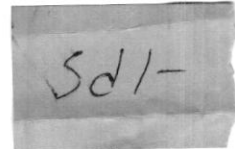
- I(a) that this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.
- (b) transferring, encumbering, alienating 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 Securitization 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.
- II (a) 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.
- (b) 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.
- (c) That the order of moratorium shall have effect from 11.05.2018 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.
- (d) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
- (e) That this Bench hereby appoints Mr. Jitesh Gupta, as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code.



10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to the Operational Creditor and the Corporate Debtor.



RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)



B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)

Sec (PS)