

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-922/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Gullivers Travel Associates

Having office at:

16 ST. Martin's Le Grand,
London EC1A 4EN

...Applicant/Operational Creditor

Versus

Fore Representations & Travels Pvt. Ltd.

Registered Office at:

J-9/59, Rajouri Garden
New Delhi -110027

...Respondent/Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Preet Pal Singh &

Mr. Saurabh Sharma (Advocates)

Counsel for Respondent: Mr. Rakesh K. Sharma (Advocate)

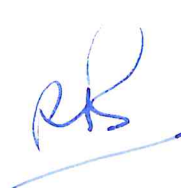
ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date:23.12.2021

1. This is an application filed by the Applicant Gullivers Travel Associates (GTA) Private Limited through its Authorized Representative Mr. Simon Jon Nicholson (Director) seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s Fore Representations & Travels Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Euro 471,692.86 (Euros Four Hundred Seventy One Thousand Six Hundred Ninety Two and Eighty Six Cents Only) equivalent to Rs 3,78,67,738.64/- (Rupees Three Crore Seventy Eight Lakh Sixty Seven Thousand Seven Hundred Thirty Eight and Sixty Four Paise Only) as alleged by the applicant, towards the Services provided by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Corporate Debtor approached Operational Creditor to avail fully independent travel

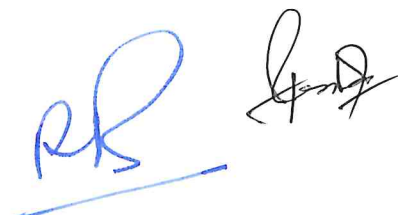


- accommodation and services (FIT) on credit. A FIT sales general terms and conditions were agreed and executed between the parties, detailing therein the complete terms and conditions. Operational Creditor after giving complete satisfactory services issued 1,342 invoices between 05.04.2018 till 25.07.2018.
- ii. Vide email dated 21.06.2018 and 22.06.2018 Corporate Debtor assured Operational Creditor to pay the outstanding amount but Corporate Debtor failed to fulfil its obligations to make payments despite availing the said services.
 - iii. Operational Creditor through its advocates issued a demand notice dated 01.03.2019 under Section 8(1) through registered post seeking payment of Operational Debt along with interest from the date of default till the date of realization.
 - iv. The said demand notice was delivered through registered post on 06.03.2019, however the same was returned when service was attempted through the mode of courier with remark "receiver shifted from given address". The said demand notice was re



issued by the advocates for the Operational Creditor on 06.03.2019 at alternate office address of the Corporate Debtor demanding operational debt and the same was successfully delivered through courier on 07.03.2019.

- v. Corporate Debtor failed to pay the outstanding debt as per the agreed terms with the Operational Creditor, however on several occasions agreed to pay the outstanding debt.
- vi. Since the debt of Operational Creditor was insured as such Operational Creditor availed the services of Coface India Credit Management Services Pvt. Ltd. for realization of the debt. It is submitted that when Corporate Debtor failed to make payments towards the outstanding dues to the Operational Creditor as per the terms of the agreement, Coface India Credit Management Services Pvt. Ltd. approached Corporate Debtor and requested to update the status of the outstanding amount. The Corporate Debtor vide email dated 8th October 2018 informed to encash the bank guarantee of USD 45,000 and



requested to reduce the outstanding debt accordingly and further informed that the Corporate Debtor will reconcile the accounts.

- vii. Corporate Debtor informed that they will come back on 20th October 2018 with the status on the balance. Thus, it is apparent, that the alleged defence/dispute which the Corporate Debtor has allegedly sought to raise is nothing but moonshine being contrary to its earlier admissions to pay.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Respondent filed its reply on behalf of the Respondent stating that:

- i. They contended that the petition has not been filed by any authorized person and not even in the name of a legal entity.
- ii. The respondent used to give access to the travel agents to book hotel and holidays for tourists. The business in the abovesaid was largely run by the travel agents whereas the respondents had facilitated the platforms where he had more than 20 hotel suppliers.



- iii. Gulliver's Travel Associate had the maximum share in the same and the second largest was the Hotel Beds. The respondent used to have huge annual turnover and the balance was more or less cleared at the end of the financial year or next financial year. The said turnover continuously decreased because of the loss of business. The respondent used to receive payments from its travel agents and accordingly the same was paid to Gulliver's Travel Associate and other hotel suppliers.
- iv. The Gulliver's Travel Associate was a supplier having its legal entity in London. The other hotel supplier, Hotel beds was based in Spain and another hotel supplier namely Tourico Holidays was based in US. Hotel Beds started investing in various hotel suppliers. Hotel Beds approached the respondent and got its account cleared and subsequently the account of Tourico Holidays was also cleared. The feeds of Hotel Beds were to be activated on clearance of payment which was eventually cleared by 15.5.2018 as promised. However, the agreement



with the hotel suppliers remained the same yet Hotel Bed started creating problems for the respondent in the mid of season for travel booking.

- v. The respondent wrote several emails dated 15.5.2018, 16.05.2018, 21.05.2018, 22.05.2018 and 29.05.2018. The Tourico Holidays and Gulliver's Travel Associates represented more than 50% of the sales of respondent. There was no agreement between the parties beyond 45,000\$BG.
- vi. The respondent and Gulliver's Travel Associate was acquired by Hotel Beds in the year 2018 which prompted the mismanagement/miscommunication between the parties. It was in May 2018 the feeds got shut by the petitioner and despite regular efforts of the respondent the same could not be opened.
- vii. During the said period of the season i.e., may 2018 the respondent was having turnover of Rs 5 Cr per month. It was a big jolt to the business where for more than 15 days in the peak holidays season the feeds were shut and no bookings could be done by



the respondent on the platform for petitioner which directly caused a loss of Rs 2.5 Cr.

- viii. Respondent started objecting to the said conduct of the petitioner and wrote several e-mails for non-working of the platform. It was during the said period the representative of the petitioner told the respondent that they were having insurance to the extent of outstanding with one Coface India Credit Management Private Limited. However, respondent lost its business and his business went into turmoil and it started taking a deep dive.
- ix. In the year 2016 respondent was having turnover of Rs 52,39,25,000/- but with every passing year the turnover started declining i.e., in 2017 the turnover was Rs 31,92,93,000/- and in the year 2018 the turnover came down to Rs 11,78,94,624/- and in the year 2019 turnover went down to Rs 11,44,95,320/- The entire business of respondent suffered due to fatal jolt given by the petitioner. The respondent has been a victim due to unprofessional



taking over of Gulliver's Travel Associates by Hotel Beds.

- x. Respondent stated that the present petition has not been filed by any legal entity. He replied the notice detailing as to how the respondent company suffered jolt due to the act and conduct of the petitioner.
- xi. The respondent had learnt that Gulliver's Travel Associate had already received the amount allegedly claimed by respondent from its insurance provider i.e., Coface India Credit Management Services Private Limited. It is not out of place to mention that the said insurance company had written any email dated 31.08.2018 written to respondent mentioning about the insurance policy.

3. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.



4. We have heard the arguments made by the counsel for the Operational Creditor and perused the documents filed by him.
5. The Corporate Debtor in its reply stated that the petition is not filed by a competent person whereas it has been correctly filed by Director of the operational Creditor and who had been further authorized to file the present petition vide board resolution 23rd August 2019.
6. Corporate Debtor himself vide its email dated 21st June 2018 and 22nd June 2018 stated that the outstanding debt/Operational Debt shall be paid.
7. The Operational Creditor has established the existence of debt and default on the part of the Corporate Debtor. The Corporate Debtor's plea of pre-existing dispute does not stand any merit since along with that, no documentary evidence substantiating the Corporate Debtor's plea regarding pre-existence of dispute has been annexed in the reply. Hence, the Corporate Debtor failed to establish any

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pre-existence of dispute and in view of the above situation, this Tribunal **admits** this petition and **initiates CIRP** on the Respondent with immediate effect.

1) A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

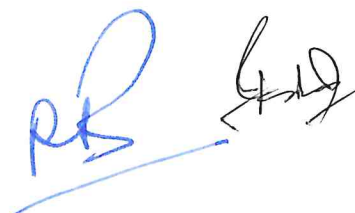
“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

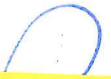
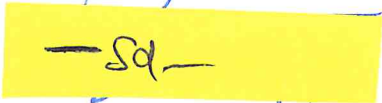




- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.
- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”
5. The interim resolution professional (“IRP”) proposed by the Tribunal is Mr. Mahender Kumar Khandelwal, (Email- khandelwalmahendar2@gmail.com), Reg. No: IBBI/IPA-001/IP-P00033/2016-2017/10086 is being confirmed by this Bench. He shall take such other and



further steps as are required under the statute, more specifically in terms of Section 13(2),15, 17 and 18 of the Code and file his report within 30 days before this Bench.

6. The Applicant is directed to pay a sum of Rs.2,00,000/- to the interim resolution professional (“IRP”) upon the IRP filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
7. Registry is directed to give the order copies to the concerned parties.
8. The order is pronounced by the adjudicating authority through video conferencing.



(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)



(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)