

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No.41/Chd/Hry/2019**

**Under Section 9 of the Insolvency  
and Bankruptcy Code, 2016**

**In the matter of :**

M/s Raj Pal Theatre  
having its registered office at  
Fattanwala House, Kotakpura Road,  
Sri Muktsar Sahib, Tehsil and District Shri Muktsar Sahib  
Punjab-152026

...Petitioner/Operational Creditor

Versus

**SRS Entertainment India Limited**  
having its registered office at  
SRS Multiplex, 2nd Floor, City Centre  
Faridabad, Haryana-121007

...Respondent/Corporate Debtor

**Judgement delivered on: 21.12.2021**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through Video Conferencing : -**

For the Petitioner : Ms. Anil Kumar Aggarwal, Advocate.

For the Respondent : Mr. Saurabh Jain, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**JUDGEMENT**

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with

Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as '**Rules**') by Jagjit Singh, Proprietor of Raj Pal Theatre (**Petitioner**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of SRS Entertainment India Limited (**Corporate Debtor**). The registered address of the petitioner is SRS Multiplex, 2<sup>nd</sup> Floor, City Centre, Sector-12, Faridabad, Haryana-121007. The Authority Letter dated 25.10.2018, issued by Partnership firm 'Raj Pal Theatre' authorising Jagjit Singh to file the petition is attached as Annexure A-4 of the petition. There is an affidavit in support of the contents of the petition which is at page no. 17 of the petition. The petition has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. Corporate Debtor is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹30,00,00,000/- and paid up share capital of ₹ 26,66,00,000 The CIN of the corporate debtor is U92490HR2014PLC053358 and its registered office is situated in Faridabad which lies in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the corporate debtor is Annexure A-2 available in the petition.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner owns a theatre in the name of Raj Pal Theatre and the same was given on lease to the corporate debtor. A lease deed was executed between the petitioner and the corporate debtor on 05.01.2015 and the lease period started w.e.f. 01.04.2015 for a period of 10 years. As per the lease deed dated 05.01.2015, a lease rent was fixed at Rs. 10.00 Lakh per month plus taxes. The lease rent was to be increased by 18% after the expiry of 3 years. The corporate

debtor deposited a sum of Rs. 60.00 Lakh towards interest fee refundable security. It is further submitted that the corporate debtor started paying only a part of the fixed rent which becomes due every month. As a consequences of which arrears of rent started increasing every month, further the last payment of Rs. 6, 07, 500/- made by the corporate debtor in the month of August, 2018. The aggregate amount of the arrears of rent up to October, 2018 has become Rs. 2,53,48,917/-. In part –IV of the form-5 the total amount of debt outstanding is Rs. 3, 28,01,724/- (including interest of Rs. 74,52,807/- up to October, 2018, the date of default is stated to be August, 2018 when the last payment of the rent was made.

4. A demand notice in Form 3 dated 31.10.2018 is stated to have been served upon the Corporate Debtor by speed post on 02.11.2018 (Annexure A-15 of the petition). The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹3,28,01,724/- (including ₹74,52,807/- as interest @ 18% per annum) within 10 days from the receipt of the notice. The demand notice was accompanied by Lease Deed dated 05.01.2015. The original postal receipts showing the issuance of demand notice at the registered address of the corporate debtor and the tracking reports showing the delivery of demand notice to the corporate debtor is attached as Annexure A-14 & A-15 respectively of the petition.

5. It is deposed by the petitioner with affidavit that the corporate debtor has not brought to its notice existence of any dispute or record of the pendency of the suit or arbitration proceedings filed before the receipt of notice under Section 8 of IBC, 2016 in relation to such dispute. The aforesaid affidavit is attached as Annexure A-16 .

6. It is submitted that the corporate debtor failed to comply with the demand notice and has not made any outstanding payment and hence this petition.

7. In Part V of Form 5, the amount of the Corporate Debtor is secured by the way of security of interest free refundable amount of Rs. 60.00 Lakhs which was paid by the respondent at the time of entering into Lease Deed.

8. In Part-III of Form 5, the petitioner has proposed Mr. Anil Arora, bearing Registration No. IBBI/IPA-001/IP-P00729/2017-2018/11224 as Interim Resolution Professional. The consent of Mr. Anil Arora (proposed Interim Resolution Professional) is furnished in Form 2 and the same is placed at Annexure A-6 of aforesaid petition. It has been stated in Form 2 that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI Agency.

9. Notice of this petition was issued to the Corporate Debtor on 27.02.2019 to show cause as to why this petition shall not be admitted. The Corporate Debtor has filed a reply vide Diary No. 4922 dated 19.09.2019.

10. The Corporate Debtor in its reply has stated that the footfall of the cinema at the Muktsar location is very low due to which cinema is not earning positive return for the Respondent-Company and a revised return was mutually agreed between the petitioner and Corporate debtor @ Rs 6,75,000/- and since January 2016 to August 2018, the petitioner has never objected.

11. The petitioner has filed a rejoinder vide a diary no. 6997 dated 10.12.2019. It is stated that the corporate debtor has defaulted in paying the lease rent for the use of theatre. The last part of the rent paid by the corporate debtor is in the month of August, 2018 and the corporate debtor is continuing to hold the premises on lease which shows that the default has occurred in 2018 and the present petition is not time barred and within limitation.

12. We have heard the learned counsel for the petitioner as well as corporate debtor and have also perused the records. .

13. The first issue for consideration is whether the demand notice in Form No.3 was properly served. The demand notice was sent by the post at the registered address of the Corporate Debtor. The original postal receipts are attached as Annexure A-14 of the petition. The tracking report which is attached as Annexure A-15 of the petition shows that the demand notice was duly served to the corporate debtor.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. There is no such evidence placed on record by the corporate debtor that there is some pre-existing dispute regarding the revised rent with respect to the lease deed in his reply. Also the corporate debtor has not approached any legal forum for redressal of his grievance with respect to unpaid operational debt.

15. We have gone through the contents of the petition filed in Form No.5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹3,28,01,724/- (including ₹74,52,807/- as interest @ 18% per annum). Based on documents on record, we have held above that the demand notice in Form No.3 was properly delivered by the petitioner and no pre-existing dispute is proved.

16. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. The petitioner states that from the abovementioned facts it is clear that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 Crore by the respondent-corporate debtor.

17. In this context, a reference is made to the following observations of the Hon'ble Supreme Court in the case of ***Mobilox Innovations Private Limited Vs. Kims a Software Private Limited, reported in MANU/SC/1196/2017: AIR 2017 SC 4532:***

*"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)*

*(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?"*

18. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by petitioner is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s SRS Entertainment India Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

19. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational 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.

20. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till 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.

22. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anil Arora and there is nothing adverse found against him. In

view of the above, we appoint Mr. Anil Arora bearing Registration No.IBBI/IPA-001/IP-P00729/2017-18/11224, e-mail: [ca.anil@gmail.com](mailto:ca.anil@gmail.com), Mobile No. 09876110038, r/o SCO 139, 2nd Floor, Chhoti Baradari, Patiala as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Anil Arora shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors

and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

23. The petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

24. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-

(Subrata Kumar Dash)  
Member (Technical)

December 21, 2021

HM

Sd/-

(Harnam Singh Thakur)  
Member (Judicial)