

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

CP No. 464/IBC/NCLT/MB/MAH/2017

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

In the matter of

**Black Pearl Hotels Private Limited**

... Operational Creditor/ Petitioner

vs.

**Planet M Retail Limited**

...Corporate Debtor

**Order delivered on 25.6.2019**

**Coram:** Hon'ble Member (Judicial) :Mr. V.P. Singh  
Hon'ble Member (Technical) :Mr. Ravikumar Duraisamy

**For the Petitioner:** Adv. PrateekPai and Adv. Tanya Barwal

**For the Respondent:** None Present

*Per V.P. Singh, Member (Judicial)*

**ORDER**

1. This is a Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as **I&B Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on 12.04.2018 by the Petitioner **Black Pearl Hotels Pvt. Ltd.** in the capacity of Operational Creditor, against **Planet M Retail Limited** (hereinafter as '**Corporate Debtor**'). The Petition was filed on 4.4.2017.
2. This case was dismissed by an Order dated 4.5.2017 of this Tribunal, among other things, on the ground that the Application was barred by Limitation Act. The Petitioner challenged the 4.5.2017 dismissal order of this Tribunal before the Hon'ble NCLAT which by its Order dated 17.10.2017 allowed the Appeal thereby setting aside the order of this Tribunal dated 4.5.2017 with certain observations and remitted the case back to this Tribunal for admission.
3. The Petitioner entered into a Business Conducting Agreement dated 01.02.2008 with the Respondent to conduct and manage the business of running a music concept store by a name 'Planet M' on behalf of the Petitioner against payment of monthly conducting fee to the Petitioner. Subsequently, vide an Addendum dated

24.6.2009 to reduce the monthly fee to ₹7 lakh for a limited period of 26 months from 1.2.2009 to 31.3.2011.

4. The Petitioner submits that the Respondent paid the reduced fee till September 2011 instead of actual fee decided as per the original Business Conducting Agreement dated 1.2.2018. It is further stated that the Respondent failed to pay any conducting fees since October 2011, and therefore, the Petitioner terminated the Business Conducting Agreement.
5. In the Appeal specifically filed in this case the Hon'ble NCLAT has observed as follows :

*“11. In this case even if it is accepted that the Limitation Act, 1963 is applicable for initiation of Corporate Insolvency Resolution Process, in such case Article 137 of the Limitation Act, 1963 will be applicable, which is quoted below:*

<i>“Description of application</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>Any other application for which no period of limitation is provided elsewhere in this division.</i>	<i>Three years</i>	<i>When the right to apply accrues.”</i>

*12. Insolvency and Bankruptcy Code, 2016 has come into force with effect from 1st December 2016. Therefore, the right to apply under I&B Code accrues only on or after 1st December 2016 and not before the said date (1st December 2016). As the right to apply under section 9 of I&B Code accrued to the appellant since 1st December 2016, the application filed much prior to three years, the said application cannot be held to be barred by limitation.*

*13. In so far as the application under section 9 of the Arbitration and Conciliation Act, 1996 preferred by appellant, it has been specifically pleaded by the appellant and not disputed by the respondent that the appellant filed an application to withdraw the application under section 9 of the Arbitration Act, expressly reserving liberty to institute fresh proceeding for interim relief. In such circumstances and as no arbitral dispute is pending, the application cannot be rejected.”*

6. The Hon'ble NCLAT further observed that that the claim of the Petitioner is not disputed prior to issuance of notice under Section 8(1) of the I&B Code. The relevant para is extracted below:

*'14. There is nothing on the record to suggest that the respondent disputed the claim prior to issuance of notice under section (1) of section 8 of the I&B Code. In the aforesaid background, we are of the view that the Adjudicating Authority, Mumbai Bench was not correct in holding that the application was barred by limitation. For the said reason the order rejecting the application cannot be sustained.'*

7. It is observed from the proceedings of this case that despite serving several notices, no one appeared on behalf of the Corporate Debtor in any of the proceedings before this Tribunal since 18.4.2017. It must also to be noted from various orders that no one appeared on behalf of the Respondent even in the proceedings before of the Hon'ble NCLAT.
8. Therefore, as per the Order of the Hon'ble NCLAT dated 17.10.2017, the Petitioner owes more than ₹1 lakh to the Respondent. The said amount is due and payable. Hon'ble NCLAT has explicitly observed that no dispute is existing between the parties, and the application is not barred by limitation and thereby cannot be rejected.
9. The Petition is filed by Mr Vaibhav Narang, Director of the Petitioner company authorized to file this Petition vide Board Resolution dated 20.2.2017. The Petitioner had sent a demand notice dated 21.02.2017 to the Respondent demanding payment of ₹3,92,38,405/- to which the Corporate Debtor replied vide its letter dated 18.03.2017 simply denying the claim of the Petitioner on the grounds that it has not performed its duties as per the terms of the Agreement.
10. Moreover, the Corporate Debtor did not file any reply to this Petition, despite service of several notices by the Operational Creditor. The service is held sufficient. The Corporate Debtor chose not to appear before this Bench, and there is no objection filed on record against the admission of this petition.
11. Therefore, there is a clear default on the part of the Corporate Debtor in making payment against the services supplied by the Petitioner, and there is no existing dispute regarding the same.

12. On going through the submissions and after perusing the documents produced on record, this Bench is of the view that the petition is complete in all respects. Given the finding of Hon'ble NCLAT dated 17.10.2017, the application filed under Sec 9 of the Code deserves to be admitted.
13. The Petitioner has not proposed the name of any resolution professional to be appointed as Interim Resolution Professional.
14. The application made by the Petitioner is complete in all respects as required by law, and it clearly shows that the operational debt has not been paid by the Corporate Debtor.

### **ORDER**

The petition filed under Section 9 of I&B Code, 2016 is **admitted**. We further declare moratorium under section 14 of the I&B Code with consequential directions, as mentioned below:

- I. That this Bench at this moment prohibits:
  - 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 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 possession of the corporate debtor.
- II. It is further made clear that:
  - a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
  - b. That the provisions of sub-section (1) of Section 14 of IBC 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 the date 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 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, 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 IBC.
- e. That this Bench at this moment points Mr Kshitiz Gupta having registration number IBBI/IPA-002/IP-N00721/2018-19/12140 as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of e-mail or WhatsApp.

Sd/-

**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

Sd/-

**V.P. SINGH**  
**Member (Judicial)**

**25<sup>th</sup> June 2019**