

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Company Petition (IB) No. 1937/ND/2019

In the matter of :

TEK TRAVELS PRIVATE LIMITED
Plot No. 183, Udyog Vihar Phase-1,
Sector 20, Gurugram-122008, Haryana

.....Operational Creditor

VERSUS

SHIVANTIKA BON VOYAGE PRIVATE LIMITED
202, 2nd floor, Naurang House, 21 K.G. Marg,
New Delhi-110001

.....Corporate Debtor

SECTION: 9 of IBC, 2016

ORDER DELIVERED ON: 12.06.2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Operational Creditor: Adv. Rachit Kohli
For the Respondent/ Corporate Debtor: Adv. Akash Jha

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. "**Tek Travels Private Limited**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**Shivantika Bon Voyage Pvt. Ltd.**".

2. The Applicant is *inter alia* engaged in the business of providing 'B2B' travel services to travel agents and tour operators including a wide range of travel solutions (such as flight tickets, hotels/resorts, tours, packages, etc.). It operated under the brand-name 'Travel Boutique Online' and is India's largest B2B online travel portal.
3. Brief facts of the case are as follows:
 - i. The Corporate Debtor is a travel agency which started procuring services of the Operational Creditor in the year 2018.
 - ii. Corporate Debtor made several hotel and flight bookings for its customers through Operational Creditor from 01.05.2018 onwards on the basis of the credit provided by the Operational Creditor.
 - iii. From the period 19.05.2018 to 22.07.2019, the Operational Creditor issued around 77 invoices, amounting to Rs. 47,23,598/- (approx) on the Corporate debtor.
 - iv. For the said 77 invoices, the Corporate debtor made part-payment towards these invoices from time to time at irregular intervals.
 - v. Out of total amount of Rs. 47,23,598/- (approx.), Corporate Debtor defaulted on a sum of Rs. 2,00,000/-.
 - vi. The Corporate debtor has specifically, in its email dated 05.10.2018, acknowledged the existence of Operational Debt of Rs. 2,00,000/-.
 - vii. The debt amount includes Rs. 2,00,000/- as the principal debt amount and Rs. 42,082/- as the interest amount @ 24% p.a.



from 14.09.2018 upto 31.07.2019. Therefore, the Corporate Debtor has an outstanding balance of Rs. 2,42,082/- in the books of the operational Creditor.

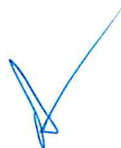
viii. The Operational Creditor sent a legal/demand notice to the corporate debtor on 22.07.2019 seeking payment of the aforesaid outstanding amount. The said demand notice was delivered to the Corporate Debtor on 26.07.2019, however, the Corporate Debtor did not send any reply to the said notice.

4. The Corporate Debtor is debarred from filing the reply vide order dated 17.12.2019.
5. We have heard the Learned Counsel for the applicant / Operational Creditor. No one appeared on behalf of the Respondent / Corporate Debtor.
6. Learned Counsel appearing for the Operational Creditor, in course of his argument submitted that the Operational Creditor had sent the demand notice dated 22nd July, 2019, which was delivered to the registered office of the Corporate Debtor on 26th July, 2019 but the Corporate Debtor had not sent any reply or raised the existence of disputes as required under Section 8 (2) of the IBC, 2016. He further submitted that the Corporate Debtor on 5th October, 2018 sent an email in which he acknowledged the debt of Rs. 2 lakhs and undertakes to clear the amount by the end of that month and in support of that he placed reliance upon the email which he has annexed as Annexure 7 at 151 of the paper book.
7. He further submitted that even after the filing of this application and after the service of notice, when the Corporate Debtor did not appear then vide order dated 09th October, 2019, the proceeding was fixed for ex-parte hearing against the Corporate Debtor but subsequently the Respondent / Corporate Debtor



appeared and filed an application for setting aside the ex-parte and accordingly vide order dated 14th November, 2019, the ex-parte order was set aside and the Corporate Debtor was given opportunity to file the reply. He further submitted that even when no reply was filed on behalf of the Corporate Debtor then the matter was heard. He further submitted that the Corporate Debtor has acknowledged the debt and no dispute has been raised as required under Section 8(2) of the IBC, 2016, therefore the application may be admitted.

8. Considering the submissions made on behalf of the Applicant/ Operational Creditor and from the perusal of the averments made in the application as well as the documents enclosed with the application, we find that it is admitted fact that earlier the proceeding was fixed for ex-parte hearing against the Corporate Debtor but in course of hearing the Corporate Debtor appeared and filed an application for setting aside the ex-parte order and accordingly, on his request, the ex-parte order was set aside and the Corporate Debtor was given opportunity to file the reply but it appears from the record that although several opportunities were given to the Corporate Debtor to file the reply but when he fails to file the reply then vide order dated 17th December, 2019, the Corporate Debtor was debarred from filing the reply and the matter was heard.
9. We further find that the Operational Creditor has filed the affidavit under Section 9(3)(b) and 9(3)(c) and it is specifically mentioned in the affidavit filed under 9(3)(b) that the Corporate Debtor has not raised the existence of any dispute for the unpaid Operational Debt, rather we find, the Operational Creditor has annexed the email dated 5th October 2018, which the Operational Creditor has annexed at page 151, this email shows that the Operational Creditor has acknowledged the debt of Rs. 2 lakhs and undertakes to repay the amount by the end of that month, the said email is dated 05th October, 2018.



10. As we have already noticed that the demand notice was duly delivered, which would be evident from the tracking report attached at page 176 of the paper book but the Corporate Debtor fails to file the reply as required under Section 8(2) of the IBC, 2016. Therefore, at this juncture, we would like to refer the Section 8 and 9 of IBC, 2016 and the same are quoted below: -

“Section: 8. Insolvency resolution by operational creditor

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -

a) Existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) The [payment] of unpaid operational debt-

(i) By sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) By sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.



Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding 3[payment] operational debt in respect of which the default has occurred.”

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor. –

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish-

(a) A copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) An affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming



that there is no payment of an unpaid operational debt [by the corporate debtor, if available;]

2[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) Any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) Admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) The application made under sub-section (2) is complete;

(b) There is no 3[payment] of the unpaid operational debt;

(c) The invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) No notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) There is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) Reject the application and communicate such decision to the operational creditor and the corporate debtor, if -



(a) The application made under sub-section (2) is incomplete;

(b) There has been 1[payment] of the unpaid operational debt;

(c) The creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) Notice of dispute has been received by the operational creditor or

There is a record of dispute in the information utility; or

(e) Any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”

11. Mere plain reading of the provisions contained under Section 8 & 9 of the Code shows that on the occurrence of a default, the operational-creditor is required to deliver a demand notice of unpaid operational debt or copy of the invoice demanding payment of the amount involved in the default to the Corporate Debtor in such form and manner as may be prescribed and the Corporate Debtor after the receipt of the demand notice or copy of the invoice mentioned in Section 8(1) of the Code, within ten days of the receipts of the notice bring to the notice of the operational-creditor the existence of disputes or show the documents that the payment of unpaid

operational-debt has been made. Section 9 makes it clear that after the expiry of period of ten days, from the date of delivery of the notice or invoice demanding payment, if the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2) of the Code, only in that case the Operational Creditor may file an application for initiation of the CIRP. If we shall read these two provisions together then we find, before initiating a proceeding under Section 9, the operational-creditor is required to fulfil the conditions mentioned under Section 8(1), if he has not sent the demand notice as required under Section 8(1) of the Code, then he cannot invoke the provision under Section 9, rather he can invoke the provision of Section 9 only, when Corporate Debtor fails to raise the existing of disputes or produce the document to show that unpaid operational debt has been paid within ten days of the receipt of the demand notice. Therefore, on the basis of aforesaid provisions, we are of the considered view that Section 8 and 9 cast a duty upon the operational-creditor as well as Corporate Debtor to act as per Section 8 and if they fail to fulfil the conditions of Section 8 and 9 then in that case neither the application filed by the operational-creditor is maintainable nor the plea of existing of disputes or the payment of debt subsequently taken by the Corporate Debtor can be taken into consideration.

12. When we shall consider the case in hand in the light of aforesaid provisions then we are of the considered view that here in the case in the hand, since no reply to the demand notice has been given, therefore, no dispute as required under Section 8(2) of the IBC, 2016 is raised and there is an acknowledgement of debt of Rs. 2 lakhs, which would be evident from the email annexed at page 151 of the paper book, and so amount is more than one Lakh which is the minimum threshold as required U/S 4 of IBC for initiating the Corporate Insolvency Resolution Processes and the application is



complete therefore, we have no option but to admit the application on.

13. Accordingly, this petition is ADMITTED. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

(b) *transferring, encumbering, alienating or disposing of by the corporate debt or 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.*

Further:

(2) *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.*

(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:*



Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

14. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint, Satish Kumar Mathur, an Insolvency Professional, Registration No. IBBI/IPA-002/IP-N00132/2017-18/10348 email id: mathursk1255@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
15. The Operational Creditor is directed to deposit a sum of Rs. 01 (One) lakh to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
16. Copies of the order be sent to both the parties as well as to the IRP.
17. The office is directed to send a free copy of this order to both the parties.

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K. K. Vohra
(Member Technical)

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Abni Ranjan Kumar Sinha
(Member Judicial)