

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-351/ND/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:**MYKIND VACATONS PRIVATE LIMITED****...APPLICANT/OPERATIONAL CREDITOR****VERSUS****IYOGI TECHNICAL SERVICES PRIVATE LIMITED****...RESPONDENT/ CORPORATE DEBTOR***ORDER DELIVERED ON: 21.09.2021***CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (JUDICIAL)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (TECHNICAL)****For the Applicant : Mr. Nakul Jain, Adv****For the Respondent :. Mr. Manish Kumar, Adv**

MEMO OF PARTIES**MY KIND VACATIONS PRIVATE LIMITED**

Having their registered office at:

A-432, 4th Floor, Logix Technova,

Plot No.4 Sector 132,

Near Expressway Noida-201301

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

1. IYOGI TECHNICAL SERVICES PRIVATE LIMITED

Having their registered office at:

178, Golf Links New Delhi-110003

2. Shri Ranjit

(CEO of IYOGI Technical Services Private Limited)

3. Shatrugan Paswan

(Director of IYOGI Technical Services Private Limited)

4. Prashant Gautam Kachru

(Director of IYOGI Technical Services Private Limited)

...RESPONDENT/ CORPORATE DEBTOR



ORDER**AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)**

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by My Kind Vacations Private Limited (for brevity 'Applicant') through Mr. Ravi Saxena (Director of the Applicant Company) with a prayer to initiate the Corporate Insolvency process against IYOGI Technical Services Private Limited (for brevity 'Corporate Debtor').
2. The Applicant My Kind Vacations Private Limited, the Operational Creditor, incorporated on 11.12.2009 under the provisions of Companies Act 1996 CIN being U93000DL2009PTC196817 having its registered office at A-432, 4TH Floor, Logix Technova, Plot No.4 Sector 132 Near Expressway, Noida 201301. It is involved in the business of travel & tourism services across the Indian sub-continent.
3. The Respondent IYOGI Technical Services Private Limited is a company incorporated on 28.02.2007 under the Companies Act, 2013 having its registered office at 178, Golf Links New Delhi-110003 and CIN U72900DL2007PTC159882 and is engaged in computer related activities for maintenance of websites of other firms/ creation of multimedia presentations for other firms etc.

4. As per the averments made by the applicant, the Corporate Debtor entered into service agreement dated 23.04.2012 with the Applicant for seeking various travel related services for their employees across world. The travel services included issuing Domestic tickets, international tickets, hotels/ apartments, guest house booking, car rentals, passport services etc, against payments within 7 days of receipt of invoices at agreed consideration of commissions payable to the Applicant. Though the agreement was valid for one year. The Corporate Debtor continued using the services of the Applicant as per the same terms and conditions.
5. The Applicant provided services to the Corporate Debtor from time to time and in this regard invoices from the period of March 2015 to December 2015 were raised. It is submitted that some payments were made by the Corporate Debtor and the bank receipt vouchers have been annexed. On 04.01.2016, the Corporate Debtor through email sought ledger account from the Applicant which was duly supplied and further requested for an amount of Rs.22,47,468.01/- from the Corporate Debtor. The Corporate Debtor in its email dated 20.01.2016 further promised to clear the entire outstanding payments by 31.01.2016. The relevant part of the email has been reproduced here:
- "We are on the last stages of our capital raise and expect to close the same by next week. We will clear all the outstanding payments by 31.01.2016."*

6. The Applicant was constrained to issue demand notice dated 01.06.2017 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs. 23,16,838/- + interest @1% Per Month. The notice was served upon the Corporate Debtor vide speed post and registered post and delivered as on 07.06.2017. The tracking report has been annexed. The Corporate Debtor did not file the reply to the Section 8 Demand Notice within 10 days, nor the payment was made. The Applicant has complied with the provision of Section 9(3)(b) of the Code, 2016.
7. The Applicant has filed this application as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 23,16,838/- + interest @1% Per Month towards unpaid invoices for the services provided by the Operational Creditor.
8. Notice to the Section 9 application was issued to the Corporate Debtor vide order dated 26.09.2017 of the Adjudicating Authority. Further The Corporate Debtor submitted before the Adjudicating Authority that the Corporate Debtor has approached the Hon`ble Delhi High Court for the Scheme for Compromise and Arrangement and the Hon`ble Delhi High Court has passed an order convening the meeting of members secured and unsecured creditors of the company. The Corporate debtor filed the copy of Scheme of arrangement and it was apprised to the Adjudicating Authority that the Hon`ble Delhi High Court has reserved the orders as

on 01.11.2018 and the claim of the present applicant has already been considered under the said scheme. The order of the Adjudicating Authority has been produces here:

Order dated: 04.10.2018

The Learned Counsel for the Corporate Debtor states that the scheme of arrangement of the Corporate Debtor under the Section 391 of the Companies Act, 1956 is heard by the Hon`ble High Court o Delhi and order is reserved. Learned counsel further states that the claim of the present applicant has already been considered under the said scheme. The matter is deferred till the order of the Hon`ble Delhi High Court is received.

9. Further the Corporate Debtor apprised the Adjudicating Authority that in the judgment passed by the Hon`ble High Court of Delhi on 23.08.2019, certain directions have been issued in relation to the unsecured creditors of the Corporate Debtor in relation to convening of a meeting of the unsecured creditors and the Applicant also falls in the category of the unsecured creditors.

"Order Delivered 04.04.2019

Learner Counsel for the parties are present. It is brought to the notice of the Tribunal that the judgment as passed by the Hon`ble Delhi High Court on 23.03.2019 certain directions have been issued in relation to the unsecured creditors of the Corporate Debtor in relation to unsecured creditors. It is also stated by the learned counsel for the parties that the petitioner also falls in the category of unsecured creditors. The directions

are awaited in relation to convening of the meeting of the unsecured creditors for which the same has been adjourned to 23.04.2019 as per the above noted order dated 23.03.2019 passed by the Hon`ble Delhi High Court.”

10. Thereafter, the Corporate debtor sought adjournments on various dates from 15.05.2019 to 30.10.2019 on the ground of pendency of the Scheme of Compromise and arrangement before the Hon`ble High Court of Delhi. Further the Corporate Debtor was directed to file an affidavit alongwith application as the Applicant had raised an apprehension that in case of withdrawal from the scheme or some hitch in implementation of the scheme, his stake or claim should not be jeopardised.

“ Order dated 05.12.2019

Learned counsel for the Corporate Debtor states that under the scheme before the Hon`ble Delhi High Court, the claim of applicant is secured as the Hon`ble High Court had taken cognizance and the same is confirmed during the meeting of unsecured creditors in pursuance of scheme. Learned counsel for the applicant is apprehensive that in case of withdrawal from the scheme or some hitch in implementation of the scheme, his stake or claim should not be jeopardised. Learned counsel for the respondent undertakes to file an affidavit along with application with respect to the claim of the applicant and further prayers for decision in the matter till the finality of the scheme are reached. Learned counsel undertakes to file the said application alongwith affidavit within one week, with copy in advance to the other side. Adjourned to 13.01.2020.”

11. The Corporate Debtor has placed on record the affidavit along with the Orders of the Hon`ble Delhi High Court dated 30.08.2018, 20.09.2018, 21.10.2019. The Corporate debtor has also placed on record the objection application CA. NO. 979/2018 IN CO.APPL (M) 135/2016 filed by the Applicant before the Hon`ble High Court of Delhi. The above mentioned orders are reproduced here as:

ORDER 30.08.2018

Some of the unsecured creditors have appeared in court stating that they were not served with notice for the meeting. Learned senior counsel appearing for the petitioners has refined this contention stating that all the creditors have been served. If any of the unsecured creditors desire to have a copy of the scheme, they may approach Ms. Aakanksha Kaul, Advocate for copy of the scheme. Objections, if any, may be filed within one week from today. List for arguments on 20.09.2018. It has been pointed out that My Kind Vacations has filed proceedings under section 8 of Insolvency and Bankruptcy Code, 2016 before the NCLT. Learned counsel appearing for My Kind Vacations submits that alongwith the respondent they will jointly request for an adjournment before the NCLT on the next date of hearing since this court is hearing the present petitions. In the meantime the petitioners will take instructions regarding the claims of My Kind Vacations. Interim order to continue till then. CCP(Co.) 17/2018 and CA 979/2018 be also listed on that date. A copy of this order be given dasti under signatures of the Court Master.

Order 20.09.2018

CA 979/2018 1.

These are objections filed by 'My Kind Vacations Private Limited'. The essential objection stated in the objections raised is that the petitioner company owes Rs.22, 47,4681- to the objector. 2. Learned senior counsel for the petitioner states that though under the scheme they were to pay only 50% of the dues of the unsecured creditors, however, keeping in view the objections of some of the creditors the petitioner is ready to pay 100% of the principal amount payable by the petitioner. 3. Keeping in view the said submissions made by learned senior counsel for the petitioner which is taken on record, learned counsel for the objector states that in view of the above statement he would not have any objection to the scheme. Objections stand disposed of.

ORDER 21.10.2019

Co. AUDI, No. 1117/2019 This is an application filed by the applicant seeking the following prayers:-"a) pass an order to extend the benefit of the protection granted under orders dated 25.10.2016, 22.05.2018, 17.07.2018 & 31.07.2018 to even the legal proceedings enumerated in para 8 of the present application; and b) pass such other and further orders as this Hon`ble Court may deem fit and proper in the facts and circumstances of this case" Learned senior counsel for the applicant has drawn the attention of this Court to para 7 of this application where during the pendency of the present petition this Court had granted interim protection to the Company vide orders dated 22.5.2018,

17.7.2018 and 31.7.2018, which have been further extended by this Court vide order dated 30.9.2019.

The applicant seeks protection orders in respect of these proceedings. Learned senior counsel further submits that Execution Petition No. 534/2018 is listed before the Court of learned ADJ on 22.10.2019. Till the next date of hearing, no coercive steps will be taken against respondent-Company and its Directors in Execution Petition No. 534/2018 and Execution Petition No. 369/2018. List on 31.01.2020. Copy of the order be given dasti under the signatures of the Court Master.

CO.APPLAM) 135/2016

Report of the Chairperson has been filed which is not in a sealed cover. Parties are at liberty to inspect the file. List on 31.01.2020. Interim order to continue.

12. The date of default is 01.04.2016 as per Form V and the present application is filed on 01.09.2017 Hence, the application is not time barred and filed within the period of limitation.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. It is pertinent to mention that the Corporate Debtor had filed an application IA 2302/ND/2021 before the adjudicating authority, seeking to place on record the order passed by the Hon`ble Delhi High Court dated 02.02.2021 in CO.APPL.53/2021. The Corporate Debtor in

CO.APPL.53/2021 had sought a stay of the proceedings in present petition no. IB-351/PB/2017 and prayed for keeping abeyance any final order/judgment passed by the Adjudicating Authority. The Corporate Debtor has submitted that subsequent development before the Hon`ble Delhi High Court and the order passed by the Hon`ble Delhi High Court will have a bearing while deciding the application. The relevant part of order of the Hon`ble Delhi High Court is reproduced as:

“As a matter of judicial discipline, this Court would be loath to interfere with the proceedings before any judicial authority, especially where orders are reserved by the said judicial authority. The averments in the application, however, indicate that while the learned NCLT had earlier been adjourning the proceedings awaiting the outcome of the present proceedings before this Court, it went ahead to hear the arguments of MKV and reserved orders on 14th January, 2021.”

Paras 16 and 17 of the present application may, in this context, be reproduced thus:

Para 16. That the un-secured Creditor i.e., M/s My Kind Of Vacations Private Limited having consented to the Scheme of Arrangement, as also recorded in order dated 21.10.2019, the proceedings before the Hon'ble NCLT stood as infructuous. However, knowing fully well that this Honble Court was in session of the matter including claim of the said un-secured Creditor, the said Unsecured Creditor acting in an extremely surreptitious manner, with an intent to arm twist the Petitioner company by mis-using the insolvency

proceedings for ulterior objectives, mis-led the Honble NCLT and proceeded on arguing its Insolvency Application on merits, when the same was listed before the Hon.ble NCLT for consideration on 14.01.2021. Pertinently, the said Un-secured Creditor, by twisting the facts, sought to assert before the Honble NCLT that Petitioner's purported admission of the claim in the present Company proceedings was an unequivocal admission, thus warranting admission of the Insolvency Application.

Para 17. That Petitioner apprised the Honble NCLT about all relevant facts including factum of this Honble Court being in session of the claim of the un-secured Creditor, aforementioned, and orders dated 30.08.2018 and 21.10.2019, passed by this Honble Court in respect thereto. In addition to the same, Petitioner also urged that the scheme was in its final stage and any adverse order would admittedly not only jeopardize the scheme but also interest of other creditors especially the Employees, Statutory and Secured Creditors apart from creating grave doubts in the minds of the investors who had assured to pump in significant amounts of funds upon this Hon'ble Court granting approval to the scheme."

The arguments advanced by the petitioner in the present application have, therefore, apparently been also advanced before the learned NCLT, which has reserved orders thereafter.

When orders are reserved by learned NCLT, I do not deem it appropriate to restrain the NCLT from passing orders in the

matter in which it has already heard arguments, including the objections raised by the present petitioner. Nevertheless, in view of the contentions of the petitioner, including, inter alia, the submissions noted hereinabove, I deem it appropriate to direct that, while the learned NCLT would be at liberty to pass its orders on petition no. (IB)- 351/PB/2017 filed by MKV before it, consequent to having reserved orders on 14th January, 2021, any such order if passed, would remain in abeyance till the expiry of one week from the communication of such order to the petitioner, within which period the petitioner would be at liberty to place the said order before this Court and seek appropriate directions. The merit of any such request, if made, would be considered at that stage.

15. On perusal of the documents placed on record and by analyzing the timeline of the proceedings in the present matter, We have observed that the Corporate Debtor has neither denied its liability nor has rebutted the claim of the Operational Creditor. Further, the Corporate debtor has admitted its liability before the Hon`ble High Court of Delhi which has been taken on record in order dated 20.09.2018 in CA 979/2018, which is an application filed by the Applicant My Kind Vacation Private Limited objecting the scheme of compromise and arrangement before the Hon`ble High Court of Delhi. The Corporate Debtor submitted before the Hon`ble Delhi High Court that *"though under the scheme they were to pay only 50% of the dues of the unsecured creditors, however, keeping in view the objections of some of*

the creditors the petitioner is ready to pay 100% of the principal amount payable by the petitioner". The Operational Creditor has also placed on record the Bank receipt vouchers reflecting the payment received from the Corporate Debtor with respect to certain invoices raised by the Operational Creditor.

16. After hearing both sides the order was reserved but before pronouncement of orders, clarification was sought from both sides about the status of the pending scheme. It was informed that the 2nd motion was pending wherein there are objections filed. The matter is listed in mid October. We were of the view that under the scheme the debt is also admitted. This bench if passes order of admission, it will not be prejudicial to any party. On the contrary all the Creditors will be taken care of. Even during CIRP and/or Liquidation, provision of arrangement and compromise of scheme can be invoked. Passing of this order will bring early resolution of the Corporate Debtor.
17. As per Section 9(5)(i) of the Code, The Adjudicating Authority by an order admit the application if (a) the application made under subsection (2) is complete: (b) there has been no 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; or (e) there is no disciplinary proceeding is pending against any proposed resolution professional. The Applicant has satisfied the bench that there is a debt

which is in default and no payment has been received with respect to the same. We are of the view that since there is a clear cut admission on the part of the Corporate Debtor, this Adjudicating Authority initiates CIRP of the Corporate Debtor.

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.

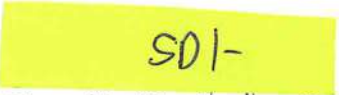
(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(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.”

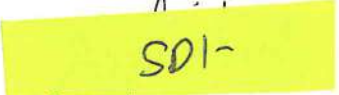
18. Since no name was proposed by the Applicant, this Adjudicating Authority hereby appoints Mr. Sumit Sharma, Registration no. IBBI/IPA-001/IP-P02323/2020-2021/13513 and the email id: sumit@vptp.in being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
19. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
20. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its

records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

Sumita Purkayastha

Member (T)

SD/-

Dr. Deepti Mukesh

Member (J)