

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 1149/MB-IV/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

**Leo Meridian Infrastructure Projects &
Hotels Limited**

[CIN: U45201TG2001PLC036053]

...Operational Creditor/Applicant

V/s

Cinema Venture Private Limited

[CIN: U74120MH2012PTC232410]

...Corporate Debtor/Corporate Debtor

Order Dated: 14.07.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Anup Khaitan, Advocate.

For the Corporate Debtor(s) : None Present.

ORDER

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 1149/MB/C-IV/2020 filed on 14-07-2020 by Leo Meridian Infrastructure Projects & Hotels Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Cinema Venture Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
 - 1.1 M/s Leo Meridian Infrastructure Projects & Hotels Limited, the Operational Creditor has been undergoing Corporate Insolvency Resolution Process vide Order dated 09.04.2019 passed by Hon'ble NCLT, Hyderabad in the matter of CP (IB) No. 43/7/HDB/2018 and Mr. Raj Kumar Ralhan has been appointed as a Resolution professional for the Operational Creditor, vide order dated 13/06/2019 passed by Hon'ble NCLT, Hyderabad in I.A. No. 459/2019 in CP (IB) No. 43/7/HDB/2018. The present Application has been filed by the Resolution Professional of Operational Creditor having authority to file the same under the Code.
 - 1.2 The total amount claimed by the Operational Creditor in the Part IV of the Company Petition is Rs. 1,61,94,427.69 (Rupees One Crore Sixty One Lakhs Ninety Four Thousand four Hundred Twenty Seven and Sixty Nine Paise Only) as on 13/07/2020 alongwith interest thereon till payment /actual realisation.
 - 1.3 The date of default as mentioned in the Part IV of the Application is 23.05.2019 (the date of the invoice immediately after the last payment received from Cinema Ventures Private Limited) and the last bill was dated 21.02.2020.
- 2 The Applicant submits that, the Operational Creditor entered into a Management Agreement with Reliance Mediaworks Limited (RMWL)

(the predecessor company to the current Corporate Debtor, Cinema Ventures Private Limited) on 20.06.2014, wherein Cinema Ventures Private Limited was granted the right to operate and manage a multiplex theatre admeasuring 60,510 sq. ft. super built up area and 32,040 sq. ft. covered area and comprising of three (3) screens from June 2014 ("Multiplex Theatre") in operational creditor's premises. The said Management Agreement provided that the revenues generated from the Multiplex Theatre and associated retail activities shall be shared between the Operational Creditor and Cinema Ventures Private Limited (Corporate Debtor).

- 2.1 The Operational Creditor raised 95 invoices/Debit Notes as per the terms and conditions of the Management Agreement and the payments , after deducting TDS, were made by the Corporate Debtor in the bank account of Operational Creditor in IDFC First Bank Limited at Hyderabad, Telangana - 500038.
- 2.2 The present operational debt occurs from 23.05.2019 to 21.02.2020. The Operational Creditor raised 95 invoices for the services provided by the Operational Creditor amounting to Rs.1,80,40,318.09 (One Crore Eighty Lakhs Forty Thousand Three Hundred and Eighteen Rupees and Nine Paise Only), which together with opening balance as on 01.04.2019 (Admitted in letter dated 14/09/2019) amounting to Rs.13,53,590.87 (Thirteen Lakhs Fifty Three Thousand Five Hundred and Ninety Rupees and Eighty Seven Paise Only), makes total sum of Rs.1,93,93,908.96 (One Crore Ninety-Three lakhs Ninety- Three Thousand Nine Hundred and Eight Rupees and Ninety-Six Paise Only) as on 13.07.2020 out of which 12

invoices were duly paid and 13th invoice was partially paid and 82 invoices stand unpaid till date.

- 2.3 That the Corporate Debtor, out of the total invoices have paid/or adjusted a sum of Rs. 55,93,273/- (Rupees Fifty-Five Lakhs Ninety- Three Thousand Two Hundred and Seventy-Three Only) to the Operational Creditor. After adjusting this amount, a balance of Rs. 1,38,00,635.96/- (Rupees One Crore Thirty-Eight Lakhs Six Hundred Thirty Five and Ninety-Six Paise Only) remained to be paid to the Operational Creditor for the services provided by the Operational Creditor as on 13/07/2020. The Interest @ 24% p.a. (being the contractual rate of interest as per Invoice/ Debit notes) is Rs. 23,93,791.73 (Rupees Twenty Three Lakhs Ninety Three Thousand Seven Hundred Ninety One and Seventy Three Paise Only) as on 13/07/2020. Therefore, there is total outstanding of Rs. 1,61,94,427.69 (Rupees One Crore Sixty One Lakhs Ninety Four Thousand four Hundred Twenty Seven and Sixty Nine Paise Only) as on 13/07/2020.
- 2.4 The RP for the Operational Creditor in attempts to get the due and outstanding amount from the Corporate Debtor, made numerous Email conversations dated 17.01.2020, 04.03.2020 and 16.06.2020 but no payment has been made till date.
- 2.5 The demand notice as per Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was issued on 03/03/2020 demanding payment of the due and outstanding amount. The Corporate Debtor failed to make the payment or raise any dispute in accordance with Section 8(2) on the existence or amount of unpaid operational debt (in

default) and provide evidence of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of the demand notice even after the expiry of period of ten days from the date of issue of demand notice.

2. The Corporate Debtor vide its reply dated 10.10.2022 submitted that the amount demanded by the Operational Creditor is in dispute and the amounts as mentioned in the Petition is not payable to the Operational Creditor.

3.1 The Corporate Debtor states that it is a part of the Carnival Group which is a growing conglomerate with diversified business interests having offices in Mumbai, Delhi, Kochi and Bhopal apart from having its business presence in more than 120 cities in India.

3.2 The Corporate Debtor states that it is an entertainment company involved in the business of cinema exhibition from its various cinema exhibition theatres across India and operates and manages its cinema exhibition business under the brand name "Carnival Cinema".

3.3 The Corporate Debtor states that the Operational Creditor has engaged the Corporate Debtor for operating and managing the Multiplex Theatres as defined under the said Agreement dated 20.06.2014 and carrying on associated retail activities for which the Corporate Debtor was entitled for revenue share out of the gross box office collection plus collection of sale of Food & Beverages and other associated retail activities.

3.4 The Corporate Debtor submitted that due to the Covid-19 restrictions, the Multiplex was not in operation from 19.03.2020, which caused huge loss to the Corporate Debtor and post Covid-19, the Multiplex has not been allowed to operate.

- 3.5 The Corporate Debtor states that the amount of Rs. 1,69,94,427.69/- as claimed by the Operational Creditor is false and frivolous and that from 01.08.2015 to till 31.01.2020, the Corporate Debtor has made payment to the Operational Debtor a sum of Rs. 6,79,48,570/- (Rupees Six Crore Seventy-Nine Lakh Forty-Eight Thousand Five Hundred Seventy only).
- 3.6 The Corporate Debtor submitted that it has incurred capital expenditure to the tune of Rs 65,29,956/- (Rupees Sixty-Five Lakh Twenty-Nine Thousand Nine Hundred Fifty-Six only) towards value of the assets lying in the multiplex premises. Further, the Corporate Debtor has been paying interest of Rs. 16,32,314 (Rupees Sixteen Lakhs Thirty-Two Thousand Three Hundred Fourteen Only) @ 10% in respect of the said capital expenditure for the period from April 2020 till September, 2022. Further, the third party assets i.e. Projectors/ servers are lying in the multiplex which is of Rs.61,00,000/- (Rupees Sixty-One Lakh only).
- 3.7 The Corporate Debtor submitted that due to sudden and unilateral closure of business of the Operational Creditor, the Corporate Debtor suffered/suffering losses as mentioned below:
- A. Rentals payable in respect of the third party assets which are still lying with Operational Creditors for the period from April 2020 till September, 2022 amounting to Rs. 3,81,000 (Three Lakhs Eighty- One Thousand Only).
 - B. Salaries amounting to Rs. 10,00,000/- (Rupees Ten Lakhs Only) of the Corporate Debtors personnel for the period of two months from the closure of the business.

- C. Management Fees (Rs.1,05,000/- per month approx.) lost by the Corporate Debtor for the period from October, 2020 to September, 2022 (excluding three months of second lock-down) amounting to Rs. 31,50,000 (Rupees Thirty-One Lakhs Fifty Thousand Only) approx.
- D. Corporate Debtor's share from the Operational Creditors revenue (approximately and excluding the lockdown period);
 - i. For the Financial Year 2020-21 Rs. 7,35,940/-
 - ii. For the Financial Year 2021-22 Rs. 13,08,338/-
 - iii. For the Financial Year 2022-23 Rs. 24,53,134/-

3.8 The Corporate Debtor further states that Authorized persons from both the parties are working on an amicable settlement.

4. The Operational Creditor, vide its Rejoinder dated 27.02.2023, stated that the amount mentioned in the petition is payable to the Operational Creditor, and denies having received notice of dispute with respect to the said debt and that the Corporate Debtor has admitted outstanding dues of INR 13,53,590.87 as on 31.03.2019 vide letter dated 14.09.2019.

4.1 The Operational Creditor states that between period of 01.04.2019 and 21.02.2020, 95 bills were issued amounting to INR 1,93,93,908.96 as mentioned in para 7 and 8 of the petition and in the said period total amount of INR 55,93,273/- has been paid and/or adjusted and as on 21.02.2020, there was an outstanding of INR 1,38,00,635.96/-.

- 4.2 There was outstanding of INR 1,61,94,427.69 as on 13.07.2020 as mentioned in para 10 of the petition. He further states that the Operational Creditor has given the proper statement of accounts from page No. 9 to page 21 of the Petition, wherein the details of the paid and unpaid invoices of the relevant period are also mentioned.
- 4.3 The Operational Creditor stated that the Corporate Debtor has time and again given settlement proposal but the same were not viable.
5. We have perused the documents and pleadings available on record and considered the arguments of both the sides.
- 5.1 This Bench notices that the Corporate Debtor has only stated that the claim of Operational Creditor is false and frivolous, and has not brought on record any communication or details substantiating this contention. The Corporate Debtor has taken a plea of counter claim and the investments made by it in making the premises fit for multiplex business. It is seen that no such counter claim has been filed and the Corporate Debtor in its reply dated 06.10.2022 has simply stated that it reserves its right to file claim before appropriate authority in respect to counter claims. Further, the corporate Debtor has also stated that they are working on settlement with the Operational Creditor.
- 5.2 In view of aforesaid findings, this Bench is of the considered view that the defence of pre-existing dispute taken the Corporate Debtor in its reply is a moonshine defence and is without substance and devoid of any substantial evidence showing existence of dispute before the issuance of demand notice. The Corporate Debtor's statement regarding attempts to

settle with the Operational Creditor with respect to the outstanding dues is enough to consider the admission of liability on its part.

- 5.3 The Operational Creditor has annexed the ledger statement for the period from 01.04.2019 till 05.07.2020 to the present petition in which the outstanding principal amount is reflected, and has also filed a statement reconciling the said amount with the amount payable as on 01.04.2019 confirmed by the Corporate Debtor. It is noticed that, the Corporate Debtor has admitted a sum of Rs. 13,53,591/- payable as on 31.03.2019 in response to letter from Statutory auditor of the Operational Creditor dated 14.09.2019 seeking confirmation of the said amount. This Bench finds that there exists a debt and default of the said debt on the part of the Corporate Debtor.
- 5.4 We find that the debt due by the Corporate Debtor against the Operational Creditor falls within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.
- 5.5 This Bench is of considered view that there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.

6. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.

7. This Bench finds that C.P.(IB)/1017(MB)/2021 filed by M/s. Rave Real Estate Private Limited and C.P.(IB)/927(MB)/2021 filed by M/s. Rave Moti Entertainment Private Limited, u/s 9 of the Code claiming default in payment of operational debt amounting to Rs. 6,14,31,658/- And Rs.5,02,23,672/- respectively. Both the applications seek admission of the Corporate Debtor into CIRP. These applications were also heard by the Bench and were reserved for orders on 03.07.2023, when the present application was pending for pronouncement of orders. Since this Bench is admitting the Corporate Debtor into CIRP in the present petition, i.e. C.P.(IB)1149/2020, both these Petitions C.P.(IB)/1017(MB)/2021 and C.P.(IB)/927(MB)/2021, become infructuous and are dismissed accordingly. The Petitioners in C.P.(IB)/1017(MB)/2021 and C.P.(IB)/927(MB)/2021 shall have liberty to file their claim with the Interim Resolution Professional appointed in the present petition.

ORDER

This Application being C.P. (IB) No. 1149/NCLT/MB/C-IV/2020 filed under Section 9 of I&B Code, 2016, filed by Leo Meridian Infrastructure Projects & Hotels Limited, Operational Creditor/Applicant against Cinema Venture Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this 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 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 possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints name of Mr. Ajay Mutha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02152/2020-2021/13279] and Email Id.- caajaymutha@gmail.com; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- VII. The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- IX. 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 email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
//LRA-Akshata Shah//

Sd/-

Kishore Vemulapalli
Member (Judicial)