

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT - II**

**C.P.(IB)-1845(MB)/2019**

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

*In the matter of*

**Indiabulls Properties Private Limited**

Having registered office at: M62/63, 1<sup>st</sup> Floor, Connaught Place, New Delhi-110001.

**.....Operational Creditor**

**Vs**

**Brick Eagle Group Private Limited**

Having Registered Office at: Unit No. B-12-13, Second Floor, Art Guild House, Phoenix Market City, LBS Road, Kurla West, Mumbai-400070.

**.....Corporate Debtor**

**Order delivered on: 12.05.2022**

***Coram:***

**Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)**

**Hon'ble Member (Technical) : Shri Shyam Babu Gautam**

***Appearances:***

For the Financial Creditor : Mr. Yakshay Chheda  
For the Corporate Debtor : Non Appeared (*Ex-parte*)

**ORDER****Per- Shyam Babu Gautam, Member Technical**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Indiabulls Properties Private Limited (for brevity 'Operational Creditor') through its Authorized Signatory, Mr. Soham Hatkar, who has been duly authorised vide Board Resolution dated 25.01.2019 for initiating Insolvency Resolution Process (CIRP) against Brick Eagle Group Private Limited (for brevity 'Corporate Debtor') for default in repaying **₹3,60,88,598** plus interest on principal outstanding @ 18% p.a., as on 31.03.2019.
2. On perusal of the Company Petition, it reveals that the Corporate Debtor has entered into a registered leave and licence agreement with the Operational Creditor on 03.08.2017 and has taken a premise **(1502 B, 15<sup>th</sup> Floor, Tower I, One Indiabulls Centre, 841, Jupiter Mills, Off Senapati Bapat Marg, Lower Parel, Mumbai)** on licence along with parking space of five cars for a period of 60 (sixty) months commencing from 01.08.2017 to 31.07.2022, for the

purpose of office accommodation. As per the agreement, licence fees amounting to **₹9,42,459** per month was payable from 01.08.2017 to 31.01.2019; **₹10,13,117** per month was payable from 01.02.2019 to 31.07.2020 and **₹10,89,125** per month was payable from 01.08.2020 to 31.07.2020 but the Corporate Debtor failed to pay the licence fees and defaulted the amount. The Operational Creditor also issued a cure notice to the Corporate Debtor to pay the outstanding amount but instead of paying the outstanding dues the Corporate Debtor vacated the premises on 30.06.2018, which was well within the lock in period as per the agreement clause 6.1 and 14.1. After several reminders the Corporate Debtor has failed to make any payment, the Operational Creditor on 23.10.2018 issued Section 8 notice demanding the Corporate Debtor to pay the amount due of **₹3,52,27,696**, failing which, the Operational Creditor would proceed against the Corporate Debtor under the Insolvency & Bankruptcy Code.

3. The Operational Creditor has annexed copy of **the Registered Leave and License Agreement**, copy of **the cure notice dated 22.05.2018** and **notice dated 07.07.2018**. The Operational Creditor has also filed the copies of **tax invoices** and **debit notes** along with the copy of **Section 8 notice**. The Corporate Debtor has not replied to Section 8 notice. As per the records, the Corporate Debtor was represented only on 15.10.2019 and 25.02.2020.

Moreover, Corporate Debtor has not filed any reply to the petition and was set **ex-parte** on 02.05.2022.

4. Heard the submissions made by the Learned Counsel for the Petitioner. Now the issue before this bench is whether dues, if any, arising from the '**Leave and Licence Agreement**' is construed as an '**Operational Debt**'?

A similar set of issue fell for consideration before the Hon'ble NCLAT in the matter of "**Anup Sushil Dubey us. National Agriculture Co-operative Marketing Federation of India Ltd. & Another Company Appeal (AT) (Insolvency) No. 229 of 2020**", wherein it has held as follows;

*"Therefore, keeping in view, the observations made by the Hon'ble Supreme Court in Para 5.2.1 of Mobilox (Supra), and having regard to the facts of the instant case this Tribunal is of the earnest opinion that the subject lease rentals arising out of use and occupation of a cold storage unit which is for Commercial Purpose is an 'Operational Debt' as envisaged under Section 5 (21) of the Code. Further, in so far as the facts and attendant circumstances of the instant case on hand is concerned, the dues claimed by the First Respondent in the subject matter and issue, squarely falls within the ambit of the definition of 'Operational Debt' as defined under Section 5 (21) of the Code."*

5. The facts of the present case are squarely covered by the Judgment rendered by the NCLAT *supra* as in the present case, the Petitioner has developed the building as an **Information Technology Park (I.T. Park)** in accordance with the provisions of IT and ITES Policy 2003 and moreover, the permission was granted for IT enabled services and financial services companies to use and occupy space in the I.T. Park by the Government of Maharashtra. In this case licencing a premise for office accommodation was completely a commercial purpose. So, this Bench is of the view that the debt and default arising out of license agreement is an operational debt.
6. Looking at the aforementioned facts, this Bench is of the view that the existence of debt and default has been proved, therefore, we hereby admit this company petition and appoint **Mr. Sandeep Jawaharlal Singhal** as an IRP, with a direction to the Operational Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.
7. Accordingly, this Company Petition is hereby **admitted** with the following directions:
  - a. **The above Company Petition (IB) 1845(MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Brick Eagle Group Private Limited.

- b. This Bench hereby appoints Mr. Sandeep Jawaharlal Singhal, having Registration No: IBBI/IPA-001/IP-P00519/2017-2018/10920, E-mail: [sandeepjsinghal@hotmail.com](mailto:sandeepjsinghal@hotmail.com), as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where

such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate

Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

8. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH**  
**(MEMBER JUDICIAL)**

12.05.2022