



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-2632(ND)2019

IN THE MATTER OF:

M/s. Central Linen Park Private Limited

Registered office at:
B-808, RIICO Industrial Area,
Pathredi, Bhiwadi- 301019

...Applicant/Operational Creditor

VERSUS

M/s Bright Star Hotels Private Limited

Registered office at:
B-3, Greater Kailash,
New Delhi- 110048

...Respondent

Section: 9 of the IBC, 2016

Order Delivered on : 16.12.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sahil Mullick

For the Respondent : Adv. Dhairya Gupta



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Central Linen Park Private Limited (for brevity, the **'Applicant/Operational Creditor'**) has filed the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Bright Star Hotels Private Limited (for brevity, the **'Respondent'**).

2. The Respondent namely M/s. Bright Star Hotels Private Limited is a Company incorporated on 07.11.1983 with CIN U74899DL1986PTC024250 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at B-3, Greater Kailash, New Delhi-110048, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Corporate Debtor is Rs. 20,00,00,000/- and Paid-up Share Capital is Rs.9,98,00,000/- as per the Master Data.

3. It is stated that the Applicant was providing laundry services to for the "The Bristol Hotel" of the Respondent situated at DLF Phase I, Gurugram in terms of the Agreement for laundry services dated 18.04.2018 (**"Agreement"**) executed between the parties. The Applicant was to process the hotel Laundry at its unit at Bhiwadi at the rates



agreed in the said agreement and payment was to be made by the Respondent within 7 days of the submission of the invoice.

4. The Applicant has further stated that the Respondent defaulted in making payments of its invoices for the period of 08.05.2018 to 20.08.2018 for an amount of Rs.10,92,318.92/-. The Applicant had earlier also filed an Application bearing IB-1593/ND/2018 under Section 9 of IBC 2016 pursuant to the Demand Notice dated 30.07.2018 issued under Section 8 of IBC for an amount of Rs. 6,90,983.81/- which was later on settled and withdrawn by the Applicant.

5. It is further submitted that since the Corporate Debtor defaulted in further transactions, therefore, for the period of 31.07.2018 to 20.08.2018, the applicant issued fresh notice of demand on 09.05.2019, under section 8 of IBC, read with Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Applicant has relied on the judgment dated 12.12.1991 of the Hon'ble Supreme Court in the case of Secretary Irrigation, Government of Orissa vs. G.C. Roy, 1992(1) SCC 508, wherein it was held that the petitioner is liable to recover interest. The Applicant has claimed the default towards payment of the 3 nos. bills and interest from 25.07.2018 onwards till date, along with the aforesaid reimbursements of liquidated damages, legal/IRP fees etc. in its notice of demand dated 09.05.2019.



6. The particulars of the Operational Debt claimed including the total amount of default and the date of default are mentioned in Part IV of the application, which is reproduced below, for the sake of convenience:

Part-IV

PARTICULARS OF OPERATIONAL DEBT		
1.	<p>Total Amount Of Debt,</p> <p>Details of transactions on account of which debt fell due, and the date from which such debt fell due</p>	<p>1. Total amount of debt is Rs. 8,65,664.20/-</p> <p>2. Details of transactions -</p> <ul style="list-style-type: none"> • Bill no. 219 dated 31.07.2018 amounting to Rs2,89,405.62/-; • Bill no. 227 dated 31.07.2018 amounting to Rs29,986.75/-; • Bill no. 233 dated 20.08.2018 amounting to Rs81,942.74/-; • Interest (from 08.05.2018 onwards) on delayed payment : Rs. 2,74,329.09/- • Legal and other expenses incurred for recovery : Rs. 1,90,000/- <p>3. The date from which such debt fell due is 30th August 2018.</p>
2.	<p>Amount claimed to be in default and the date on</p>	<p>Amount claimed to be in default is Rs.8,65,664.20/- The working / computation of the Amount in</p>
	<p>which the default occurred (attach the workings for computation of Amount and dates of default in tabular form)</p>	<p>default is given in Annexure C to this form.</p>



7. Thus, under Part IV of the Application, the Applicant has claimed an amount of Rs. 8,65,664.20/- as unpaid operational debt.

8. It is stated by the Applicant that since the Respondent did not make the due payment of its operational debt, it had issued a Demand Notice dated 09.05.2019 under Section 8 of IBC 2016 at the registered office of the Respondent. It is further stated that the Respondent has replied to the Demand Notice on 03.06.2019. The Applicant has filed the Affidavit under Section 9(3)(b) of 2016 stating that the reply dated 03.06.2019 indicates no existence of dispute.

9. On issuance of notice, the Respondent has filed its reply and raised the following objections -

9.1. The Applicant had previously filed a similar application under Section 9 of IBC, 2016 to initiate CIRP against the present Respondent bearing CP No. (IB)-1593/ND/2018. The said application was filed on account of default in payment of operational debt involved in eight invoices raised by the Applicant. The particulars of the eight invoices forming subject matter of the CP No. (IB)-1593/ND/2018 are:

- 1) Bill No. 62 dated 08.05.2018
- 2) Bill No. 78 dated 31.05.2018
- 3) Bill No. 117 dated 31.05.2018
- 4) Bill No. 138 dated 30.06.2018
- 5) Bill No. 182 dated 25.07.2018
- 6) Bill No. 219 dated 31.07.2018
- 7) Bill No. 277 dated 31.07.2018
- 8) Bill No. 233 dated 20.08.2018

9.2. The said application was disposed of vide order dated 26.04.2019 of this Tribunal after settlement between the parties and



tendering of a demand draft of Rs. 6,90,984/- by the Respondent to the Applicant in satisfaction of its claim. But the said order dated 26.04.2019 does not grant any liberty to the Applicant to re-agitate the same claim based on the same invoices and therefore, the present application is barred by the principle of res judicata.

9.3. The Invoice/bill no. 219, 227 and 233 dated 31.07.2018, 31.07.2018 and 20.08.2018 respectively were neither raised nor received by the office of Respondent. It is submitted that an approved and acknowledged invoice bears the stamp of the Respondent Company and usually contains marking reflecting that the same is duly checked and verified by the Executive Housekeeper.

9.4. The invoices annexed by the applicant along with the present petition are not the acknowledged invoices. They bear the signature of unknown persons and do not bear the stamp of the Respondent Company. It is further submitted that since the physical copies of the invoices were never received by the Respondent, therefore, there was no occasion of it being approved by the Executive Housekeeper of the Respondent. That the alleged debt/invoices raised by the Applicant are not admitted and has been bona fide disputed by the Respondent.

9.5. The claim of interest and other expenses is not legally tenable in an application filed u/s 9 of the IBC 2016.

10. We have heard the submissions made by the parties and perused the documents placed on record. The Applicant has claimed



the operational debt basing on the three invoices i.e., Bill No.219, Bill No.227 and Bill No.233, Interest and legal & other expenses incurred. It is the contention of the Respondent that the subject matter of these three invoices has been agitated and settled in CP(IB)-1593(ND)/2018. In order to examine whether these three invoices were agitated in CP(IB)-1593(ND)/2018, we would like to go through the Column1 Part IV of Form 5 of the said application, which as available on the DMS of this Tribunal, is reproduced below:

Part-IV

PARTICULARS OF OPERATIONAL DEBT	
1.	<p>TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE</p>
	<p>1. Total amount of debt is Rs. 10,92,318.92/-</p> <p>2. Details of transactions –</p> <ul style="list-style-type: none"> • Bill no. 62 dated 08.05.2018 amounting to Rs 27,606.10/-; • Bill no. 78 dated 31.05.2018 amounting to Rs 2,99,272.19/-; • Bill no. 117 dated 31.05.2018 amounting to Rs 35,520.95/-; • Bill No 138 dated 30.06.2018 amounting to Rs. 2,58,495.52/- • Bill No 182 dated 25.07.2018 amounting to Rs. 70,089.05/- • Bill No 219 dated 31.07.2018 amounting to Rs. 2,89,405.62/- • Bill No 227 dated 31.07.2018 amounting to Rs. 29,986.75/- • Bill No 233 dated 20.08.2018 amounting to Rs. 81,942.74/- <p>3. The date from which such debt fell due is 15th May 2018.</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>
	<p>Amount claimed to be in default is Rs.10,92,318.92/- The working / computation of the Amount in default is given in Annexure B to this form.</p>



11. On perusal of part IV of the earlier application, it is observed that the Applicant has already included the amounts of Bill No.219, 227 and 233 in the operational debt claimed in CP(IB)-1593/ND/2018. Now, it is pertinent to find out whether the said application i.e., CP(IB)-1593/ND/2018 was finally heard and decided by this Adjudicating Authority on merits. The order dated 26.04.2019 is reproduced below:

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1593(ND)2018

CORAM:

PRESENT: DR. V. K. SUBBURAJ
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.04.2019.

NAME OF THE COMPANY: M/s. Central Linen Park Pvt. Ltd. V/s. M/s. Bright Star Hotels Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 9 of IBC, 2016

S.NO. NAME DESIGNATION REPRESENTATION SIGNATURE


Present: Mr. Sahil Mullick, Advocate for the Petitioner
Mr. Dhairya Gupta, Advocate for the Respondent

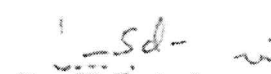
ORDER

It is being pointed out there has been some discrepancy in the figures claimed in the demand notice and that claimed in the present petition. While a sum of Rs. 6,90,984/- was the amount claimed under Section 8 of the Code, the petitioner has been filed for a higher amount in the petition.

Ld. Counsel for the Corporate Debtor is ready and willing to make the payment as per the demand notice under Section 8 of the Code. The demand draft of this amount has been tendered to the Ld. Opp. Counsel for the Operational Creditor who accepts this amount as claimed in his notice on account of a technical aberration.

This petition stands disposed off.


(V. K. Subburaj)
Member (T)


(Ina Malhotra)
Member (J)



12. It is observed from the aforesaid order, which records that *there has been some discrepancy in the figures claimed in the demand notice and that claimed in the petition.* It further records that the petitioner had claimed higher amount in the petition. Therefore, we would like to refer to the Demand Notice dated 30.07.2018 issued by the Applicant before filing the CP(IB)-1593(ND)/2018, which is reproduced below:

FORM 8
(See clause (a) of sub-rule (1) of rule 5)
**FORM OF DEMAND NOTICE / INVOICE DEMANDING PAYMENT UNDER THE
INSOLVENCY AND BANKRUPTCY CODE, 2016**
(Under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

July 30, 2018

To,
Bright Star Hotels Pvt. Ltd. (The Bristol Hotel) Corporate Debtor
(CIN U74899DL1986PTC024250)
B-3, GREATER KAILASH
New Delhi 110048.

From,
CENTRAL LINEN PARK PVT LTD Operational Creditor
(CIN U74140DL2011PTC227664)
B-808, RIICO Industrial Area,
Pethredi, Bhiwadi
Alwar - 301 019.

**Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from
Bright Star Hotels Pvt. Ltd. under the Code.**

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from Bright Star Hotels Pvt. Limited.
2. Please find particulars of the unpaid operational debt below:

PARTICULARS OF OPERATIONAL DEBT	
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE
1.	Total amount of debt is Rs. 6,90,983.81/-
2.	Details of transactions - <ul style="list-style-type: none"> • Bill no. 62 dated 08/05/2018 amounting to Rs. 27,606.10/-; • Bill no. 78 dated 31/05/2018 amounting to Rs. 2,99,272.19/-; • Bill no. 117 dated 31/05/2018 amounting to Rs. 35,520.95/-; • Bill no. 138 dated 30/06/2018 amounting to Rs. 2,58,495.52/-; • Bill no. 182 dated 25/07/2018 amounting to Rs. 70,089.05/-
3.	The date from which such debt fell due is 15 th May, 2018.



13. On perusal of contents of the Demand Notice, it is seen that the Bills No. 219, 227 and 233 did not form part of the statutory Section 8 Demand Notice, based on which the CP(IB)-1593(ND)/2018 was preferred by the applicant, therefore, disposal of the said application will not have any bearing on the present application and in our view, the principle of *res judicata* is not applicable in the present case.

14. Another contention raised by the Respondent is that the claims in respect of the Bills No.219, 227 and 233 are disputed, as the said bills/invoices were not received and acknowledged by the Respondent with its stamp and they bear the signature of an unknown person. The Respondent has also annexed a sample of the approved invoice of the applicant, which is reproduced below, for the sake of convenience :

ANNEXURE - D

Central Linen Park Pvt.Ltd.
 B-808, HICO Industrial Area,
 Pathankot, Bhiwadi,
 Alwar 301 019
 CIN: U74140DL2011PTC227064
 Contact: 0562751161, 0220032611163, 94
 E-Mail: info@centrallinenpark.com
 www.centrallinenpark.com

Invoice No. 33
 Supplier's Ref. BLGN/GL/160417-300417

Dated 30-Apr-2017
 Other Reference(s)

Buyer
Bright Star Hotels Pvt. Ltd (The Bristol Hotel)
 DLF Phase -1
 Gurgaon - 122002
 PAN/TIN No. AAACB457BJ

S. No.	Description of Goods	Rate	per	Amount
1	Guest Laundry (Dry Cleaning Services)			7,895.00 - 7670.00
2	Service Tax @ 14% (On Assessable Value 7,895.00)	14 %		1,105.00 - 1073.80
	Krishi Kalyan Cess @ 0.50%	0.50 %		39.00 - 38.00
	Swachh Bharat Cess @ 0.50%	0.50 %		39.00 - 38.00
				8814.80
				₹ 9,078.00
				E 4.02

Amount Chargeable (in words)
 INR Nine Thousand Seventy Eight Only
 Service Tax Payable (in words)
 One Thousand One Hundred Eighty Three Only

Remarks:
 Sales for the period 16/04/2017 to 30/04/2017
 Company's VAT TIN: 08354202885
 Company's CST No: 08354202885
 Company's Service Tax No: AAEC6151F5D003
 Buyer's Service Tax No: AAACB457BJ5T001
 Company's PAN: AAEC6151F

Declaration:
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

for Central Linen Park Pvt. Ltd.
 B-808,
 HICO Industrial Area,
 Pathankot, Bhiwadi,
 Alwar - 301 019

Handwritten notes:
 Paid: -
 CU. No - 159178
 DT - 19.3.19
 Amt - 117578/-
 119647/-
 10-8814/-



15. On perusal, we do not find, any stamp of the Respondent affixed on the said sample invoice. Furthermore, the bill no.219, 227 and 233 and the sample bill bears the similar signature. For clarity, we refer to one of the Bills, i.e., Bill No.219, which is reproduced below:

Tax Invoice (ORIGINAL FOR RECIPIENT) (25)

	Central Linen Park Pvt. Ltd. G-429, PUNO Industrial Area Patna, Bihar ANAR 305/918 GSTIN/UIN: 08AEC6161F1ZU Sales Name : Registration Code : 08 CIN: U74140DL2015PTC027804 Contact : 09975111942, 09975111830-4 E-Mail : info@centralinenpark.com www.centralinenpark.com	Invoice No. 219	Dated 31-Jul-2018
	Buyer Bright Star Hotels Pvt. Ltd (The Bristol Hotel) DLF Phase -1, Gurgaon - 122002 GSTIN/UIN : 08AAACB457B1Z1 PAN/IT No : AAACB4579J State Name : Haryana, Code : 06 Place of Supply : Haryana	Supplier's Ref. BLGN/July/18	Mode/Terms of Payment 7 Days
Terms of Delivery			

Sl. No.	Description of Goods	HSN/SAC	Amount
1	Room Linen	999712	1,05,750.00
2	F&B Linen	999712	29,376.00
3	SPA Linen	999712	12,384.00
4	Uniform	999712	62,900.00
5	Uniform	999712	24,055.00
6	Guest Laundry	999712	10,785.00
7	IGST @ 18%		44,148.62
Total			₹ 2,89,405.62

E. & O.E.

Amount Chargeable (in words)
 INR Two Lakh Eighty Nine Thousand Four Hundred
 Five and Sixty Two paise Only

Remarks:
 Sales for the period 01-07-2018 to 31-07-2018
 Company's PAN : AAEC6161F

Declaration:
 We declare that this invoice shows the actual price of the
 goods described and that all particulars are true and
 correct.

for Central Linen Park Pvt. Ltd.

 Authorized Signatory

SUBJECT TO ALWAR JURISDICTION

This is a Computer Generated Invoice

Reed
 Madhavi
 4/8/2018

For Central Linen Park Pvt. Ltd.

Director



Therefore, it can be concluded that this was the general practice between the parties during the business transaction and the bills no.219, 227 and 233 were duly received and acknowledged by the Respondent, hence, we do not find any force in the contentions of the Respondent.

16. As per the terms of the invoices, the Respondent was required to clear the payment within 7 days from the date of issuance of invoices, on which the Respondent has defaulted. The present application being filed on 16.10.2019, minimum threshold of Rs. 1 Lakh is applicable to the present case. The default in payment of operational debt with respect to the Bill No.219, 227 and 233 being more than the minimum threshold amount, we are inclined to initiate the Corporate Insolvency Process against the Respondent.

17. In the given facts and circumstances, the Applicant having established the default on the part of the Respondent in payment of the operational debt being above the minimum threshold and the application being complete, **the present Application is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

“(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 the possession of the corporate debtor.”

18. As proposed by the Operational Creditor, this Bench appoints Mr. Rakesh Chaturvedi (Email id: ip@pareshrakesh.in), Registration No. IBBI/IPA-001/IP-P00242/2017-18/10471 as IRP having subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority further orders that:

“Mr. Rakesh Chaturvedi (Email id: ip@pareshrakesh.in) as IRP having Registration No. IBBI/IPA-001/IP-P00242/2017-18/10471, is directed to take charge of the of the Corporate Debtor to initiate CIR Process with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”



19. The Operational Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

20. A copy of this Order shall immediately be communicated by the Registry/Court Officer to the Operational Creditor, the Corporate Debtor and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their record.

— sd —

(L. N. GUPTA)
MEMBER (T)

— Sd —

(BACHU VENKAT BALARAM DAS)
MEMBER (J)