



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.214/Chd/CHD/2019

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

**Apavarga Trading Company, Partnership Firm
through its partner Sh. Moti Kumar**

with its office at

Khasra No.52/21, GF Street No.2,
Block-A, Pardhan Enclave Village,
Burari, Delhi - 110084

PAN : AAZFA5722A

...Petitioner-Operational Creditor

Vs.

IKO Hospitality Private Limited

with its registered office at

H-901, Pilot Court, Essel Tower,
M.G. Road, Gurugram, Harayna - 122001

...Respondent-Corporate Debtor

Judgment delivered on: 29.07.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Shailender Kumar, Advocate

For the respondent-Corporate Debtor : Respondent ex-parte vide
Order dated 06.07.2022.



Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Apavarga Trading Company (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its Partner, Mr. Moti Kumar, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of IKO Hospitality Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, IKO Hospitality Private Limited, is a Company incorporated on 07.05.2013 under the provisions of Companies Act, 1956 with CIN No.U55101HR2013PTC049060 with its registered office at H-901, Pilot Court, Esel Tower, M.G. Road, Gurgaon, Haryana - 122001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-3.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for supply of groceries items and various invoices were raised which were duly received and acknowledged. Copy of ledger account statement of the operational creditor is attached as Annexure A-5. Copy of the Bank statement of the operational creditor (Annexure A-9). Certificate from financial institution under Section 9(3)(c) of the IBC, 2016 confirming that there is no payment of unpaid operational debt by the corporate debtor (Annexure A-10).



4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.22,40,288/-/- via various invoices pending from 30.12.2015 till 07.06.2017 and the default occurred on 09.05.2017.

5. A demand notice in Form 3 dated 27.09.2018 is stated to be issued to the operational creditor by speed post. Copy of postal receipt along with tracking report and affidavit by operational creditor to the effect that there is reply against demand notice.

6. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Tarsem Chand Garg, Insolvency Resolution Professional from the list provided by IBBI.

7. Notice of this petition was issued to the corporate debtor vide order dated 23.05.2019 to show cause as to why this petition be not admitted. None appeared on behalf of the corporate-debtor. Thereafter as per order dated 06.07.2022 of this Tribunal, the authorized representative for petitioner-operational creditor informed the date of hearing to the opposite counsel and the compliance affidavit has been placed on record as per the direction. Despite service, there was no representation from the respondent-corporate debtor and even no reply is filed. In these circumstances, this Adjudication Authority was constrained to proceed with the matter and the respondent has been set *ex parte*.

8. We have heard the learned counsel for the petitioner and have perused the records.



9. The first issue for consideration is whether the demand notice in Form 3 dated 16.08.2019 was properly served. The petitioner has placed a tracking report, whereunder it was stated that the speed post was delivered to the corporate debtor and reply to that has been duly received.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of the corporate debtor despite repeated service and has been set ex parte vide order dated 06.07.2022. Moreover, the petitioner has appended affidavit u/s 9(3)(b) stating that even after reply to the demand notice, the corporate debtor has not cleared the outstanding dues, which is reflected in the certificate issued under Section 9(3)(c) of the Code, for which the present petition has been filed by the operational creditor.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 28.02.2019 vide Diary No.1015. Whereas the date of default is 09.05.2017, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹22,40,288/-. The operational creditor has supplied goods to the corporate debtor and raised invoices attached as Annexure A-4. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in



threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, IKO Hospitality Private Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below.

- 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 the possession of the corporate debtor.

15. It is further directed that 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. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till 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.



17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Tarsem Chand Garg and there is nothing adverse against him. In view of the above, we appoint Mr. Tarsem Chand Garg, Registration No. IBBI/IPA-001/IP-P01410/2018-2019/12451, E-mail: gargtarsem@gmail.com Mobile No.9501036694 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Tarsem Chand Garg shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) The Interim Resolution Professional, Mr. Tarsem Chand Garg is directed to file his written consent in Form-2 within one week of this order.
- iii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control



and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iv.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- v.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- vi.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with



the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vii.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The RP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of



thirty days from the date of **his** appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

18. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is accordingly allowed and admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 29, 2022
AV/ASH