

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

C.P.(IB)-24(MB)/2023

(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

Mr. Zameer Nathani

Having Correspondence Address at: 201,
United Classic, Dr. Peter Dias Road,
Bandra West, Mumbai 400050

.....Operational Creditor

Vs

Ding Entertainment Private Limited

Having Registered Office at: 1001, 10th
Floor, Gazdhar Enclave, Dalla Industrial
Estate, Off. Andheri Link Road, Andheri
West, Mumbai- 400053.

.....Corporate Debtor

**Order Reserved on: 22.08.2023
Order delivered on: 25.08.2023**

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Operational Creditor : Adv. Aman Kacheria i/b Nikhil Lahate
For the Corporate Debtor : Non Appeared (*Ex-parte*)

ORDER**Per- Charanjeet Singh Gulati, 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 Mr. Zameer Nathani (for brevity 'Operational Creditor/Petitioner') for initiating Insolvency Resolution Process (CIRP) against Ding Entertainment Private Limited (for brevity 'Corporate Debtor') for default in repaying **₹1,09,00,000 (Rupees one crore and nine lakhs only)**, as on 09.11.2022.
2. On perusal of the Company Petition, it reveals that the Petitioner is an Indian Inhabitant and the Corporate Debtor is a production and distribution house. The Corporate Debtor approached the Petitioner to use his property (*plot no. 16 admeasuring 3526. 94 sq. ft. bearing survey no. 128 (old) i.e. survey no. 11 (new situated, lying and being at Revenue Village Chowk, Bhayandar (West), Taluka District Thane*) for shooting web series and movies being produced by them. The Corporate Debtor and the Petitioner executed a Memorandum of Understanding dated 23.06.2020, to record arrangement for use of the said property and the

consideration (INR 40,000/- per day) payable to the Petitioner for the same. The relevant terms of the MoU are as follows:

I. USAGE OF THE SAID PROPERTY AND TERMS OF SUCH USAGE:

B. TERMS OF USAGE:

5. *The Parties agree that this MoU shall not be considered as a leave and license agreement or a lease agreement or an agreement which is of like nature that give exclusive and sole right to the said DING to occupy, possess and use the said Property. It is herein clarified that the ownership and possession shall at all times stay and belong to the said ZN.*

6. *It is agreed between the Parties that whenever the said DING is in requirement of the said Property for conducting shooting, it shall issue an advance written request to the said ZN informing the said ZN of the date, schedule and number of days of the shooting that is required to take place on the said Property. On receiving such written request, the said ZN shall within a period of 48 hours confirm the availability of the said Property for the duration as requisitioned by the said ZN. It is clarified herein that the said ZN shall not be held liable by the said DING in the event the said Property is not available for conducting the said shooting.*

II. FEE/CONSIDERATION:

1. *It is agreed between the parties that the said DING shall pay to ZN consideration of INR 40,000/- per day for the said duration of the shooting period as stipulated in the written requisition as per clause 6 above.*

2. *To secure the payment of the said consideration, the said DING shall handover post dated cheque of an amount equivalent to 50 percent of the total consideration payable to the said ZN for that duration of the shooting period during which DING is in usage of the said Property. On receiving payment of the said consideration, the*

said ZN shall handover the said post dated cheque back to the said DING.

3. The said ZN shall, within a period of 48 hours from the date on which the shooting period is over, intimate the said DING in writing the total consideration that is payable to the said ZN in accordance with clause 1 above.

4. The said consideration as the case may be shall be paid to the said ZN by the said DING within a period of 14 days from the date on which the said DING receives written intimation as per clause 2 above.

3. On 12.10.2020, the Corporate Debtor sent a letter to the Petitioner seeking permission to conduct shooting of their web series "Apharan" from 21.11.2020 to 25.01.2021 and the same was agreed by the Petitioner through his letter dated 20.10.2022. The Petitioner also asked the Corporate Debtor to make payment of Rs. 10,00,000/- (Rupees Ten Lakh Only) via a postdated cheque in accordance with the terms of the MoU.
4. Further on 03.02.2021, the Corporate Debtor sent a second letter to the Petitioner seeking permission for conducting shooting from 18.02.2021 to 19.05.2021 for its web series "Hisstory". The Petitioner agreed to the same through his letter dated 12.02.2021 to the Corporate Debtor confirming availability of property and asked to make payment of Rs. 24,00,000/- (Rupees Twenty-Four Lakhs Only) via a postdated cheque in accordance with the terms of the MoU.

5. Similarly, on 02.09.2021, the Corporate Debtor sent a letter to the Petitioner seeking permission to conduct shooting at the said property from 21.09.2021 to 18.12.2021 for shooting of its web series "Laxmi Inc". In response to this, the Petitioner addressed a letter dated 05.09.2021 to the Corporate Debtor stating that in accordance with MoU, they were liable to pay him a total of Rs. 68,00,000/- (Rupees Sixty-Eight Lakh Only) out of which Rs.20,00,000/- (Rupees Twenty Lakh Only) were for use of said property for 50 days from 21.11.2020 to 25.01.2021 and Rs. 48,00,000/- (Rupees Forty-Eight Lakh Only) for use of said property for 120 days from 18.02.2021 to 19.05.2021, which have not been paid.
6. The Corporate Debtor gave numerous verbal assurances to the Petitioner that they will clear all the dues pending. Based on these assurances, Petitioner gave another chance to the Corporate Debtor and allowed shooting at said property from 21.09.2021 to 18.12.2021. Further, on 10.02.2022, a meeting was held between the Corporate Debtor and the Petitioner for consideration payable by the Petitioner to the Corporate Debtor under terms of MoU dated 23.06.2020.
7. In the said meeting it was discussed that as per the said MoU, the Corporate Debtor was obligated and liable to pay consideration of a sum of Rs. 40,000/- (Rupees Forty Thousand Only) per day for the total number of days the Corporate Debtor occupied the said Property for conducting

the shooting activities. Pursuant to which, the Corporate Debtor occupied the said Property and conducted shooting on various dates as under:

- i. 50 days from 21.11.2020 to 25.01.2021;*
- ii. 120 days from 18.02.2021 to 19.05.2021;*
- iii. 90 days from 21.09.2021 to 18.12.2021.*

Therefore, the Corporate Debtor was obligated to pay a sum of Rs.1,04,00,000/- (Rupees One Crore and Four Lakhs Only) to the Petitioner as consideration for occupying and using the said Property along with Rs.5,00,000/- (Rupees Five Lakh Only) as compensation for default in payment.

8. In accordance with the said meeting, the Corporate Debtor issued postdated cheques bearing reference no. 003188; 003189 and 003190 for a sum of Rs. 30,00,000/- (*dated 01.09.2022*); Rs. 50,00,000/- (*dated 03.10.2022*) and Rs. 24,00,000/- (*dated 01.11.2022*) respectively. However, the said cheques were returned dishonoured on 09.11.2022. Therefore, the Petitioner through his Advocate issued Demand Notice dated 16.11.2022 by way of e-mail/Registered Post with Acknowledge Due (*R.P.A.D.*), under the provisions of the Code. However, the Corporate Debtor failed to respond to the same or pay the amount in default. In such circumstances, the Petitioner has filed the present petition before this Tribunal.

9. As per the records, the registry of this court as well as the Applicant issued notices to the Corporate Debtor but it

failed to be present before this Tribunal. Moreover, the Corporate Debtor has not filed any reply to the petition and was set ***ex-parte*** on 16.02.2023.

10. On perusal of the Petition and material annexed to this Petition, we are of the considered view that clause 3 of Part II of the “Memorandum of Understanding” explicitly stipulates that the Petitioner, referred to as ‘ZN’, is obligated to inform the Corporate Debtor, referred as ‘DING’ in writing about the total sum due within 48 hours of the conclusion of the shooting period, as per and in accordance of Clause 1. Consequently, the Corporate Debtor was liable to settle the agreed-upon amount following the conclusion of the respective shooting schedules. Further, clause 4 stipulates that “4. *the said consideration as the case may be shall be paid to the said ZN by the said DING within a period of 14 days from the date on which the said DING receives written intimation as per clause 2 above. In the event, the said DING fails to pay the said ZN the said consideration amount within the stipulated period, the said ZN shall be at liberty to terminate this MoU and/or refuse to provide the said Property to the said DING until such time the said consideration is paid.*”
11. In this case, the Corporate Debtor utilized the said property for the filming of three separate web series on three occasions: spanning 50 days from November 21, 2020, to January 25, 2021; 120 days from February 18, 2021, to May 19, 2021; and 90 days from September 21, 2021, to December 18, 2021. This entailed payment obligations of

Rs.20,00,000/-, Rs.48,00,000/-, and Rs.36,00,000/-, respectively. Consequently, it is evident that defaults occurred subsequent to January 25, 2021; May 19, 2021; and September 21, 2021.

12. Thus, the amount fell due on following dates:

Period	No. of Days	Amount Due	Amount Due on/ Date of Default
21.11.2020 to 25.01.2021	50	20,00,000/-	09.02.2021
18.02.2021 to 18.12.2021	120	48,00,000/-	04.06.2021
21.09.2021 to 18.12.2021	90	36,00,000/-	02.01.2022

As can be seen from the table above, the default pertaining to an amount of Rs. 20,00,000/- falls within the period of suspension under Section 10A of the Code of the initiation of the corporate insolvency process.

13. This leaves the default amounts of Rs. 48,00,000/- and Rs. 36,00,000/-, totaling to Rs. 84,00,000/-. It is further pertinent to note that the present petition is filed in 2023, and the notification implementing an increase in the threshold limit from Rupees One Lakh to Rupees One Crore, effective from March 24, 2020, has a direct bearing on this case. Therefore, in the facts of the case the default amount to be considered for the CIRP comes below the one crore limit.

14. Taking all factors into account, it is our considered view that the present petition does not meet the threshold of minimum amount of debt in respect of which default is said to have occurred. Accordingly, C.P.(IB)24/MB/2023 is hereby ***dismissed as non-maintainable***.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**

Arpan, LRA