

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
CP(IB)/81(MP)2022

Proceedings under Section 9 IBC

IN THE MATTER OF:

M/s Amar Constructions
V/s
M/s Carnival Films Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 22/03/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

-sd-

**P. MOHAN RAJ
MEMBER (JUDICIAL)**

THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/81/MP/2022

(An application under section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/s Amar Constructions

Partnership Firm having its
Registered address at:
Fundore Mall, 363/3,
A.B. Road, Near Medicaps,
Rau, Indore,
Madhya Pradesh- 453331

.....Petitioner/Operational Creditor

Versus

Carnival Films Private Limited

CIN: U92100MP2012PTC027484
Having its registered address at:
FM-18 Mansarovar Complex,
7 No Stop Shivaji Nagar,
Bhopal,
Madhya Pradesh- 462016

.....Respondent/Corporate Debtor

Order pronounced on: 22.03.2024

Coram: P. Mohan Raj, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Petitioner: Ld. PCA Ms. Teena Saraswat Pandey

For Respondent: *Ex-parte* (on 13.10.2023)

ORDER

1. This petition was filed on 28.11.2022, by Mr. Pawan Agrawal, partner in M/s Amar Constructions (Operational Creditor) under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Carnival Films Private Limited (Corporate Debtor). The default amount stated by the operational creditor is Rs 2,00,30,698/- (Invoice amount Rs 1,68,68,774/- and Interest amount Rs 31,61,924/-). The date of default stated by the operational creditor is 05.05.2021.

2. The averments made by the operational creditor in its petition and presented/argued by the learned PCA for the operational creditor are summarized hereunder:

(i) The operational creditor entered into a commercial lease deed with the corporate debtor on 25.03.2021 for a period of 15 years for a total area of 14445 square feet on a monthly lease amount of Rs 7,36,695/- and maintenance charges Rs 1,66,442/- in shopping complex "Fundore Complex" (for cinema exhibition) situated at Khasra No. 363, AB Road, Rau, Indore.

(ii) According to clause (5) of the lease deed, the lessee was allowed to commence business from 18.03.2021, as earlier there was disruption in business due to Covid-19. But the corporate debtor started defaulting from first month of the agreement and then parties entered into a settlement for the first three months i.e. April to July 2021 for Rs 17,38,600/-, but still partial payment of Rs 6,54,051/- was made by the corporate debtor. Thereafter, the corporate debtor completely stopped payment of rent, maintenance charges payable every 5th day of the next month and also the interest amount on delayed payment of rent.

(iii) A demand notice under section 8 of the Code dated 22.09.2022 was issued by the operational creditor and was served at both the

address of the corporate debtor. The corporate debtor has acknowledged receipt of the demand notice dated 22.09.2022 in his reply to the demand notice dated 04.10.2022. The corporate debtor in his reply in para 8, 9 and 10 has stated as per extracts reproduced hereunder:

Para 8 “We state that the delay in payments was not and had never been intentional but purely circumstantial; only after this pandemic, things have become difficult to manage as the revenue in its entirety is generated from the cinema exhibition business. Yet again we reiterate that circumstances were unforeseen, and it was a tough time for the company like every other company which is into the similar business of operating and running multiplex.”

Para 9 “Thereon, during the postulation of potential lockdown, there had been a massive delay from the distributor’s end which then delayed our business operations, yet again negatively affecting the generation of revenues. Thereafter, in the months of June, July and August 2022, on opening of cinema theatres for the business operations, the anticipated blockbusters like Shamshera, Laal Singh Chaddha, Rakshabandhan and many others haven’t been able to perform and generate the speculated revenues.”

Para 10 “That from the date of “alleged” first debt i.e. 05.05.2021 till the date of the reply to the said notice, we have made substantial payment to you, this itself shows the intention to make payment and run the cinema business and continue with the lease. In addition to the above interest free refundable security deposit amounting to Rs 1,11,14,552/- is deposited with you. You have also been holding the revenue generated at the cinema multiplex which is in tune of Rs 6,31,820/-. That claims made under the said notice are baseless and faulty.”

(iv) The security deposit was revised as per page 115 (lease agreement) to the tune of Rs 75,74,552/- and the same is with the operational creditor. However, it is pertinent to mention that the

corporate debtor has not handed over/given possession of the leased premises etc., hence, the security deposit amount could not be adjusted against the rent and other charges.

(v) After issuance of the demand notice, no pre-existing dispute was brought to the notice of the operational creditor by the corporate debtor. An affidavit to this effect has been attached to the present petition as per section 9(3)(b) of the Code.

3. The corporate debtor neither replied to the present petition nor was present during the entire proceedings before this Adjudicating Authority. Even after several notices were served to the corporate debtor, the corporate debtor chose not to represent it before this Adjudicating Authority. Hence, this Adjudicating Authority vide order dated 13.10.2023 decided to proceed *Ex-parte*.

4. We have heard the learned PCA appearing for the operational creditor on the issue of admission of petition filed under section 9 of the Code and have perused the relevant records and documents. It is noted that there was a business relationship between the operational creditor and the corporate debtor. As per the lease deed dated 25.03.2021, executed between the operational creditor and the corporate debtor for a period of 15 years, the operational creditor has provided the corporate debtor premises comprising 14,445 square feet (for running multiplex i.e. cinema exhibition) for which the corporate debtor was to pay a minimum guaranteed amount or 14% of net revenue share (whichever is higher) to the operational creditor as rent. Additionally, Common Area Maintenance (CAM) charges were also payable by the corporate debtor to the operational creditor as per the said lease deed. For the duration 01.02.2020 till 17.03.2021, the amount of rent and other charges of Rs 35,40,000/- were adjusted from the security deposit as per the lease deed. The operational creditor raised several invoices from September 2021 till September 2022 for monthly rent, CAM charges, and other charges of the month from April 2021 till September 2022 amounting to Rs 1,75,22,825/-. Ledger attached to the petition shows an opening balance of Rs 5,21,637/- on 01.04.2021, and it confirms that part payments were also

made by the corporate debtor. The default amount stated by the operational creditor is Rs 2,00,30,698/- (Invoice amount Rs 1,68,68,774/- and Interest amount Rs 31,61,924/-) for which a demand notice under section 8 of the Code was issued on 22.09.2021 by the operational creditor. In defense, no reply to the present petition is filed by the corporate debtor. However, the corporate debtor had replied to the section 8 notice vide a letter dated 10.10.2022, disputing the debt, and pointing out that the delay in payments was due to the pandemic, not intentional and it has made substantial payments to the operational creditor. In addition, it is also submitted that a refundable security deposit amounting to Rs 1,11,14,552/- is lying deposited with the operational creditor.

5. The corporate debtor has disputed the debt in its reply to the section 8 notice, however, it has never disputed the invoices raised for the monthly rent and other charges which were issued by the operational creditor with respect to the requirement of the lease deed executed between the parties. Further, no pre-existing dispute was raised by the corporate debtor in the present matter.

6. Having considered the facts of the case, we are of the view that the corporate debtor has defaulted in repayment of its debts. The outstanding amount of Rs 1,68,68,774/- together with the interest of Rs 31,61,924/-, as per the ledger provided in the present petition (even after adjusting the balance security deposit of Rs 75,74,552/-), exceeds the threshold limit of Rs 1 Crore as prescribed under section 4 of the Code. The default date stated by the operational creditor is 05.05.2021, the same is well within the limitation period. As such the petition deserves to be admitted. Accordingly, we allow this petition and order as under:

- (i) Corporate Debtor M/s Carnival Films Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
- (ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

- 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 Securitisation 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.*

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) As proposed by the Operational creditor, we appoint Mr. Satyendra Sharma, having registration No. IBBI/IPA-002/IP-N00737/2018-2019/12260, having address at: M-3, Block No. 51, Anupam Plaza-II, First Floor, Above Axis Bank, Sanjay Place, Agra, Uttar Pradesh- 282002, email: satyendrasirp@gmail.com to act as an Interim Resolution Professional under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of the Corporate Insolvency Resolution Process (CIRP) and call

for submission of claims under Section 15 as required by section 13(1) (b) of the Code.

(vi) 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. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Operational creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Operational creditor, Corporate Debtor and the Interim Resolution Professional, and the concerned Registrar of Companies, after

completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against the Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

7. Accordingly, the petition CP(IB)/81/MP/2022 stands allowed.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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P. MOHAN RAJ
MEMBER (JUDICIAL)

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