

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

**C.P. (IB)- 3882 (MB)/ 2018**

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*

**Go Airlines (India) Ltd.,**

Having its registered office at: C/o. Britannia Industries Limited, A-33, Lawrence Road, Industrial Area, New Delhi – 110035.

.....Operational Creditor

Vs

**Blue Mushroom Infozone Private Limited.,**  
(CIN No.: U72300MH2011PTC221687)

Having its Registered Office at: 437,438 & 439 IJMIMA Complex, Behind Goregaon Sports Club, Raheja Metroplex, Malad West, Mumbai - 400064.

.....Corporate Debtor

**Order delivered on:- 10.07.2023**

*Coram:*

**Shyam Babu Gautam**

**Kuldip Kumar Kareer**

**Member Technical**

**Member Judicial**

*Appearances:*

For the Operational Creditor : Mr. Nirman Sharma, Advocate  
For the Corporate Debtor : Ms. Chaitali Jani, Advocate

## ORDER

*Per :- Kuldip Kumar Kareer, Member Judicial*

1. This Company Petition is filed by *Go Airlines (India) Limited*. (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Blue Mushroom Infozone Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of **Rs. 51,52,426/-** (Rupees Fifty-One Lakhs Fifty-Two Thousand Four Hundred and Twenty-Six Only) together with interest of **Rs. 8,75,772/-** (Rupees Eight Lakhs Seventy-Five Thousand Seven Hundred and Seventy-Two Only) aggregating to a sum of **Rs.60,28,198/-** (Rupees Sixty Lakhs Twenty-Eight Thousand One Hundred and Ninety-Eight Only).
3. A branding Agreement dated 31.12.2015 was executed between the Operational Creditor and the Corporate Debtor for the scope of the work as mentioned in the Agreement. The scope of the

said services was further extended vide an Addendum letter dated 23.01.2017 and Renewal letter dated 24.01.2017. The Operational Creditor duly performed its obligation and provided its services in accordance with the Branding Agreement.

4. Further it is seen that an amount of Rs. 9,00,000/- was paid by the Corporate Debtor to the Operational Creditor towards the security deposit under the Branding Agreement. The Operational Creditor had raised 39 invoices in all for a total amount of Rs. 1,56,37,701/- out of which the Corporate Debtor had paid amount of Rs. 95,85,275/- against the outstanding amount and also adjusting the security deposit of Rs. 9,00,000/- the total amount due and payable was Rs. 51,52,426/- to the Operational Creditor under the 16 invoices.
  
5. The Operational Creditor addressed a **Demand Notice dated 20.02.2018** calling upon the Corporate Debtor to pay an amount of Rs. 51,52,426/- along with an interest amounting to Rs. 4,99,715/- calculated at the rate of interest of 12%. Further, it is observed that the Operational Creditor tried to serve the demand notice to the registered office of the Corporate Debtor. However, the envelopes containing the Demand Notice returned as undelivered on 21.02.2018 and 05.03.2018 with remarks as unclaimed. Thereafter, the Operational Creditor under the cover letter dated 14.05.2018 again tried to serve the demand notice dated 20.02.2018 at the new registered address of the Corporate Debtor which was also returned as undelivered with a remark as

closed. The Operational Creditor then, vide an email dated 08.08.2018 addressed the Demand Notice dated 20.02.2018 to the Corporate Debtor which was duly delivered. Despite having the demand notice delivered, the Corporate Debtor failed to pay the unpaid debt to the Operational Creditor nor raised any dispute within 10 days of the notice.

6. The Corporate Debtor filed the Reply to this Petition. The Corporate Debtor stated that the debt amount has been wrongly calculated and the same has been claimed wrongly. The Corporate Debtor in the tenure of Branding Agreement dated 31.12.2016 faced lot of non-cooperation from the Operational Creditor and non-compliance of the terms of the Agreement by the Operational Creditor.
7. Further, due to partial policies for competing advertisements, the Corporate Debtor Company suffered heavy losses due to cancellation of the contracts and losing of the two major contracts. The Corporate Debtor Company at multiple occasions raised the non-compliance issues in writing which are evident from the emails as annexed to the Reply.
8. The Operational Creditor on various occasions had breached the terms of the contract. The Corporate Debtor vide emails in the month of June, 2017 raised the issue of non-compliance which were not addressed by the Operational Creditor. Some of the campaigns were communicated by the Operational Creditor in short notice of time wherein the Corporate Debtor could not get sufficient time to run the campaign.

9. The Corporate Debtor has also objected to the total amount of debt claimed as an amount of Rs. 9,00,000/- was paid to the Operational Creditor towards the security deposit under the branding agreement and the same was adjusted by the Operational Creditor against the outstanding amount. The remaining raised invoices, which are due, as per the Operational Creditor remained pending on account of non-settling of the issues on the part of the Operational Creditor on account of which the Corporate Debtor has faced losses.
10. The Operational Creditor has filed Rejoinder to the Reply. The Operational Creditor has stated that the annexures as produced by the Corporate Debtor are illegible. Further, the Corporate Debtor has not raised any dispute with regards to the usage, enjoyment and utilization of the services. The Corporate Debtor has not disputed the invoices nor disputed and communicated the dispute till the demands were raised by the Operational Creditor. The Corporate Debtor failed to reply to the Demand Notice.
11. Further, the Corporate Debtor vide their emails has pointed out that the Corporate Debtor assured that they will pay its dues and did not raise any issue of the same.
12. The Operational Creditor also states that the allegations as raised by the Corporate Debtor in the reply are nothing but an afterthought.

The Corporate Debtor have acknowledged its liability to pay 40,00,000/- to the Operational Creditor vide email dated 03.03.2017. Further, the Operational Creditor states that on various occasions the Operational Creditor had followed up with the Corporate Debtor for the payment of the invoices and the latter continued to assure that all dues will be cleared and did not raise any objection or any dispute.

### **FINDINGS**

13. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. It is evident from bare perusal of the documents available on record that the Operational Creditor had raised 39 invoices in favour of the Corporate Debtor for the services provided under the Branding Agreement. However out of the 39 invoices, Corporate Debtor had paid an amount of Rs. 95,88,275 towards the 22 invoices and further after adjusting the security deposit of Rs. 9 Lakh which is evident from the emails as exchanged between the parties, a principal amount of Rs. 51,52,426 is due and payable by the Corporate Debtor.
14. We have also perused the various email communications between the parties. One of the said emails dated 03.03.2017 demonstrates that the Corporate Debtor had admitted its liability to pay the outstanding amount of Rs. 40 Lakhs payable to the Operational Creditor and also mentioned that the Corporate Debtor were in the process of streamlining the

payment cycles. On various occasions the Corporate Debtor has acknowledged its liability to pay to the Operational Creditor and has raised frivolous defences and objections as to the existence of the dispute between the parties.

15. The Corporate Debtor has further relied on the email dated 12.06.2017 wherein it states that the Corporate Debtor had raised the dispute with regard to non-compliance of the terms of the Branding Agreement and also running of a parallel campaign by the Operational Creditor. However, it is observed that the Corporate Debtor has raised baseless allegations on the Operational Creditor and has not been able to elaborate or crystalize as to exactly what breach of contract or lapse was committed by the Operational Creditor which would amount to a pre-existing dispute between the parties.
16. The objections and allegations of the said campaigns or non-compliance were not raised at the time of pendency of the campaigns or at the time of raising the invoices but were only communicated when the demands were made by the Operational Creditor. The dispute as raised by the Corporate Debtor appears to be complete afterthoughts and the Corporate Debtor have failed to show the existence of any plausible dispute between the parties prior to the demand as raised by the Operational Creditor.
17. Hence, the facts and circumstances clearly established that there is an admitted debt due from the Corporate Debtor and the defenses as raised by the Corporates Debtor are raised for the

first time at the time of demand from the Operational Creditor and are bald without any proof. In view of the above, the Corporate Debtor is liable to make the payment of the outstanding dues of the Operational Creditor.

18. It is also noted that the Operational Creditor herein has been admitted into Corporate Insolvency Resolution Process vide Order dated 10.05.2023 passed by the Principal Bench, New Delhi in CP 264 of 2023 under Section 10 of the Code. The control of the Operational Creditor now vests with the Resolution Professional **Mr. Shailendra Ajmera having Registration No. IBBI/IPA-001/IP-P00304/2017-2018/10568**, having email :- [shailendra.ajmera@in.ey.com](mailto:shailendra.ajmera@in.ey.com) and having address at Ernst & Young LLP, 3<sup>rd</sup> Floor, World Mark – I, Aerocity Hospitality, New Delhi, National Capital Territory of Delhi, - 110037 .
19. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. Hence this Bench is left with no option except to admit the above Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.
20. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

**ORDER**

- a. **The above Company Petition No. (IB) - 3882(MB)/2018 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered Blue Mushroom Infozone Private Limited.
- b. This Bench hereby appoints **Ms. DIPTI AMIT THITE**, Insolvency Professional, Registration No: - **IBBI/IPA002/IPN01087/2021- 2022/13629**, having email id as :- [dipti@csdiptithite.com](mailto:dipti@csdiptithite.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.3 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.
- k. Registry shall send a copy of this Order to the Resolution Professional of the Operational Creditor as mentioned in paragraph 18 above.

Accordingly, this Petition is admitted.

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

**Sd/-**

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

**Sd/-**

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**