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NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-I  
CHENNAI

(14)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 18.09.2019

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL  
SHRI ANIL KUMAR B, MEMBER (TECHNICAL)

APPLICATION NUMBER :  
PETITION NUMBER : IBA/41/2019  
NAME OF THE PETITIONER(S) : FERNWEN HOLIDAYS PVT LTD  
NAME OF THE RESPONDENTS : TRADE LINE ENTERPRISES PVT LTD  
UNDER SECTION : 9 RULE 6 OF IBC

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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REPRESENTATION BY WHOM

1.	Lenin J	Operational Coordinator	
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2.	AVINASH KRISHNAN RAVI JERIN ASHER SOJAN	Counsel for Respondent	
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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI**

**IBA/41/IB/2019** filed under Section  
9 of the Insolvency and Bankruptcy  
Code, 2016 r/w Rule 6 of the Insolvency  
and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016

In the matter of *M/s. Trade Line Enterprises Private Limited*

**M/s. FERNWEH HOLIDAYS PRIVATE LIMITED**

*...Operational Creditor*

-VS-

**M/s. TRADE LINE ENTERPRISES PRIVATE LIMITED**

*...Corporate Debtor*

*Order delivered on 18<sup>th</sup> of September, 2019*

CORAM :

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Mr. Lenin. J, Counsel*

*For Corporate Debtor : Mr. Avinash Krishnan Ravi &  
Jerin Asher Sojan, Counsel*

**ORDER**

**Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

1. Under Adjudication is IBA/41/IB/2019 that has been filed by the *M/s. Fernweh Holidays Private Limited* (hereinafter referred to as '**Operational Creditor**') under

Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against *M/s. Trade Line Enterprises Private Limited* (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Heard the Counsels for the Operational Creditor, Corporate Debtor and perused the record placed on file.
3. The Operational Creditor has claimed an amount of Rs.10,08,117/- which includes interest, as outstanding against the Corporate Debtor which the Corporate Debtor has failed to pay.
4. The brief facts of the case are that the Operational Creditor is engaged in the business of tour planners and

travel agent. The Corporate Debtor approached the Operational Creditor and availed the services of the Operational Creditor. After rendering the service as required by the Corporate Debtor, Invoices were raised by the Operational Creditor. The terms and conditions of payment and other conditions are stipulated in the Invoice itself. Index to the list of Invoices and the Invoices are placed at pages 33A to 70 of the typed set filed with the Application. The Operational Creditor has placed on record the summary of claim and interest calculation at page 71 of the typed set filed with the Application wherein the amount claimed by the Operational Creditor is revealed.

5. The Counsel for the Operational Creditor has referred to the Ledger Account from 22.06.2015 to 19.05.2016 maintained by the Operational Creditor pertaining to the Corporate Debtor, which is placed at page 33 of the typed set filed with the Application, which

gives the details of the payments made by the Corporate Debtor and the balance is shown as Rs.6,26,597/-.

6. The Counsel for the Operational Creditor has submitted that the Corporate Debtor is maintaining the running account and for attending to each order the Operational Creditor raised a separate Invoice on the Corporate Debtor and as and when the payments are made by the Corporate Debtor, the said amount shall be deducted from the aggregate Invoice amounts. The Counsel for the Operational Creditor has further submitted that the balance amount due were periodically intimated to the Corporate Debtor and the last payment made by the Corporate Debtor was Rs.50,000/- on 19.05.2016. After giving credit to the various payments made by the Corporate Debtor, the balance amount due to the Operational Creditor is Rs.6,26,597/- towards ticket booking and travel arrangement service rendered to the Corporate Debtor.

7. The Operational Creditor has sent notice under Section 8 of the I&B Code, 2016 on 19.02.2018 which is placed at pages 21 to 28 of the typed set filed with the Application, wherein the amount as claimed by the Operational Creditor has been mentioned to which the Corporate Debtor has given Reply along with accounts statement on 09.03.2018 which is placed at pages 29 to 32 of the typed set filed with the Application wherein the Corporate Debtor has denied the amount claimed by the Operational Creditor and stated that as per the ledger account statement enclosed with the Reply to the notice would reveal only Rs.3,88,658/- as payable by the Corporate Debtor to the Operational Creditor .

8. The Operational Creditor has also complied with Section 9(3)(b) and (c) of the I&B Code, 2016, by placing on record the Affidavit at pages 19 and 20 of the typed set filed with the Application wherein it has been deposed under Para 3 that no notice was given by the Corporate Debtor to the Operational Creditor regarding any pending

litigation or arbitration proceedings in relation to the dispute of any unpaid Operational Debt. The Ledger Account is already on record as mentioned hereinabove.

9. The Corporate Debtor has filed the Counter Affidavit, wherein it has been stated that the instant Application is barred by limitation. It is further stated that the contents at page 7 of the Application in which the Operational Creditor is seeking payments for items 1 to 25 in the list of Invoices relate to a period beyond 3 years from the date of filing of the present Application.

10. In this regard, the Counsel for the Operational Creditor has submitted that the Corporate Debtor has been maintaining the running account and the Operational Creditor raised a separate Invoice on the Corporate Debtor and as and when the payments are made by the Corporate Debtor, after deducting from the aggregate Invoice amounts the balance amount due were periodically intimated to the Corporate Debtor.

11. The Counsel for the Operational Creditor has referred to the e-mail communication dated 28.01.2016 placed at pages 113 and 114 of the typed set filed with the Application wherein the Operational Creditor has demanded the outstanding balances in all the accounts maintained by Tradeline including the outstanding amount of Rs.8,23,666/- due from the Corporate Debtor to which the Corporate Debtor replied that the Operational Creditor will work on this, as top priority next week the Operational Creditor will get payments. The Counsel for the Operational Creditor has referred to one more communication dated 02.02.2016 sent by the Operational Creditor to the Corporate Debtor copy of which is placed at page 116 of the typed set filed with the Application, requesting to settle the pending amount to which the Corporate Debtor replied that the *payment will be received in a day or two*. The Counsel for the Operational Creditor has finally referred to the e-mail communications dated 25.06.2019 exchanged between

the Operational Creditor and the Corporate Debtor wherein the Corporate Debtor *proposed to closed the dues in 6 equal monthly installments starting from 25.07.2019,* to which the Operational Creditor requested the Corporate Debtor to provide further payment details to which the Corporate Debtor again replied that *the Corporate Debtor are willing to close the dues from Tradeline Enterprises Pvt. Ltd., in full in 6 instalments starting by last week July.* The Counsel for the Operational Creditor has submitted that based upon the above e mail communications, the claim is not time barred as claimed by the Corporate Debtor.

12. It is worthwhile to record that under Para 5 of the Reply dated 09.03.2018, the Corporate Debtor contended that the calculation made by the Operational Creditor with respect to the outstanding liability is incorrect and the ledger account statement enclosed with the reply notice would reveal that only a sum of Rs.3,88,658/- is payable by the Corporate Debtor to the Operational

Creditor, thereby admitting the liability of the Operational Creditor. Hence, the plea that has been taken by the Corporate Debtor that the Application is barred by limitation is negated.

13. The Corporate Debtor in its Counter stated that there is no liability from the Corporate Debtor insofar as the claim of interest is concerned, as there is no agreement for delayed payment between the parties. It is stated that in Invoices placed at pages 33A to 70, there is no provision for interest whatsoever and in the absence of any such clause, the Operational Creditor has claimed interest from the Corporate Debtor which is wholly contrary to law. However on delayed payment, the Operational Creditor has a right to charge interest at a reasonable rate. Therefore, the Operational Creditor is held entitled to the interest @ 12% p.a.

14. During the course of hearing, the Corporate Debtor has filed the Schedule for Payments proposing to pay a

sum of Rs.10 Lakhs in 12 equal instalments from 25.08.2019 to 25.07.2020. However, the Operational Creditor did not agree and rejected the same.

15. In the facts and circumstances of the case and the documentary evidence placed on records, the Operational Creditor has made out a case for admission of the Application and the defence that has been taken by the Corporate Debtor is spurious, illusory, hypothetical and is a mere bluster and the same stands rejected

16. In view of the discussions made above, this Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, the Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

17. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016.

It is ordered to prohibit all of the following, namely: -

- (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 (54 of 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. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

19. The Resolution Professional viz. Mr. S. Vasudevan has been proposed by the Operational Creditor for appointment as IRP. There is no disciplinary proceeding pending against him as evidenced from Form-2. Therefore, Mr. S. Vasudevan is hereby appointed as IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

20. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

21. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The address details of the IRP are as follows: -

Mr. S. Vasudevan  
**(IBBI/IPA-002/IP-N00573/2017 - 2018/11740)**  
Plot 5, 2<sup>nd</sup> Floor, Manasarovar Apartment,  
Bagavanthy Nagar, Medavakkam Koot Road,  
Medavakkam, Chennai, 600 100.  
Email: kvasu1956@gmail.com  
Mobile No.9710419502.

22. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

23. Order is dictated and pronounced in open court in the presence of the Counsels for the Operational Creditor and the Corporate Debtor.

-SD-

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

P.ATHISTAMANI

-SD-

**CH. MOHD. SHARIEF TARIQ**  
MEMBER (JUDICIAL)