

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 1567 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Team Outdoors

...Operational Creditor/ Applicant

v/s

Orient Tourism Private Limited

...Corporate Debtor

Order Dated 17.09.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Applicant: Mr Vishal Jain, PCA.

For the Respondent: None Present.

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 1567/2018 filed by, **Team Outdoors**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Orient Tourism Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr Tushar Laxmichand Gori, Proprietor of the Applicant Proprietorship firm.
3. The applicant contends that the corporate debtor **Orient Tourism Private Limited** is a company registered under Companies Act 2013.
4. The Applicants further contends that he had paid ₹12,00,000/- to the Respondents on 14.12.2016 based on the confirmation letter dated 13.12.2016 sent by the Corporate Debtor confirming the booking for '6 pax for Europe' trip starting from 15.05.2017 at the



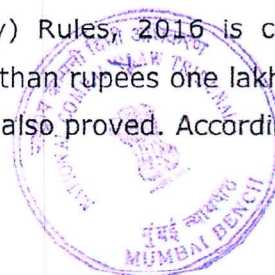
cost of ₹2,00,000/- per pax. Subsequently, the Applicant increased its requirements from 6 to 24 pax and accordingly transferred the further amount of ₹35,10,000/- as per negotiations, on various dates during April and May 2017.

5. The Applicant vide its letter dated 31.07.2017, 18.08.2017 and 31.08.2017, requested the Corporate Debtor to return the entire sum of ₹47,10,000/- paid by the Applicant for the services of the Corporate Debtor, as the Corporate Debtor failed to provide the said services.
6. The Applicant, in its Form-5, has filed its application claiming an amount of ₹47,10,000/- is due and payable against the corporate debtor.
7. The applicant contends that the corporate debtor has committed default in making payment mentioned above and date of default is 31.05.2017.
8. The Applicant has submitted on record, its Bank Statement for the period 12.12.2016 to 24.12.2016 that reflects the entries for payment to the Corporate Debtor. The Applicant has also submitted a Bank Certificate dated 26.04.2018 in compliance of section 9(3)(c) of the I&B Code certifying that the amount of ₹47,10,000/- is not paid by the Corporate Debtor in the Account of the Applicant during the period 26.03.2018 to 24.04.2018.
9. The Applicant sent a Demand notice in Form-3 dated 23.03.2018 demanding payment of ₹47,10,000/-. The Demand notice was not replied to by the Corporate Debtor. The Applicant has filed an affidavit in compliance of section 9(3)(b) of the I&B Code stating that he has after service of notice he has neither received the payment nor any notice of dispute from the corporate debtor.
10. It is on record that the court notice was duly served upon the Corporate Debtor, but the corporate debtor chose not to file any objections in its defence, even after providing ample opportunities to do so. There was no representation on behalf of the Corporate Debtor during hearing.
11. On perusal of the documents submitted by the operational creditor, it is clear that debt amounting ₹47,10,000/- is due and payable on



the Corporate Debtor which is also evident from the letter of the Corporate Debtor dated 13.12.2016 and the Bank Statement of the Applicant for the period 12.12.2016 to 24.12.2016. The default with respect to the said debt is evident from the bank certificate dated 26.04.2018 filed in compliance of Sec 9(3)(c) of the Code.

12. The applicant has filed various letters dated 31.07.2017, 18.08.2017 and 31.08.2017 written by the corporate debtor in support of its claim. The Corporate Debtor has not replied to any of the letters of the Applicant or the Demand notice. The Corporate Debtor failed to provide the agreed services to the Applicant in spite of receiving advance money for providing the services. The amount received as advance is a claim in respect of for providing services is an operational debt as per provision of Sec 5(21) of the Code.
13. The same is not controverted even during the hearings in which there was representation on behalf of the Corporate Debtor. Therefore, the default is also established by the conduct of the Corporate Debtor. The outstanding debt of more than Rs One Lac is due and payable against the corporate debtor and corporate debtor has committed default in making the payment.
14. The application filed by the operational creditor is on proper form 5, as prescribed under the Adjudicating Authority Rules and application is complete.
15. The Applicant has proposed the name of Mr Anurag Jain, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01049/2017-18/11732] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
16. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form No5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the



application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

The application filed under Section 9 of I&B Code, 2016, by **Team Outdoors**, against the corporate debtor, **Orient Tourism Private Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 activity under the Securitization 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 possession of the corporate debtor.

II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench at this moment appoints Mr Anurag Jain, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01049/2017-18/11732] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

17. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

17th September 2019



Confirmed True Copy
Copy Issued "Free of cost"
On 11/10/19
B. A. Patel
National Company Law Tribunal
Mumbai Bench