



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-596/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Rama Tent House

Having Registered Office at: 5, Hospital Road,
Bhogal Jangpura,
New Delhi - 110014

...Applicant/Operational Creditor

Versus

M/s. Unisons Hotels Private Limited

Having Registered office at: Plot No, 2,
Nelson Mandela Road, Vasant Kunj, Phase II,
New Delhi - 110070

...Respondent/Corporate Debtor

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Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Vishwa Bhushan Arya

Counsel for Respondent: Mr. Gaurav Bahl

ORDER

Per: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 22.12.2022

1. This is an application filed by the Applicant M/s. Rama Tent House seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Unisons Hotels Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs.1,10,05,215/- (Rupees One Crore Ten Lacs Five Thousand Two Hundred and Fifteen) as on 22.01.2018 along with interest @ 18% from the date of default. The details of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

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- i. That the Operational Creditor is well-known in the business of hiring of tent house including water proof structured tents.
- ii. That the Corporate Debtor is engaged in the business of hotels.
- iii. That the directors of the Corporate Debtor approached the Applicant to avail its services to provide the tent house item and services for the events of customers at the hotel of the Corporate Debtor.
- iv. That the Corporate Debtor availed the services from the Applicant in terms of the agreement dated 01.09.2015 for a period of 2 (two) years i.e. 01.09.2015-31.08.2017.
- v. That the Applicant successfully provided such services to the Corporate Debtor and the above said agreement was extended for period of 1 year i.e. 01.09.2017 to 31.08.2018.
- vi. That the Corporate Debtors availed the services of the Applicant in terms of the agreement dated 01.09.2015 and the Applicant provided its services



to the Corporate Debtor to its satisfaction and never received any complaint regarding my deficiency in the same and for the said services.

- vii. That the Applicant raised various invoices in the name of the Corporate Debtor which the Corporate Debtor itself acknowledged.
- viii. That the Corporate Debtor accepted and admitted the unpaid operational debt, Rs.1,10,05,215/- in their email dated 22.01.2018, giving the details of the entire invoices in an attachment.
2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:
- i. That the present petition is not maintainable because same is barred by limitation.
- ii. That the present petition stated to have been filed under section 9 of IBC, 2016 is not maintainable because no debt is due and payable by corporate debtor and on the contrary petitioner is liable to pay INR. 7,71,434/- as at 30/09/2017, as certified by Chartered Accountant of the Corporate Debtor.



- iii. That the present petition stated to have been filed under section 9 of IBC, 2016 is not maintainable because petitioner was guilty of rendering deficient and incomplete services, which adversely affected the business of the Corporate Debtor.
 - iv. That the Corporate Debtor is a solvent company and is carrying on business for about more than 20 years. The Corporate Debtor is an established company and has expanded both vertically and horizontally over the years and has presence across the globe and further has a respectable image and market value.
- 3.** The Counsel for the Operational Creditor has filed Rejoinder stating that:
- i. That the present petition is not barred by limitation.
 - ii. That the Corporate Debtor in its acknowledgment under email dated 22.01.2018 had categorically acknowledged and admitted the liability of Operational debt of Rs. 1,10,05,215/-.

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- iii. That there has been no email which shows that there was any deficiency in services on the part of Operational Creditor. Since the Corporate Debtor was not making the payment the partners of Operational Creditor were not interested to renew the contract with them anymore. The officers of Corporate Debtor vide email dated 22.03.2018 had respected the decision of Operational Creditor for not renewing the contract. If there was any deficiency of services on the part of Operational Creditor then there was no need for the Corporate Debtor seeking renewal of contract.
- iv. That the acknowledgment under email dated 22.01.2018 clearly shows the amount of operational debt was due and payable.
4. The Counsels for the Operational Creditor & Corporate Debtor have filed their written submissions which have been taken on record.
5. We have heard the Ld. Counsels for the Operational Creditor and Corporate Debtor and perused the

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averments made in the application as well as the documents enclosed with the application.

6. The Corporate Debtor has stated in his reply that there were pre-existing disputes between the parties and he has also contended that the petition is barred by Limitation. The disputes w.r.t the quality of work were raised by the Corporate Debtor in its emails sent in the year 2017. However, in the e-mail dated 22.01.2018, the Corporate Debtor has acknowledged the debt. The Corporate Debtor while acknowledging the debt in the said e-mail has nowhere mentioned about the existence of any disputes between the parties. The e-mail dated 22.01.2018 clearly acknowledges the outstanding amount of Rs. 1,10,05,215 due as on 22.01.2017.
7. The contention of the Corporate Debtor that the present petition is barred by limitation does not suffice as the Hon'ble Supreme Court has in the case of *Asset Reconstruction Company (India) Limited v Bishal Jaiswal (2021) 6 SCC 366*, held that Section 18 of the Limitation Act, 1963 which extends the period of limitation



depending upon an acknowledgement of debt made in writing and signed by the Corporate Debtor, is applicable to proceedings under the IBC. The Supreme Court further held that entries in the Balance Sheet would amount to acknowledgment of debt for the purpose of extension of limitation under Section 18 of the Limitation Act. In the present case, the Corporate Debtor has acknowledged the debt in the E-mail dated 22.01.2018, thereby giving a fresh lease of limitation. Therefore, the present petition is not barred by limitation.

8. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and



accepted the said default. The Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this tribunal admits this application and initiates CIRP on the Corporate Debtor with immediate effect.

9. The name of Insolvency Resolution Professional has not been proposed in the Application filed by the Operational Creditor. This Adjudicating Authority, hereby appoints Mr. Krit Narayan Mishra, (Email – kritmassociates@gmail.com), Reg. No: IBBI/IPA-001/IP-P00441/2017-18/10784 to act as Insolvency Resolution Professional from the panel of Insolvency Professionals (IPs) valid from the period 01.07.2022-31.12.2022 issued by IBBI in terms of Section 16(4) of the IBC, 2016. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

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- 10.** The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
- 11.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
- 12.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including*

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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 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 the possession of the corporate debtor.

13. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of

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Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

- 14.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- 15.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and

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strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

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16. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)

*Pronounced today under Rule 151 of NCLT Rules, 2016 as
Hon'ble Member (J) Sh. P.S.N Prasad is not holding the court
today.*

— Sd —

Court Officer
22.12.2022