

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

**IA No. 1046/2022 in CP (IB)
180/2022,**

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Yatra Online Limited

...Corporate Debtor

V/s

**Ezeego One Travel and Tours
Limited**

...Operational Creditor

In the matter of:

**Ezeego One Travel and Tours
Limited**

...Operational Creditor/Applicant

V/s

Yatra Online Limited

...Corporate Debtor/Respondent

Order Dated: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor : Mr. Nausher Kohli, Advocate
For the Corporate Debtor : Mr. Krishnendu Datta, Sr. Counsel

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Application is filed by Yatra Online Limited i.e. the corporate, under section 60(5) of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking dismissal of the Operational Creditor's Application under section 9 of the Code on the ground that the Application is not maintainable being barred by section 10A of the Code.
2. The Corporate Debtor submits that the Operational Creditor has filed the Application alleging that an amount of Rs. 3,15,47,313/- is due and payable by the Corporate Debtor and has stated the date of default as 30.10.2020 in the Part IV of the Application.
 - 2.1. It is submitted by the corporate Debtor that the date alleged as date of default in Demand Notice dated 30.11.2021 and in part IV of the Application falls within the period barred by section 10A of the Code for initiation of Corporate Insolvency Resolution Process i.e. the suspension period.
 - 2.2. The corporate Debtor has relied on the case of *Ramesh Khymal v. Siemens Ganesh Renewable Power Private Limited*, (2021) 3 SCC 224 wherein the Hon'ble SC has affirmed that Section 10A is clearly prohibitory in nature and the filing of insolvency proceedings under section 7,9 and 10 of the Code is clearly barred for the Suspension period.
 - 2.3. The Corporate Debtor has also submitted that once the Operational Creditor himself has stated the date default which occurs during the suspension period, the bar under Section 10A will inevitably apply; and

that the Operational Creditor's claim of alleged admission cannot change this position. It is submitted that even if the admission of debt is considered on its face value, the Operational Creditor's remedies for recovery cannot lie under the code in view of Section 10A of the Code.

- 2.4. Thus, the present Application filed by the Operational Creditor is liable to be rejected as the date of default falls within the period of suspension as mentioned under section 10A.
3. The Resolution Professional of the Operational Creditor ("Applicant Resolution Professional") submits that the Operational Creditor was admitted into CIRP vide order dated 09.03.2021 and the Application seeking initiation of CIRP against the Corporate Debtor was filed by the Applicant Resolution Professional.
4. The Applicant Resolution Professional addressed an email dated 23.07.2021 requesting the Corporate Debtor to share all the relevant details/documents in respect to the transaction between operational Creditor and Corporate Debtor along with information pertaining to balance due from the Corporate Debtor. The Corporate Debtor replied on 25.08.2021 expressing its inability to provide its exact details of the due on account of pending reconciliation of ledger accounts of Corporate Debtor and its associate entities and sort some time. Upon follow up reminders, the Corporate Debtor finally provided ledger statement admitting the debt of Rs. 1,59,29,163/- vide email dated 15.11.2021 and said ledger statement showed that this balance is outstanding since 01.04.2019 onwards.
- 4.1. It is also the submission of the Applicant Resolution Professional that the Suspended Directors of the Operational Creditors vide email dated

30.10.2022 had demanded repayment of the outstanding dues amounting to Rs. 2,15,98,832/- due as on 30.10.2022. In view of this communication, the Applicant Resolution Professional addressed the demand notice dated 30.11.2021 demanding repayment of the outstanding dues in the absence of the erstwhile management not cooperating with the Applicant Resolution Professional to provide exact details of the debt owed by the Corporate Debtor.

4.2. Furthermore, the Applicant Resolution Professional submits that it can be ascertained from the ledger statements that the defaults had started accruing from 01.04.2019 onwards while the amount of Rs. 2,15,98,832 was calculated and crystallized as on 30.10.2020. Thus, it can be ascertained that the date of default is much prior to 24.03.2020. The Applicant Resolution Professional has relied on the judgment of *Mr. Assem Srivastav v. ICICI Bank Limited & Anr., (company Appeal (AT) (Ins) NO. 147 of 2021* wherein the Hon'ble NCLAT reiterated that where a debt has been acknowledged prior to suspension period as prescribed under Section 10, the Operational period is not affected by the said period. In view thereof, the Applicant Resolution Professional has expressed an unequivocal acknowledgement of its liability in the email dated 12.09.2019.

4.3. The Applicant Resolution Professional has relied on the judgment of *Bank of India, Chennai Large Corporate Branch & Anr v. Coastal Oil Gas Infrastructure Pvt Ltd. & Anr., (2020) SCC Online NCLAT 1095* wherein it was stated by the Hon'ble NCLAT that the NCLT has the power to grant an opportunity to the Operational Creditor to rectify the date of default in Part IV of the Company Petition. Therefore, it is submitted by, the Applicant Resolution Professional that this Tribunal is required to

ascertain the true and correct date of default based on the material placed before it, irrespective of what may be stated in Part IV as date of default.

5. The Corporate Debtor has also filed an Additional Affidavit dated 20.02.2023 to place on record developments after filing of Corporate Debtor's reply dated 27.06.2022. The Corporate Debtor has enclosed an email dated 22.04.2022 whereby its advocate had enclosed a soft copy of demand draft vide email dated 07.09.2022 in favour of Operational Creditor for a sum of Rs. 1,59,29,163/- and asked the Operational Creditor to initiate necessary action for withdrawal of Application under section 9 of the Code. Further, vide email dated 19.09.2022, the Applicant Resolution Professional intimated the Corporate Debtor that pending reconciliation of accounts, the outstanding amount was Rs. 2,04,43,052.51/- and upon payment of the said amount, the Applicant Resolution Professional would withdraw their Application and undertook to refund if any determined on such reconciliation. Thus, it is the submission of the Corporate Debtor that the Operational debt claimed by the Applicant Resolution Professional is subject to reconciliation and therefore there is a pre-existing dispute. Thus, the debt is not crystallised and disputed.

Findings/Observations:

6. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
 - 6.1. The learned counsel for the Corporate Debtor has vehemently opposed the present Application as not maintainable under Section 10A of the Code submitting that this Tribunal does not have power to ascertain the

correct date of default in so far as such ascertainment of the debt results into relief to the Applicant as the Applicant is bound by the facts stated in part IV and cannot plead beyond that in this respect. The learned counsel for the Applicant Resolution Applicant drew our attention to the email communication dated 23.07.2021, whereby the Corporate Debtor was asked to provide the details of the transaction with the Operational Creditor under CIRP. We find that the Operational Creditor was under CIRP and the Applicant Resolution Professional had limited information to find out correct particulars of the debt owed by the Corporate Debtor.

6.2. The date of default is stated as 30.10.2020 in the part IV of the Application. The Applicant Resolution Professional has explained that *“in the absence of additional information being made available by the Corporate Debtor, the Resolution Professional was hard pressed for the date of default which was inadvertently, mentioned as 30.10.2020, being the date of issuance of the demand notice by the erstwhile management of the Operational Creditor.”* The Applicant Resolution Professional has filed copy of email dated 12.09.2019 wherein the Corporate Debtor had offered to transfer 7.5 Cr. to the Operational Creditor and sought their signature; e-mail dated 15.11.2021 to the Applicant Resolution Professional whereby the Corporate Debtor intimated the outstanding of Rs. 1,59,29,163/- in its Books of Accounts as payable to the Applicant and Rs. 3,49,47,735/- as payable to the Applicant by other group companies.

6.3.. On perusal of the ledger Account provided by the Corporate Debtor to the Applicant Resolution Professional, it is noted that the last date of transaction with the Operational Creditor is stated as 23.06.2019. Further, it is admitted position that the Agreement with the Corporate

Debtor was terminated on 02.07.2019. In view of this, we find that a default, if any occurred in payment of admitted amount of Rs. 15929163/-, could have occurred in 2019 only. In the present case, the Application was filed by the Resolution Professional as the Operational Creditor was under CIRP and he has stated that mention of 30.10.2020 as date of default was based on e-mail communication from suspended director demanding payment from the corporate debtor and it happened because of limited information and knowledge in his possession.

6.4. The Adjudicating Authority is under obligation to ascertain the existence of debt and default based on Pleadings in the Application and the documents/information appended thereto or filed in course of adjudication of the Application. The ascertainment of default also encompasses ascertainment of its date as it is this date which is relevant for maintainability of the Application under the Code. In our opinion, the Adjudicating Authority is duty bound to ascertain the facts relating to debt and default correctly and cannot allow the Respondents to take advantage of mistakes of fact or law on the part of Applicant.

6.5. In view of this, we find that there is exist a debt and date of default is not 30.10.2020 but falls in July 2019 i.e. the month in which the agreement between the parties was terminated. Hence, the present Interlocutory Application is not maintainable, and we do not find any merit in the contention of the Corporate Debtor that the Application under section 9 of the Code is barred by provisions of Section 10A of the Code.

ORDER

1. This Application being IA No. 1046/2022 in CP (IB) 180 of 2022, filed by **Yatra Online Limited**, the Corporate Debtor/Applicant, under section 60(5) of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking dismissal of the Operational Creditor's Application under section 9 of the Code on the ground that the Application is not maintainable being barred by section 10A of the Code is **dismissed**.
2. We make it clear that any observations made in this order should not be construed as expressing opinion on merits and we are not commenting on the issue of existence of prior dispute and the same shall be decided while disposing of the Application under Section 9 of the Code.

Sd/-
Prabhat Kumar
Member (Technical)
17/03/2023

Sd/-
Kishore Vemulapalli
Member (Judicial)