

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT NO. IV

Company Petition No. IB-2695/ND/2019

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

IN THE MATTER OF:

M/s. MYKIND VACATIONS PVT. LTD.

...Applicant/Operational Creditor

VERSUS

M/s. DION GLOBAL SOLUTIONS LTD.

...Respondent/Corporate Debtor

Order Pronounced on: 18.08.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr.Achint Singh Gyani, Advocate

For the Respondent :Mr. Bindu Das, Advocate

MEMO OF PARTIES

M/s. MYKIND VACATIONS PVT. LTD.

Having its registered office at:

307, Syndicate House,

3, Old Rohtak Road,

Inderlok, Delhi 110035

...Applicant/Operational Creditor

VERSUS

M/s. DION GLOBAL SOLUTIONS LTD.

Having its registered office at:

409, Chaudhary Complex,

9, VS Block, Madhuban Road,

Shakarpur, Delhi East,

Delhi-110092

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

M/s. Dion Global Solutions Ltd. (for brevity 'Applicant'), through its authorized signatory Mr. Sandip Kumar Sinha, authorizing him to file present application vide Board resolution dated 11.10.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Mykind Vacations Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a company incorporated on 11.12.2009, under the provisions of Companies Act, 1956, having CIN No. U93000DL2009PTC196817, having its office at 307, Syndicate House, 3, old Rohtak Road, Inderlok, Delhi-110035.
3. The Respondent, the Corporate Debtor, is a company incorporated on 23.03.1994, under the provisions of Companies Act, 1956 with CIN No. L74899DL1994PLC058032, having its registered office at 409, Chaudhary Complex, 9, VS Block, Madhuban Road, Shakarpur, Delhi East-110092. The Authorised Share Capital of the respondent company is Rs.85,00,00,000/- and Paid Up Share Capital of the company is Rs.32,22,74,000/- as per Master Data of the company.

4. It is the case of the Operational Creditor that, the Corporate Debtor had entered into Travel Service Agreement (“Agreement”) to avail travel related services from Operational Creditor, including but not limited to booking and cancellation of air tickets, rail tickets, handling reservations, confirmations of hotel/apartments/guest house booking, car rentals, passport services, foreign exchange related services, travel insurance, organizing conferences, conducting package tours, incentive tours, events etc. (“Services”). The Travel Services Agreement was initially executed in the year 2016, which was renewed from time to time.
5. It is further stated that, under the agreement, the Operational Creditor agreed to provide services to the Corporate Debtor and raised its invoices dated 02.08.2017 to 27.06.2019 as per the agreed rates prescribed under the Agreement. The Corporate Debtor agreed to pay the demanded amounts within 15 days from the date of invoice. The Operational Creditor provided satisfactory and regular Services to Corporate Debtor for three and a half years (approx.). However, the Corporate Debtor

failed to comply with the payment obligations, as agreed under the agreement.

6. It has also been stated by the Operational Creditor, that it sent various emails on 04.07.2019, 09.07.2019 and 15.07.2019 to the Corporate Debtor and requested it to clear the outstanding amounts. As the Corporate Debtor continued to commit default in clearing the outstanding amount, the Operational Creditor stopped providing services to the Corporate Debtor from 18.07.2019.
7. As per the submissions of the Operational Creditor, on 03.09.2019, representatives of Corporate Debtor and Operational Creditor had a meeting where, the Corporate Debtor assured to make part payment of Rs. 10 Lakhs within 2 days, i.e., by 05.09.2019 and further assured to clear the balance outstanding amounts. On 06.09.2019, the Corporate Debtor sent an email to the Operational Creditor and acknowledged that a sum of Rs. 40,07,101.16/- is due and payable by it to the Operational Creditor. However, no payment was made by the Corporate Debtor despite assurances.

8. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 12.09.2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent, asking them to make the entire payment of Rs. 40,07,101.16/- (Rupees Forty Lakh Seven Thousand One Hundred One and Paisa Sixteen only), along with interest at the rate of 2% per month, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution Process (“CIRP”) against the Respondent.
9. The applicant has annexed postal receipt, for the delivery of the said demand notice at the registered office of the Corporate Debtor.
10. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has not given any reply to the said notice nor raised any dispute by way of notice of dispute.



11. The applicant has stated that total debt due and payable is Rs. 40,07,101.16/- (Rupees Forty Lakhs Seven Thousand One Hundred One and Sixteen Paisa Only), along with interest at the rate of 2% per month with effect from August, 2019 on delayed payments. As per the invoices the default occurred on 04.07.2019, when the Corporate Debtor failed to make the outstanding payment and further the default occurred on 06.09.2019, when the Corporate Debtor acknowledged and confirmed the outstanding amount of Rs.40,07,101.16/- (Rupees Forty Lakhs Seven Thousand One Hundred One and Sixteen Paisa Only).
12. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that in compliance of the order dated 23.10.2019, the respondent has been served through speed post on 28.10.2019. The Applicant further states that the respondent has also been served dasti and through email on the registered email id as per MCA records. The postal receipt along with the tracking report, dasti

receiving and copy of the email sent, have been annexed along with the affidavit.

13. After the service of said notice, the Corporate Debtor has caused an appearance in the matter and has filed its reply. In its reply to the present section 9 application, the Corporate Debtor states that, the total unpaid amount claimed by the Operational Creditor is Rs. 40,07,101.16/-, it was orally agreed between the parties that the Operational Creditor shall forebear with the Corporate Debtor for making balance payment. The Operational Creditor in utter disregard of the said arrangement has instituted the captioned application against the Respondent before this Tribunal. Further it states that there is no acknowledgement of debt by the Respondent whatsoever, in fact the alleged email dated 06.09.2019 has not so much as even been placed on record by the applicant and thus, no reliance on the said email ought to be placed.

14. However, on examination of the application it is revealed that the said email has been annexed by the Operational Creditor along with the demand notice which has been sent to the

Corporate Debtor under the provisions of the Section 8 of the I & B code, 2016.

15. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices and copies of ledger account. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant. There has been much cloud in the submission of the Respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.
16. In ***“Innoventive Industries Ltd. (Supra)”***, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices were received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

17. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”



In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the corporate debtor does not survive. On the contrary there is an admission to outstanding amount on the part of the Corporate Debtor through its email dated 06.09.2019.

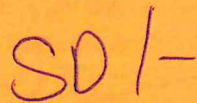
18. The applicant has attached an affidavit in compliance of section 9(3)(b), also, it has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
19. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.



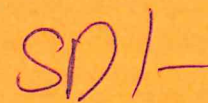
21. The Applicant has proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Pradeep Kumar Lakhani, having registration no. IBBI/IPA-001/IP-P00541/2017-2018/10966, email address is pradeep.lakhani1967@gmail.com, mobile no. 9811115617 as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
22. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Pradeep Kumar Lakhani to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.



23. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
24. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Handwritten signature in red ink, appearing to read "SD/-".

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

Handwritten signature in red ink, appearing to read "SD/-".

(DR. DEEPTI MUKESH)
MEMBER (Judicial)