

**NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**IB-997(ND)2019**

**In the matter of**

- 1. Mr. Pradyuman Kumar Aggarwal  
S/o Mr. Krishan Kumar Aggarwal**
- 2. Mr. Alok Kumar Aggarwal  
S/o Mr. Krishan Kumar Aggarwal**
- 3. Ms. Rati Aggarwal  
W/o Mr. Pradyuman Kumar Aggarwal**
- 4. Ms. Upasna Gupta  
W/o Mr. Alok Kumar Aggarwal**

**All 1 to 4 are residents of  
E-1, Kalindi Colony, New Delhi - 110065**

**.....Operational Creditor**

**V/s**

**Orchid Salon Services Pvt. Ltd.  
Through its Director, Mr. Naviin Gupta,  
REGISTERED OFFICE at:  
14-B, Shiv Shakti Apartments,  
Sector - 10, Dwarka,  
New Delhi - 110075**

**Also at:**

**37 Ground Floor, Jacranda Marg,  
DLF City, Phase - II  
Gurgaon, Haryana**

**.....Corporate Debtor**

**SECTION: 9 of IBC, 2016**

**Order delivered on: 12.07.2019**

**Coram:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)**  
**SH. V.K. SUBBURAJ, HON'BLE MEMBER (T)**

**Present for the Petitioner.: Mr. Rahul Gupta and Mr. Shekhar Gupta,**  
**Advocates**

**Present for the Respondent: Ms. Shreya Singhal, Advocate**

**ORDER**

**PER SMT. INA MALHOTRA, MEMBER (J)**

1. Based on a liability arising out of the unpaid lease rent, the lessor, as an Operational Creditor, has prayed for initiation of the Corporate Insolvency Resolution Process of the respondent/Corporate Debtor.
2. Brief facts of the case are that the Operational Creditor had leased out the 1<sup>st</sup> Floor of their property bearing No. M-32, in M-Block Market, Greater Kailash -I to the Corporate Debtor vide a registered lease deed dated 30.06.2015 on a monthly rent of Rs. 7 lakhs. The Corporate Debtor has been in default in paying the rent from January, 2017. Despite issuance of a legal notice and other reminders, the Corporate Debtor failed to liquidate this liability. The possession of the lease property was taken over pursuant to a decree passed by the Hon'ble High Court of Delhi. Directions were also passed in the said proceedings to deposit the arrears of rent with the Ld. Registrar General of the Delhi High Court, but to no avail.

3. The Hon'ble High Court also decreed the recovery of the arrears of rent and other charges of Rs. 1,34,45,942/-. Since the Corporate Debtor failed to take steps, a demand notice u/s 8 of the Insolvency & Bankruptcy Code was issued which was not replied to. This was followed by filing of the present petition.
4. On issuance of notice, the Corporate Debtor put in appearance and filed their reply. They have impugned the present proceeding on the ground that the same does not fall within the definition of being an Operational Debt. It is further submitted that there is a dispute with respect to the liability.
5. Upon considering the facts on record, it is abundantly clear that the liability arises out of non-payment of rent by the lessee/Corporate Debtor. The claim towards recovery of this amount as rent has also been confirmed by the Hon'ble High Court of Delhi vide its decree dated 15.01.2019. There is no pending proceeding in respect of the said litigation and therefore the decree has attained finality. Since the quantified liability has arisen on account of non-payment of the lease rent, this Bench is of the opinion that the same falls within the scope and definition of the Operational Debt which remains unpaid till date. There is no dispute that has been brought to the notice of this Bench which will have a bearing on the petitioner's prayer. The defence sought to be raised by the Corporate Debtor is meritless. An operational debt exists which has given rise to the present proceedings. The petition

therefore merits consideration and is Admitted. A moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:

*“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.*

Further,

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be*

*terminated or suspended or interrupted during moratorium period.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*(4) Further, the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*“Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

7. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Lalit Gandhi, Registration No. IBBI/IPA-001/IP-P00651/2017-18/11104, email: [l.gandhi@ibbi.gov.in](mailto:l.gandhi@ibbi.gov.in), Mobile No. 9810267125 duly empanelled with the IBBI as an IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17,18,20 and 21 and file her report.

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8. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be duly accounted for the IRP and shall be reimbursed by the CoC to the Operational Creditor to be recovered as CIR costs.
9. Copy of the order be communicated to both the parties as well as to the IRP.
10. To come up on 30<sup>th</sup> August, 2019.



**(V.K. Subburaj)**  
**Member (T)**



**(Ina Malhotra)**  
**Member (J)**