

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-2417/(ND)/2019

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 Tek Travels Private Limited
Having Registered Office at:
E-78, South Extension, Part-I,
New Delhi-110049

...Operational Creditor/Petitioner

Versus

Ted Travels and Experiences Private Limited
Having Registered Office at:
House No.2117, Blk-A
Jain Nagar, Village Karala
Delhi-110081

...Corporate Debtor/Respondent Company

Coram:

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

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Order Delivered on:19.03.2021

ORDER

Per Dr. V.K Subburaj, Member (Technical)

1. This is a petition filed by M/s. Tek Travels Private Limited the petitioner/operational creditor seeking to initiate CIRP against the Respondent company /Corporate Debtor M/s Ted Travels and Experiences Private Limited., under Section 9 of IBC 2016 for the



alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 34,25,104/- including the interest component for not paying the flight bookings. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:-

- a. The Operational creditor is involved in the business of providing 'B2B' travel services to travel agents and tour operators including a wide range of travel solutions such as flight tickets, hotels/resorts, tours, packages etc and is operated under the brand name 'Travel Boutique Online' and is Indis's largest B2B online travel portal.
- b. That the applicant entered into agreement dated 01.06.2018 for providing travel services to the Corporate Debtor and thereafter the operational creditor raised various invoices upon which the payment has been defaulted by the Corporate Debtor.

Copy of the service agreement filed on record.

- c. From the period 13.02.2019 onwards, the operational creditor issued 64 invoices amounting to Rs. 34,93,132/- on the corporate debtor and the corporate debtor had not disputed to any of the invoices before the issuance of the Demand Notice by the operational creditor.

Copy of the Invoices are annexed alongwith.

- d. It is submitted that for the 64 invoices, the corporate debtor made part-payment from time to time at irregular intervals,



and out of total amount of Rs. 34,93,132/-, the corporate debtor defaulted sum of Rs. 25,09,758/- despite the fact that the operational creditor had already paid to all the concerned airlines companies.

Copy of the revised ledger have been filed on record.

- e. That the corporate debtor had issued a cheque of Rs. 30,09,552 dated 01.07.2019 in favour of the Operational creditor in order to discharge its liability. However, upon presentation the same was dishonoured on account of "Insufficient Funds".

Copy of the dishonoured cheque and the return memo issued by the bank has been placed on record.

- f. That the operational creditor sent a Demand Notice dated 14.09.2019 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. Copy of the Demand Notice dated 14.09.2019 demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India, where the operational creditor supplied services to the Corporate Debtor. Further served by email, which was replied to.



g. It is pertinent to mention that the corporate debtor provided an email reply to the Demand notice dated 15.09.2019 wherein the corporate debtor acknowledged the existence of the operational debt and further requested for additional time for the payment of the outstanding dues within 3 months.

Copy of the email reply dated 15.09.2019 filed on the record.

2. The Corporate Debtor in its reply to the application submits that:

- a. There is pre-existing dispute between the parties.
- b. That the claim of the operational creditor is barred by limitation.
- c. That the Corporate debtor submitted that the petitioner does not fall under the category of the Operational creditor in respect of following:
 - No goods/services have been supplied by the petitioner to the respondent.
 - No Invoices have been raised by the petitioner on the respondent.
 - The ledger accounts provided in the petition pertain to the Travel Boutique Online and not the respondent.
- d. That the corporate debtor submitted that the operational creditor in the petition mentioned that the “default had occurred from 10.05.2019 onwards” wherein the last payment



of Rs.5,00,000/- was made to the operational creditor on 17.07.2019 but the applicant had not accounted for the said amount. Further it was orally and mutually agreed between the parties that the rest outstanding balance of Rs. 26,42,633/- shall be payable in parts within the span of 5 months.

- e. That the operational creditor had wrongly quoted interest of 4,15,346 on amount of Rs. 30,09,522/- and further submitted that the figure claimed is wrong.
- f. That the corporate debtor submitted that on 02.07.2019 issued cheque in lieu of the services availed from the petitioner, due to some emergent situation asked the petitioner not to present the cheque in the bank for encashment to which the operational creditor agreed. Further then the corporate debtor issued cheque for Rs. 5 Lacs dated 17.07.2019 to be encashed on the mentioned date.

3. In this regard, the petitioner has denied the allegations made in the reply of the corporate debtor and further submitted that:

a. Acknowledgement of Debt:

- It is pertinent to mention that the email reply of the corporate debtor dated 15.09.2019 to the Demand Notice wherein the corporate debtor acknowledged the existence of the operational debt and further requested for additional time period for the payment.



- Further reply filed by the corporate debtor dated 13.11.2019 wherein the corporate debtor again acknowledged the existence of the debt stating that the *“That the outstanding balance is Rs.26,42,633/- which is agreed shall be payable within span of 5 months”*.
 - In respect of the cheque: That the cheque issued by the corporate debtor dated 01.07.2019 which was dishonoured evidences the debt payable by the corporate debtor to the Operational creditor.
- b. In respect of the pre-existing dispute: It is pertinent to mention that the corporate debtor had failed to substantiate the same by any documentary evidence. Further, no dispute has been raised by the corporate debtor in writing before the issuance of the demand notice by the Operational creditor.
- c. In respect of the Claim barred by Limitation: That the operational creditor issued the last invoice bearing no. DW/1920/313179 to the corporate debtor dated 24.04.2019. Thereafter the corporate debtor was provided 15 days time period to the outstanding amount as per Clause 4 of the Agreement. Further the present petition has been filed within limitation period i.e 23.09.2019 from the date of default i.e 10.05.2019.

Thus the corporate Debtor filed its reply raising issue of frivolous nature issues in order to create moonshine dispute.



4. We have gone through the documents filed by the petitioner and heard the arguments made by the counsel of the petitioner. A perusal of the correspondence indicates acknowledgment of the debt wherein the email reply of the corporate debtor dated 15.09.2019 to the Demand Notice requesting for the additional time period for the payment of the outstanding amount.

5. There has been much cloud in the submission of the respondent. Further there is nothing on record indicating in respect of the pre-existing dispute wherein the corporate debtor had failed to substantiate the same by any documentary evidence. Further that there is no dispute raised by the corporate debtor in writing before the issuance of the demand notice by the Operational creditor. When there is absolutely no document or particulars to support the claim of existence of dispute, the mere claim of dispute raised in the reply and in the pleadings in defence can be termed as vague and motivated to evade the liability. That the authenticity of facts can only be ascertained by supporting evidence and mere submission would not be taken into consideration. The Hon'ble Supreme Court of India in the matter of *Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd* has observed that:

“Para 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 defence which is mere bluster”.


6. Going by the above details the operational creditor has clearly established the existence of debt and default on the part of the corporate debtor. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.

7. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(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 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.
- (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) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

8. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Anil Kumar Mittal Registration No. IBBI/IPA-003/IP-N00305/2020-2021/13289 email--- fcs.akmittal@gmail.com duly empanelled with the IBBI as the IRP. 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.



9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.



(DR. V.K.SUBBURAJ)
MEMBER (TECHNICAL)



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