

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising the powers of Adjudicating Authority  
under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.261/Chd/Hry/2019**

**Under Section 10 of the  
Insolvency and Bankruptcy  
Code, 2016.**

**In the matter of:**

**Glister Hospitality Gurgaon Private Limited,**  
having its registered office at 223, 2<sup>nd</sup> Floor,  
Good Earth City Centre, Sector 47-50,  
Gurgaon-122001.

.... Petitioner-Corporate Debtor

**Judgement delivered on: 08.01.2020**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For Petitioner- : Mr. V.K. Mahajan, Advocate  
Corporate Debtor

For Financial Creditors : Mr. Vishav Bharti Gupta, Advocate

**Per: Ajay Kumar Vatsavayi, Member(Judicial)**

**JUDGEMENT**

This petition has been filed by **Glister Hospitality Gurgaon Private Limited**, the Corporate Debtor itself in Form No.6 as prescribed under sub rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The Corporate Debtor was incorporated on 15.07.2014 having been allotted CIN U74999HR2014PTC0527044. Its registered office is at Gurgaon in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The certificate of incorporation of the corporate debtor is at Annexure A-6 (page 33 of the petition).

3. The authorized share capital of the corporate debtor is ₹1,00,000/- and paid up share capital is ₹1,00,000/-.

4. The petition has been filed by the corporate-debtor through Mr. Guru Dutt, Director, who has been authorized to file this petition under Section 10 of the 'Code' vide Board resolution dated 26.02.2019 (Annexure-1 of the petition). The petition has been filed in pursuance of resolution passed in the meeting of members of corporate debtors held on 25.03.2019 (page 23 of the petition). The contents of the application are supported by the affidavit of Mr. Guru Dutt, Director, which is at Page No. 19-21 of the paper book.

5. As per Memorandum of Association of the corporate applicant (Annexure-7), the main objects of the corporate applicant are:

*"To carry on all the business of hotels, restaurants, cafes, holiday camps, resorts, taverns, beer-houses, refreshment rooms, night clubs, cabarets and swimming pools and Turkish baths and lodging or apartment house keepers, licensed victuallers, wine, beer and spirit merchants, brewers, distillers, bakers and confectioners, importers and manufactures of aerated mineral and artificial water and other drinks". etc.*

6. It is stated that the Corporate debtor executed a lease deed on 23.07.2014 with Endure Reality Pvt. Ltd. for lease of an area of 7118 sq. ft. bearing Unit Nos. 223A, 223B and 223C for running a restaurant in a building

known as "Good Earth City Centre" situated in Sector 50, Malibu Town, Gurgaon. It is further stated that as per the allotment letter dated 31.01.2015, these business units were transferred by Endure Reality Pvt. Ltd. to different persons namely Ms. Nisha Kumar Chanana etc. It is also stated that the corporate debtor contributed by way of unsecured loan of more than ₹90 lacs to build restaurant and on its interiors, furniture, fixtures and fittings and other assets. Owing to competition in the business and shortage of staff, the corporate debtor found it difficult to survive in the business. It is stated that the corporate debtor found it difficult to make payment of rent to the Lessors which exceeded more than ₹23 lacs. It is further stated that the Lessor on 23.02.2019 sent an e-mail to vacate the leased premises within 48 hours and eventually took over possession of the leased premises from the corporate debtor on 25.02.2019. It is submitted that the corporate debtor has committed a default in making a payment of ₹ 23,89,119/- to its operational creditors. Annexure A-8 is the copy of the Lease Deed, Annexure A-9 is Allotment Letter and Annexure A-10 is notice of vacation of premises.

7. In Part-III of Form No. 6, the complete particulars including addresses of the financial and operational creditors have been given. A list of the financial and operational creditors is at Annexure A-4 and A-5 of the petition, respectively.

8. The corporate debtor raised long term borrowing (Annexure A-4) to the tune of ₹ 91,61,337 from five borrowers. Further, trade payables are stated to be ₹ 1,04,74,075 as per Annexure A-5 (Pages 29 to 32 of the paper book).

9. Vide order dated 23.08.2019, some defects for compliance of Annexure VI of the instructions to Form No. 6, were noticed and an opportunity was granted to the petitioner to rectify the same within seven days.

10. In compliance of the above order, an affidavit vide Diary No. 5393 dated 07.10.2019 was filed wherein the list of shareholders, other current assets amounting to ₹2,642,079.13 and other current liabilities amounting to ₹36,66,977.60 are found to be attached.

11. Notice of this petition was issued to all the financial creditors annexed at Annexure A-4 of the petition. The petitioner has filed affidavit of service vide Diary No.6878 dated 05.12.2019.

12. On the last date of hearing, the learned counsel representing all the five financial creditors submitted that the financial creditors have no objection if the CIRP is initiated against the corporate debtor

13. We have heard the learned counsel for the corporate debtor/applicant and learned counsel for the financial creditors and gone through the records.

14. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order:-

*“(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or*

*(b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).*

*Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.”*

15. In order to comply with the requirement of clause (a) of Section 10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in

column 3 of Part-III of the Application Form. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2016-2017, 2017-18 and 2018-19 as at Annexure 12 and 13 and the provisional financial statements upto 20.04.2019 which is at Annexure 14. As per instruction, Annexure 12 attached to prescribed Form No.6, the provisional financial statements up to a date not later than 14 days from the date of the application are required to be filed. The instant petition was filed on 25.04.2019 and the provisional statements up to 20.04.2019 fulfil the requirements of the rule. We thus, find that the application is complete in all respects.

16. Sub-Section (3) of Section 10 of the Code reads as under:-

*“The corporate applicant shall, along with the application, furnish-*

*(a) The information relating to its books of account and such other documents for such period as may be specified;*

*(b) The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*

*(c) The special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.”*

17. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Page No.25-27 furnished by Mr. Atul Mittal, a Registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that currently he is serving as Liquidator in two proceedings and authorised representative in one proceeding. He has also certified that no disciplinary proceedings are pending against him with

the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00439/2017-18/10762. We find that the written consent furnished by the proposed Interim Resolution Professional is in order.

18. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads:-

<b>S.No.</b>	<b>Particulars</b>	<b>Amount (₹)</b>
1.	<b>REVENUE FROM OPERATIONS</b>	
	As on 31.03.2019	29,252,179.01
	As on 31.03.2018	45,603,410.02
	As on 31.03.2017	39,303,786.04
	As on 31.03.2016	37,811,970.00
2.	<b>NET PROFIT/ LOSS OF CORPORATE DEBTOR</b>	
	As on 31.03.2019	(-) 7,528,240.14
	As on 31.03.2018	(-) 7,525,582.98
	As on 31.03.2017	330,879.94
	As on 31.03.2016	122,378.15

19. The figures extracted above indicate complete loss of net worth of the corporate applicant for the financial year 2017-18 and 2018-19. It is clear from the above that the corporate applicant has failed to pay its debt and has thus committed default. It is thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders. It could also be observed that the learned counsel representing financial creditors have submitted that the financial creditors have no objection if the CIRP is initiated against the corporate debtor.

20. In view of the above facts the petition is admitted. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

- (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.

21. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

22. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

23. The Law Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional and nothing has been found adverse against Mr. Atul Mittal.

24. In view of the above, we appoint Mr. Atul Mittal, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P00439/2017-18/10762, email Id: [a.mittalmc@gmail.com](mailto:a.mittalmc@gmail.com), Mobile No. 9871830777, address: 174, BALCO Apartments, Plot No. 58, IP Extension, Patparganj, Delhi-110092 as an Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Atul Mittal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty

days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

25. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

January 08, 2020  
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Corporate Debtor

For Financial Creditors : Mr. Vishav Bharti Gupta, Advocate

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12. On the last date of hearing, the learned counsel representing all the five financial creditors submitted that the financial creditors have no objection if the CIRP is initiated against the corporate debtor

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15. In order to comply with the requirement of clause (a) of Section 10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in

column 3 of Part-III of the Application Form. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2016-2017, 2017-18 and 2018-19 as at Annexure 12 and 13 and the provisional financial statements upto 20.04.2019 which is at Annexure 14. As per instruction, Annexure 12 attached to prescribed Form No.6, the provisional financial statements up to a date not later than 14 days from the date of the application are required to be filed. The instant petition was filed on 25.04.2019 and the provisional statements up to 20.04.2019 fulfil the requirements of the rule. We thus, find that the application is complete in all respects.

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*(a) The information relating to its books of account and such other documents for such period as may be specified;*

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*(c) The special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.”*

17. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Page No.25-27 furnished by Mr. Atul Mittal, a Registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that currently he is serving as Liquidator in two proceedings and authorised representative in one proceeding. He has also certified that no disciplinary proceedings are pending against him with

the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00439/2017-18/10762. We find that the written consent furnished by the proposed Interim Resolution Professional is in order.

18. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads:-

<b>S.No.</b>	<b>Particulars</b>	<b>Amount (₹)</b>
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19. The figures extracted above indicate complete loss of net worth of the corporate applicant for the financial year 2017-18 and 2018-19. It is clear from the above that the corporate applicant has failed to pay its debt and has thus committed default. It is thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders. It could also be observed that the learned counsel representing financial creditors have submitted that the financial creditors have no objection if the CIRP is initiated against the corporate debtor.

20. In view of the above facts the petition is admitted. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

- (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.

21. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

22. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

23. The Law Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional and nothing has been found adverse against Mr. Atul Mittal.

24. In view of the above, we appoint Mr. Atul Mittal, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P00439/2017-18/10762, email Id: [a.mittalmc@gmail.com](mailto:a.mittalmc@gmail.com), Mobile No. 9871830777, address: 174, BALCO Apartments, Plot No. 58, IP Extension, Patparganj, Delhi-110092 as an Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Atul Mittal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty

days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

25. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

January 08, 2020  
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