

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) No. 2399/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

Eatigo India private Limited

...Operational Creditor / Applicant

V/s

Liquid Glass Hospitality LLP

...Corporate Debtor / Respondent

Order Dated: 9th October 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh

Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: CA Pragya Navandar

For the Respondent: Adv. Vishal Jaju

Per: V. P. Singh, Member (Judicial)

ORDER

1. This is an Application being CP 2399(IB)/MB/2019 filed by **Eatigo India Private Limited**, the Operational Creditor /Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Liquid Glass Hospitality LLP**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of ₹6,36,167/- (Rupees Six Lakh Thirty-Six Thousand One Hundred and sixty Seven Only) including interest at 3% p.m. up to 20.02.2019. The Application is filed by Mr Koustubh Bharat Rajepandhare, Director of Operational Creditor duly authorised to file this Application vide Board Resolution dated 15.03.2019.

3. The Applicant submitted that it was engaged in the business of providing an online platform for making reservations on their participating restaurants. The Applicant and Corporate Debtor entered into an Agreement dated 21.05.2018, whereby the Applicant provided services to the Corporate Debtor by listing and creating a reservation widget and mobile application for Corporate Debtor. The Applicant issued six (6) invoices upon Corporate Debtor between 31.07.2018 to 31.12.2018 for the services provided. The copy of said invoices is annexed to the Application. The working for computation of amount outstanding is annexed to the Application.
4. The Applicant submitted that even after availing the services, the Corporate Debtor failed to make payments to the Applicant for the same. Therefore, the Applicant issued Legal Notice dated 19.12.2018 calling upon the Corporate Debtor to refund the outstanding amount of the invoices of ₹3,97,046/- (Rupees Three Lakh Ninety-Seven Thousand and Forty-Six Only). After that, the Applicant issued Demand Notice to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of ₹6,36,167/- (Rupees Six Lakh Thirty-Six Thousand One Hundred and Sixty Seven Only). Copy of the Legal Notice and Demand Notice are annexed to the Application.
5. The Corporate Debtor replied to the Demand Notice vide its letter dated 20.03.2018 and contended therein that the Applicant has not provided the copy of Agreement dated 21.05.2018 to the Corporate Debtor, and therefore the Corporate Debtor could not know on what basis the computation of the amount of ₹6,36,167/-, claimed in Demand Notice, is calculated by the Applicant. The Corporate Debtor further stated that it is always ready and willing to pay the Applicant the requisite payment as per the terms and conditions laid in the Agreement dated 21.05.2018. Therefore, the Corporate Debtor in its reply to demand notice requested the Applicant to provide a copy of Agreement dated 21.05.2018.

6. The Applicant filed present Application on 06.06.2019, the Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 17.07.2019. The Applicant filed its Affidavit of Service of Notice on 13.09.2019. It is on record that the court notice was duly served upon the Corporate Debtor, but the Corporate Debtor chose not to file any objections in its defence even after providing an opportunity to do so. However, the Counsel for Corporate Debtor appeared on date of hearing and submitted that it had raised dispute against the claim of Applicant by asking the Applicant to provide the copy of Agreement dated 21.05.2018.
7. We have heard the parties and perused the records.
8. On perusal of the documents submitted by the Applicant, it is clear that the Applicant has provided services for which Corporate Debtor has failed to make payment. The outstanding, operational debt of more than Rupees One Lakh is due and payable against the Corporate Debtor and Corporate Debtor has committed default in making the payment. Further, the Corporate Debtor has not controverted the same even during the hearing. Therefore, the default is also established.
9. Under Section 5(6) of the I&B Code, the word "dispute" is defined as:
"dispute" includes a suit or arbitration proceedings relating to-
 - (a) *the existence of the amount of debt;*
 - (b) *the quality of goods or service; or*
 - (c) *the breach of a representation or warranty;*Therefore, the contention of Corporate Debtor that Applicant has not provided the copy of Agreement does not amount to dispute. Further, in the case of **Mobilox Innovtions Private Limited Versus Kirusa Software Private Limited**, the Hon'ble Supreme Court of India observed that:
"What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the

receipt of the demand notice or invoice, as the case may be”.

In the present case the Corporate Debtor has not raised any disputes before filing of reply to Demand Notice and has not provided any evidence to prove that any such dispute existed at any time prior to receipt of Demand Notice. The Corporate Debtor has also not denied the claim of Applicant. Moreover, the Applicant has annexed an email dated 21.11.2018, which shows that the Applicant had sent the copy of Contract to the Corporate Debtor. Therefore, the defence raised by Corporate Debtor cannot be treated as pre-existing dispute and therefore, the contentions raised by the Corporate Debtor are not tenable and hence rejected.

10. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 21.02.2019 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Bank Certificate dated 15.03.2019 in compliance of section 9(3)(c) have been filed with this Bench.
11. The Applicant, having provided services to the Corporate Debtor, for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not established any pre-existing dispute concerning the debt claimed in the Application.
12. The Application is filed within limitation as the date of last payment made by the Corporate Debtor is 23.10.2018. Copy of the Ledger Statement of Corporate Debtor maintained by the Applicant reflecting payment of ₹1,00,000/- on 23.10.2018 is annexed to the Application.
13. The Applicant has not proposed the name of an insolvency resolution professional to act as Interim Resolution Professional and to carry out the functions as mentioned under I&B Code, 2016.

14. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh is due and payable against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **Eatigo India Private Limited**, Operational Creditor / Applicant against **Liquid Glass Hospitality LLP**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**.

We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Mr. Uday Shreeram Sakrikar**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P01230/2018-19/11927]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA

Member (Technical)

Sd/-

V. P. SINGH

Member (Judicial)

9th October 2019