IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB)No.3853/NCLT/MB/2018
Under Section 9 of the I&B Code, 2016

In the matter of:
Masters Management Consultants (India) Private Limited
…Operational Creditor/ Applicant
V/s
Lotus Inn Private Limited
...Corporate Debtor / Respondent

Order Dated: 03.03.2020

Coram: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Prachi Wazalwar
For the Respondent: Adv. Rajdeep Lahiri

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 3853/NCLT/MB/2018 filed by **Masters Management Consultants Private Limited,** the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Lotus Inn Private Limited,** Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Application is filed by Chief Financial officer, Mr. Pradeep Shetty, authorised signatory of Operational Creditor, claiming a total default of Rs. 25,19,520/- (Rupees Twenty Five Lakh Nineteen Thousand Five Hundred Twenty Only) as principal amount.

3. The Applicant submitted that it is providing project management consultancy services to the Corporate Debtor and raised invoices for the same from 02.05.2015 to 28.07.2016. Copies of the said invoices are annexed to the Application.

4. The Applicant submitted that it raised last invoice of Rs.3,81,034/- on 28.07.2016 and last payment made by Corporate Debtor was on 09.10.2015 therefore the date of default is 09.10.2015.

5. The Applicant submitted that the Applicant sent reminder emails from 28.07.2016 to 14.10.2016 to the Corporate Debtor. Copies of the said emails demanding the payment are annexed to the Application. Further the Applicant submitted that despite of several reminders and follow up through letters the Corporate Debtor failed to settle the Corporate Debt.

6. The Applicant submitted that even after assurance and admission of liability, the Corporate Debtor defaulted in making payment of the outstanding invoices. Therefore, the Applicant issued Demand Notice dated 10.09.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of Rs.25,19,520/- as principal Amount. The Corporate Debtor did not reply to the Demand Notice.

7. Adv. Rajdeep Lahiri i/b Arihant Associates appear as counsel for Corporate Debtor and filed its Affidavit in Reply dated 14.12.2018.

8. The Corporate Debtor has filed Affidavit in Reply and submitted that the Applicant without assigning any reason and executing any agreement of whatsoever nature, chosen to initiate the present proceeding against the Corporate Debtor. The Corporate Debtor further submitted that there was no existence of contract between the Applicant and the Corporate Debtor.

9. The Corporate Debtor submitted that the invoices which are annexed by the Applicant to the Application are also addressed to Revankar Constructions. The Corporate Debtor further submitted that the final Proposal dated 18.07.2018 is between the Applicant and Revankar

Constructions and not with the Present Corporate Debtor. The said copy of the Proposal dated 18.07.2018 is annexed to the Application.

10. The Applicant filed its Affidavit in Rejoinder dated 23.01.2019 and submitted that the there was no existence of dispute or record of any pending litigation before receipt of demand notice. There is no single communication brought on record where the Corporate Debtor has questioned the services rendered by the Applicant.

11. The Applicant submitted that Mr. Siddharth Madhav Revankar and Mrs. Swati S Revankar are two directors of the Corporate Debtor. The Applicant further submitted that Revankar Construction/Lotus Inn Private Limited managed by Mr. Siddharth Revankar and he himself instructed Applicant to bill/book invoices in the name of Revankar Construction, Lotus Inn Private Limited and all the invoices are billed accordingly. Further the Corporate Debtor submitted that Mr. Siddharth Revankar has acknowledged all the debts on behalf of the Corporate Debtor. The Applicant submitted that the Corporate Debtor has also booked all invoices in the name of Applicant in their books of accounts. The said ledger account of Corporate Debtor is annexed to the Application.

12. We have heard the parties and perused the records.

13. On perusal of the documents submitted by the Applicant, it is clear that Applicant has provided project management consultancy services more than ₹1,00,000/- (Rupees One Lakh Only) of which the Corporate Debtor has failed to make payment. Therefore, operational debt of more than Rupees One Lakh is due and payable by the Corporate Debtor.

14. It is pertinent to note that Revankar Construction and Lotus Inn Private Limited are managed by Mr. Siddharth Revankar and the Corporate Debtor has also booked all invoices in the name of Applicant in their books of accounts. At the same time all the invoices acknowledged by Mr. Siddharth Revankar on behalf of the Corporate Debtor.

15. The Applicant, having provided project management consultancy 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 raised dispute in respect of the invoices which are raised in the name of Revankar Constructions, Lotus Inn Private Limited and Corporate Debtor itself booked all the invoices in the name of Applicant in their Books of Accounts. Thus, the debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.

16. Although the interest amount was claimed by the Applicant it is to note that the rate of interest was neither mentioned in invoices nor in Proposal dated 18.07.2018. Thus, interest amount is not included in the default amount.

17. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 10.09.2018 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 01.10.2018 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.

18. The Applicant has proposed the name of Mr Anish Gupta, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00285/2017-18/10843] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2, the proposed IRP has declared that there are no disciplinary proceedings pending against him.

19. 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 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 **Masters Management Consultants (India) Private Limited** Operational Creditor / Applicant against **Lotus Inn Private Limited** Corporate Debtor for initiating corporate insolvency resolution process is **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

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

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 appoints **Mr Anish Gupta,** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00285/2017-18/10843]** 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.

20. The Registry is 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)
03.03.2020

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)