IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-460/ND/2020

(Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code,2016 (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S KDH TRAVELS PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

M/S INDIA SPORTS FLASHES PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on:11.08.2021

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

MEMO OF PARTIES

M/S KDH TRAVELS PRIVATE LIMITED
Registered Office at N-63, Main Market Kirti Nagar
New Delhi-110021

...Applicant/Operational Creditor

VERSUS

M/S INDIA SPORTS FLASHES PRIVATE LIMITED
Registered office at: 70-A/23, Third Floor, Rama Road,
Industrial Area, Najafgarh Road
New Delhi-110015

...Respondent/ Corporate Debtor

For the Applicant: Mr. Kapil Madan, Mr. Saurabh Gauba, Advocates

For the Respondent: ----

ORDER

Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 by, M/s KDH Travels Private Limited (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/S India Sports Flashes Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company, incorporated under the provisions of Companies Act, 1956, inter alia engaged in the business of tour & travel services, having its CIN U63000DL2011PTC213440 and its registered office at N-63, Main Market Kirti nagar, New Delhi-110021.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 01.08.2016 bearing CIN U22219DL2016PTC303793 and having its registered office at 70-A/23, Third Floor, Rama Road, Industrial Area, Najafgarh Road, New Delhi-110015.
4. The applicant submits that the Corporate Debtor approached the applicant for providing the services of booking of air tickets, rail tickets, cruises, hotel accommodation, surface (land) transportation, sightseeing tours, guide services, conference arrangements & other miscellaneous services for its Directors & staff members. It is submitted that applicant entered into General Agreement dated 20.02.2019 with the Corporate Debtor containing the terms & conditions. The applicant provided above said services to the Corporate Debtor from the month of

February 2019 to April 2019 and accordingly raised the invoices from 28.02.2019 to 08.04.2019 and the same were duly acknowledged by the Corporate Debtor.

5. The applicant submits that as per the Billing and Payment clause of General Agreement, it was clearly stipulated that the corporate debtor shall clear all the outstanding due, for the services availed within 10 days of receipt of Invoice. Further, it is submitted that as per the terms & conditions of the said agreement, it was clearly agreed between both the parties that if the payment due by corporate debtor is not made, in such an event it is deemed that the Corporate Debtor has committed a breach of the agreement and the corporate debtor shall be liable to pay additional Rs. 500 for each pending invoice per day till final settlement of Payment. The billing & payment clause is reproduced hereunder:

   a. *"The payment should reach to KDH Travels Pvt Ltd in minimum 10 days (Ten Days) post submission of invoices*
   b. *For all group bookings the full remittance should be paid prior to departure.*
   c. *That any disputes arising from any discrepancies in regards to the KDH Travels Pvt Ltd's billing, shall be referred to KDH Travels Pvt Ltd prior to the deduction of the amount involved.*
   d. *All Bank charges shall be borne by INDIA SPORTS FLASHES PVT. LTD*

   If the payments due by INDIA SPORTS FLASHES PVT. LTD Is not made, In such an event it is deemed that INDIA SPORTS FLASHES PVT. LTD has committed breach of the agreement at New Delhi and INDIA SPORTS FLASHES PVT. LTD will pay additional Rs 500/- for each pending Invoice per day till final settlement of Payment."

6. The applicant submits that the Corporate Debtor availed services for Rs.13,35,777/-, out of which the sum of Rs 6,44,183/- was paid by the corporate debtor the sum of Rs.6,91,594/- is still pending unpaid. It is submitted that after no. of

reminders and requests made by the applicant, the Corporate Debtor issued a cheque dated 31.10.2019 for the sum of Rs. 2,00,000/-. The Corporate Debtor at the time of issuance of cheque ensured that the said cheque shall be honoured. On presentation of the said cheque for encashment by the applicant, the same was got bounced unpaid with the return memo with the remark "Funds Insufficient". The copy of cheque & return memo are duly annexed.

7. The Applicant issued demand notice dated 20.12.2019 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding total amount from the Corporate Debtor of Rs 6,91,594/-. The said notice was served through speed post at their registered office as well as via email as reflected in master data of MCA website. The tracking report is filed, which mentions 'Item Delivery Confirmed'. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.

8. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application at the registered address as well as via email, as reflected on the MCA website, which was duly delivered to the corporate debtor. The affidavit of service is filed along with the proof of service.

9. The Corporate Debtor has neither filed any reply nor appeared before the bench. The corporate debtor was proceeded ex-parte on 07.07.2021.

10. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. Rs. 6,91,594/- along with interest @24% p.a. of Rs 1,25,161.94/-

11. The date of default as per part IV, has occurred from the expiry of ten days of receipt of Invoice & the date of receipt of the last invoices was on 08.04.2019. The present application was filed on 04.02.2020, hence the debt is not time barred and the application is filed within the period of limitation.
12. The Applicant has filed an affidavit under section 9(3)(b) dated 30.01.2020 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
15. Since the Applicant has not named the Insolvency Resolution Professional, we hereby appoint Mr. Prateek Kathuria, with registration number IBBI/IPA-001/IP-P02110/2020-21/13278 (email –feaprateek99@gmail.com) as IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

16. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Prateek Kathuria to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

17. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

18. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

(DR. DEEPTI MUKESH)
MEMBER (J)