

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 40/KB/2023

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

IN THE MATTER OF:

Dhanashree Electronics Limited

... Applicant/ Operational Creditor.

Verses

DLKH Hospitality Services Private Limited

... Respondent/ Corporate Debtor.

Date of Pronouncement: February 19, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant:

Mr. S. K. Tiwari, Adv.

Mr. Abhijit Majumdar, PCS.

ORDER

Per D. Arvind, Member (Technical):

- 1.** The Court congregated through a blended mode.
- 2.** Heard the Learned Counsel for the party.

Facts of the case in brief:

- 3.** This instant application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code"

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by **Dhanashree Electronics Limited**, bearing CIN: L31103WB1987PLC042594, hereinafter referred to as **“Applicant” or “Operational Creditor” or “DEL”** against **DLKH Hospitality Services Private Limited**, bearing CIN: U55209WB2017PTC222369, hereinafter referred to **“Respondent” or “Corporate Debtor” or “DLKH”** seeking the direction to initiate Corporate Insolvency Resolution Process, for brevity **“CIRP”** in respect of the Corporate Debtor.

4. The total amount claimed to be in default is of **Rs. 1,35,36,900/-** including interest till 01.10.2022 at the rate of 18% per annum on the principal amount of Rs. 1,03,31,199/- plus chargeable interest at the same rate till the date of actual payment being entitled to claim the interest as per section 16 of the MSMED Act, 2016. It is claimed that a sum of Rs. 30,43,023/- on account of license fees and Rs. 1,62,679/- on account of Service Charges till 01.02.2022 is due on the account of interest calculated at the rate of 18% per annum.
5. Demand Notice has been issued on 07.11.2022, to the Corporate Debtor via email and through registered post demanding to pay the due amount within 10 days of receipt, annexed at pages 53-67 as Annexure “G”.

Applicant’s submissions:

6. The Learned Counsel for the applicant submits that on 06.07.2017, one “Dum Laga Ke Haisa”, a partnership firm (later on the control, ownership and management was taken

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over and merged with the Corporate Debtor vide a Board resolution dated 25.08.2017 of the Corporate Debtor and started functioning as an unit of Corporate Debtor) entered into two Agreements i.e., one for 'Leave & Licence Fee' and another for 'Service Charges' with the Applicant whereby one premises admeasuring about 5000 sq. ft. located at ground floor of Annexure Building, Room no.A-01, Plot No.XI-16, Block EP & GP, Salt Lake Electronic Complex, Sector-V, Salt Lake, Kolkata- 700091 was taken on leave and licence basis from applicant company for the period from 01.07.2017 to 30.06.2020 at a licence fees of Rs.3,00,000/- per month and service charges of Rs.3,00,000/- per month plus Service Tax/GST for the said period.

7. It is submitted that in terms of the said agreements, the applicant started raising monthly invoices, however, after 4 months, the Corporate Debtor expressed their inability to pay the monthly invoices and requested the Operational Creditor verbally to reduce Leave and Licence fees and Services charges from Rs. 3,00,000/- per month plus GST to Rs. 2,00,000/- per month plus GST, which DEL agreed verbally.
8. Further, it is submitted that according to the new arrangement, the applicant started raising monthly bills for Leave & Licence fees and Service charges on the reduced rates at the rate of Rs. 2,00,000/- plus GST each but the Corporate Debtor after paying some period stopped payment of monthly bills and from January 2020 sans any reason whatsoever.

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- 9.** Further, it is contended that a total of Rs. 1,35,36,900.70/- is due to be paid by the Corporate Debtor to the Operational Creditor including interest amounting to Rs. 30,43,022.79/- on account of Licence fees and Rs. 1,62,678.91/- on account of Service charges till 01.10.2022 at the rate of 18% on the principal amount of Rs. 98,53,000.00/- towards Licence fees and Service charges and Rs. 4,78,199.00/- towards reimbursement of electricity charges till 01.10.2022 with further interest at the same rate till the date of actual payment being entitled to claim the interest as per Section 16 of the MSME Development Act, 2006.
- 10.** Further, it is contended that the Operational Creditor made repeated requests to the Corporate Debtor to make payment of the above amount and the Corporate Debtor kept on assuring the Operational Creditor that it would clear the amount due and outstanding. It is claimed that Rs. 1,03,31,199/- as the principal is due to the Operational Creditor by the Corporate Debtor till 01.10.2022 and no payment was made by the Respondent till date.

Gist of the proceedings:

- 11.** We have noted that this matter has the first time come on board on **14.03.2023**. on the next occasion i.e., on **08.05.2023**, we directed the Registry to issue notice to the Corporate Debtor. It would be evident that the Court Officer of the Bench issued notice on 10.05.2023 through speed post and email.

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- 12.** Further we recorded that on the next occasion i.e., **03.07.2023**, none appeared for both parties. We again directed to issue fresh notice to the Corporate Debtor for appearance on the next date by speed post and tracking information would be placed on record. We would further infer that if no one appears on behalf of the Corporate Debtor on the next occasion, the appropriate orders will be passed accordingly. From the record, we noted that the Court Officer again issued notice on 05.07.2023.
- 13.** On the next occasion, i.e., on **09.08.2023**, we noted that the notice was not served to the Corporate Debtor due to insufficient address. Therefore, substituted service be affected and an affidavit of service be filed on the next date of hearing. However, it is evident that notice through email was served twice, i.e., on 24.05.2023 and 10.07.2023.
- 14.** We further noted that on the next three occasions, i.e., on **22.09.2023, 10.11.2023 and 21.12.2023**, no one appeared on behalf of the Corporate Debtor. Further, we noted that on **31.01.2024**, the matter was reserved for order by allowing the Corporate Debtor to furnish written notes of arguments within one week. It is further recorded that neither Reply Affidavit nor written submissions have been filed till date in this matter. Thus, there is no statement from the Corporate Debtor, denying and disputing the averments of the Financial Creditor. Accordingly, we are of the considered opinion to consider the

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instant application *ex-parte* and to decide the matter on the merits of the facts and documents as available.

- 15.** At this juncture, it would be appropriate to quote the Rule 49 and Rule 110 of the National Company Law Tribunal Rules, 2016, which are reproduced in verbatim as below:

Rule 49: Ex-parte Hearing and disposal. –

(1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

Rule 110: Default of appearance of respondent and consequences. —

Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Tribunal may proceed to hear the appeal or application or petition ex-parte and pass final order on merits: Provided that it is open to the Tribunal to seek the assistance of any counsel as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.

Analysis and Findings:

- 16.** It is evident that in terms of the “Leave and License” agreement dated 06.07.2017 annexed at page 37-42 to the application, the Operational Creditor has agreed to provide the Corporate Debtor the licensed premises as mentioned above for a period of 36 months commencing from 01.07.2017 to 30.06.2020 for

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an amount as a License fee of Rs. 3 Lakh including maintenance charges and webel charges at the rate of Rs. 3% per month with GST payable to the Operational Creditor.

17. Further, it is evident that in terms of the “Service Agreement” dated 06.07.2017 annexed at Pages 43-47 to the application, the Operational Creditor has agreed to make available the services to the Corporate Debtor for a sum of Rs. 3 Lakh per month along with other maintenance charges with GST payable to the Operational Creditor.

18. The Learned Counsel for the applicant took us through the working computation of the default amount along with Interest, which is annexed at pages 127-128 to the application. Further, the Learned Counsel for the applicant took us through the bill and invoices raised by the applicant to substantiate its claim, annexed at Pages 129-188 to the application. After careful examination of the working computation of the default amount and the bill and invoices raised by the applicant to the respondent, it would be evident that:

18.1. The outstanding dues with M/s Club Dum Laga Ke haisa, a unit of DLHK Hospitality Pvt Ltd towards **Electricity Charges along with interest** as on 01.10.2022 is of Rs. 6,40,877.91/- in which the balance amount due and payable is of Rs. 4,78,199.00/- and interest at the rate of 18% amounting to Rs.

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1,62,678.91/-. Defaults have occurred as recorded from 01.01.2020 to 08.01.2022.

It would be evident that there is a default raised during the period **31.03.2020 to 08.03.2021** which comes under the period as prescribed under **Section 10A**¹ of the I&B Code, 2016. We have calculated the default amount raised during the period 31.03.2020 to 08.03.2021 (Section 10A Period) i.e., of **Rs. 2,41,225.55/-** in which the Balance amount due and payable is of Rs. 1,73,941/- and interest amount is of Rs. 97,284.55/-.

18.2. Further, the Outstanding Dues with M/s Club Dum Laga Ke haisa, a unit of DLHK Hospitality Pvt Ltd towards **License and Service Charges along with Interest** as on 01.10.2022 is of Rs. 1,28,96,022.80/- in which the balance amount due and payable is of Rs. 98,53,000.00/- and interest at the rate of 18% amounting to Rs.

1. Section 10A: Suspension of initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after **25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified** in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

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30,43,022.79/- . Defaults have occurred as recorded from 01.01.2020 to 01.10.2022.

It would be evident that there is a default raised during the period **01.04.2020 to 01.03.2021** which comes under the period as prescribed under **Section 10A** of the I&B Code, 2016. We have calculated the default amount raised during the period 01.04.2020 to 01.03.2021 (Section 10A Period) i.e., of **Rs. 69,82,891.98/-** in which the Balance amount due and payable is of Rs. 50,74,000/- and interest amount is of Rs. 19,08,891.98/- .

18.3. Thus, the total amount due and payable during the Section 10A period is of Rs. **72,24,117.53/-**.

18.4. If we deduct the default raised during the Section 10A period from the total amount claimed to be default, it would be:

Total amount claimed to be in default=	Rs. 1,35,36,900.00/-
Default during the Section 10A period= (-)	Rs. 72,24,117.53/-
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After deduction	= Rs. 63,12,782.47/-

19. It is evident that the amount actually due and payable is below the threshold limit as prescribed under Section 4 of the I&B Code.

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- 20.** In terms of foregoing discussion, we **dismiss** this application, being **C.P. (IB) No. 40/KB/2023** as not maintainable.
- 21.** No costs.
- 22.** Certified copies of the order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This order is signed on the 19th Day of February, 2024.

Bose, R. K. [LRA]