

**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI (COURT NO. IV)****Company Petition No. IB-684/ND/2019**

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

**IN THE MATTER OF:****M/S INDIACORP LAW**

Through its Proprietor

Mr. Alok Kumar Kuchhal

**...Applicant/Operational Creditor****VERSUS****PAADM INTERNATIONAL HOTELS PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgment Pronounced on: 06.11.2019****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)**

**MEMO OF PARTIES****M/S INDIACORP LAW**

Through its Proprietor

Mr. Alok Kumar Kuchhal

**Registered office at Anantprabha LGF**

C-154 Sector-51, Noida-201301

**...Applicant/Operational Creditor****VERSUS****PAADM INTERNATIONAL HOTELS PRIVATE LIMITED****Registered office at L-7, S/F Rajouri Garden**

New Delhi-110027

**...Respondent/ Corporate Debtor****For the Applicant:** Mr. Alok Kumar Kuchhal, Advocate**For the Respondent:** -----

**ORDER****Per-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 (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/S Indiacorp Law, through its proprietor Mr. Alok Kumar Kuchhal (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Paadm International Hotels Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is an advocate running proprietary firm M/S Indiacorp Law providing legal services having its place of business & office at Anantprabha LGF, C-154 Sector-51, Noida-201301.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 17.08.2017 bearing CIN U74999DL2017PTC322231 and having Authorized Share Capital of Rs.50,00,000/- and Paid Up Share Capital is Rs. 50,00,000/- as per Master Data of the company. The registered office of the corporate debtor is situated at L-7, S/F Rajouri Garden, New Delhi-110027.

4. The Applicant has stated that the corporate debtor had approached the applicant for providing professional services. Applicant had provided professional services to the corporate debtor. It is submitted that the corporate debtor had committed to pay Rs 2,25,000/- in respect of the services being provided by the applicant. After the services rendered the applicant raised an invoice dated 21.02.2018 which is annexed with the application. It is submitted that only Rs 50,000/- was paid by the corporate debtor through cheque and balance payment of Rs 1,75,000/- has not been paid by the corporate debtor till date.
5. The Applicant has submitted that the he was in constant touch with the directors of the corporate debtor and repeatedly reminded the corporate debtor to pay the balance of professional fees but despite repeated reminders and continuous follow-ups by the applicant, the corporate debtor did not pay the balance amount of professional fees.
6. The Applicant issued demand notice dated 02.02.2019 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 to the Corporate Debtor demanding total debt due of Rs 1,75,000/-. The said notice was sent by Speed Post at the registered address of the corporate debtor as

reflected in the master data, which was duly delivered on the corporate debtor as per the tracking report. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.

7. The Applicant filed present Application on 12.03.2019 under section 9 of IBC, 2016 and served the copy of this application through speed post as well as through email address as reflected on the MCA website, which is duly delivered to the Corporate Debtor. The affidavit of service is filed along with tracking report and copy of email was sent at the registered address as per master data.
8. It is submitted that the notice was sent back with a remark “*there is no person with this name*” from the registered address of the corporate debtor but the email did not return or bounced. Considering that the notice was sent at the registered address of the company as reflected in the MCA website and the remark ‘*there is no person with this name*’ shall not be considered as not served to defeat the very purpose of service. The Hon’ble Supreme Court in “*Madan And Co. V. Wazir Jaivir Chand*” 1989 SCC 264 observed that even if it is returned, the same if sent on correct available address be treated as served under

section 27 of General Clause Act. The extracts from the said order is reproduced herein:

*“We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of [section 11\(1\)](#) and the proviso to [section 12\(3\)](#) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under [s. 27](#) of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee.*

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*“He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant*

*is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."*

Hence in the present case, the service of the application can be considered as complete.

9. The Corporate Debtor has neither filed any reply nor appeared before the bench.

10. As claimed by the applicant as on date, the Corporate Debtor is liable to pay a sum of Rs. 1,75,000/- (Rupees One Lakh Seventy-Five Thousand Only), as per Part IV of Form 5.
11. The Applicant has filed an affidavit under section 9(3)(b) dated 12.03.2019 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
12. The Applicant further states that none appeared on behalf of the corporate debtor nor any reply is filed and the corporate debtor was proceeded ex-parte on 02.05.2019.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The date of default as per Form V is 21.02.2018 and this application is filed on 12.03.2019 hence the debt is not time barred and the application is filed within the period of limitation.
15. 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.

16. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal from the list furnished by Insolvency and Bankruptcy Board of India, appoints Ms. Rashmi Agarwalla, with registration number IIBI/IPA-001/IP-P0461/2018-2019/12281 (email- rashmivika10@yahoo.co.in, Mobile No. 9871190333) as the Interim Resolution Professional 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 is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein 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.
17. We direct the Operational Creditor to deposit a sum of Rs. 1 lac with the Interim Resolution Professional, namely Ms. Rashmi Agarwalla to meet out the expense 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.

18. 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.
19. 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/-

**(HEMANT KUMAR SARANGI)**  
**MEMBER (T)**

SD/-

**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**

