

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT-I, MUMBAI BENCH**

**C.P. No. 4482/IBC/MB/2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**KAVITA KUMAR**

Having address at –

603-B, New Blue Heaven CHSL, Juhu  
Versova Link Rd. Andheri (W),  
Mumbai – 400 053.

... Operational Creditor/Petitioner

Vs

**C. S. HOSPITALITY AND  
MANAGEMENT SERVICES**

(CIN: U55101MH2006PTC164576)

Registered office at: CTS No. 381/1-8,  
Swaroop Enclave, Off. Military Road,  
Marol, Andheri (W), Mumbai  
– 400 059.

... Corporate Debtor

**Order delivered on: 21.03.2024**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance :-**

For the Operational Creditor : Mr. Abhishek Puri, learned Counsel  
a/w Mr. Mansha Bhatia, Advocate  
a/w Ms. Suman Gupta, Advocate

For the Corporate Debtor : Mr. Avinash Khanolkar, Advocate a/w  
Ms. Surekha Yadav, Advocate

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This is an application filed by Operational Creditor/Applicant under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as “IB Code” for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

**Brief facts:-**

2. The Operational Creditor along with her husband Sarwan Kumar is the owner of Unit No. 503, situated at C.T.S. No. 381/1-8, Swaroop Enclave (“said building”), Opp. Borosil, Glass Factory, Military Road, Andheri (East) Mumbai – 400 059 (“the said unit” for short).
3. Corporate Debtor is a private limited company *inter alia* into the business of restaurants & hospitality and is operating a hotel at the registered office address as mentioned in the cause title of the petition.
4. The Operational Creditor granted lease of the said Unit in favour of the Corporate Debtor from 2007 onwards. However, the Lease agreement with respect to the said unit could be entered into only in 2009 for the period of 114 month on 14.09.2009 as the Corporate Debtor was not having the necessary funds at that time. Clause 4 of the said agreement provides that the Corporate Debtor shall pay the Rent to the Operational Creditor with yearly increase of 10% and also the interest free deposit of Rs. 1,50,000/-.

5. The Operational Creditor alleges that Corporate Debtor is in willful breach of payment of the rent and no amount was paid till April, 2010. In the meantime, due to enquiry by the Income Tax department, the Operational Creditor approached the Corporate Debtor for a certificate confirming the outstanding lease rent in or around July, 2011 and the Corporate Debtor accordingly issued certificate confirming/admitting relationship of lessor and lessee since 2007 and also the outstanding rent. Even thereafter the Corporate Debtor has confirmed its liability to pay the amounts but despite repeated requests, it has failed to make complete and timely payments. Despite assurances given by the Corporate Debtor no outstanding amount in its entirety was paid. Merely *ad-hoc* payments were made. An amount of Rs. 23,62,159/- including the interest as well as an amount of Rs. 1,44,000/- being the balance on the security deposit i.e. a total of Rs. 25,06,159/- is still outstanding and payable by the Corporate Debtor.
6. The Operational Creditor ultimately served demand notice in Form-3 under Section 8 of the IB Code which was not replied. Therefore, the present petition.
7. The Corporate Debtor has resisted the claim by filing its affidavit-in-reply and outrightly denied that outstanding dues are to be paid to Operational Creditor.
8. According to the Corporate Debtor there is no confirmation about the amount outstanding or about there being any dues after December, 2013. Similarly, demand notice was dully replied by the letter dated 01.07.2019.

9. The Corporate Debtor next contends that it has prepared a tabular form showing break-up of the alleged claim of the Applicant for the period up to 30.09.2016 and also for the period 01.10.2016 to 30.09.2019 (Exhibit-B) which reveals that out of the amount of Rs. 23,62,159/- claimed as due as on 30.09.2019 the amount due as on 30.09.2016 (after adjusting the TDS and amount received) is Rs. 15,68,933/- . The amount of Rs. 15,68,933/- being older than 3 years is time barred.
10. According to the Corporate Debtor the alleged claim amount of Rs. 23,62,159/- cannot be admitted as an Operational debt of the Operational Creditor and does not qualify for being called an Operational Creditor too.
11. For all the above reasons, petition is liable to be dismissed, prays the Corporate Debtor.
12. By way of rejoinder the Operational Creditor has denied all the contents in the affidavit in reply of the Corporate Debtor and again re-iterated that the Corporate Debtor has not at all responded to the demand notice dated 30.10.2019 and in any case the alleged letter dated 01.07.2019 does not contain any defense to the demand made by it.
13. Heard Mr. Abhishek Puri, learned Counsel for Operational Creditor and Mr. Avinash Khanolkar, learned Counsel for the Corporate Debtor.
14. Perused the record.
15. We shall first deal with the objection in law. According to the learned Counsel for the Corporate Debtor the

Operational Creditor being an owner of the immovable property does not qualify for being called an operational creditor as defined under sub Section (20) read with sub-Section (21) of the Section 5 of the IB Code in as much as in order to attract the debt within the ambit of an operational debt it should have arisen in respect of (i) provisions of goods or services including employment or, (ii) debt in respect of re-payment of dues arising under any law for the time being in force. Certainly, the claim in respect of lease rents does not fulfil any of these criteria and therefore cannot fall within the definition of “operational debt”.

16. As far as execution of lease agreement between the parties is concerned, and which is very much on record, is not disputed by the Corporate Debtor. Rather, there is certificate given by the Corporate Debtor titled as “To WHOMSOEVER IT MAY CONCERN” at page 45 of the petition which clearly shows the said unit was in possession of the Corporate Debtor on the date of issuance of the said certificate on lease rent basis. This certificate also supports the lease agreement in question.
17. Be that as it may, the facts remain that the Corporate Debtor was occupying the said unit under lease agreement and was running the business of restaurant and hospitality.
18. In ***Jaipur Trade Expocentre Pvt. Ltd. Vs. M/s. Metro Jet Airways Training Pvt. Ltd. (2022) ibclaw.in 478 NCLAT*** the Hon’ble NCLAT has held that the claim of the Licensor for payment of license fee for use of Demised Premises for business purposes is an ‘operational debt’ within the

meaning of Section 5(21) of the IB Code. In view of this authoritative pronouncement there remains no doubt. The present petition is fully covered within the meaning of operational debt under Section 5(21) of the IB Code. Therefore, argument of learned Counsel for the Corporate Debtor stands rejected.

19. Coming to the case of the Operational Creditor, from the record we find that from time to time there was demand of the arrears from the side of the Operational Creditor and ultimately the demand notice dated 30.10.2019 was duly served on the Corporate Debtor which was neither replied not complied with. We may note from the affidavit in reply of the Corporate Debtor that notice was duly replied. However, what we find from the record is that the Corporate Debtor gave reply dated July, 2019 (Exhibit-A) which was in response to the demand notice dated 10.06.2019 issued by the Operational Creditor. We immediately note here that the demand notice as given in the petition is dated 30.10.2019 and not of 10.06.2019. Even assuming for the sake of arguments that Corporate Debtor was referring to the demand notice in petition then also the reply does not suggest even remotely about any dispute in respect of either relationship between the parties or any discernable grievance in respect of arrears of rent. All that it reflects is its denial as to the content of the notice. This is again cryptic denial bereft of details thereof. Then it terms demand as an illegal demand just to pressurize the Corporate Debtor. How the demand is illegal is again nowhere explained and accounted for. Therefore, in our considered opinion there is no effective reply to the demand

notice dated 30.10.2019 duly received by the Corporate Debtor. This reply therefore does not further the case of the Corporate Debtor in any manner.

20. One of the pertinent correspondences between the Operational Creditor and Corporate Debtor is letter dated 11.12.2013 written by Directors of the Corporate Debtor to Operational Creditor acknowledging in clear terms the outstanding dues as per the terms of the lease agreement. Though this acknowledgement is of 11.12.2013 nevertheless it makes to things clear. One, which we have already noted relationship between the parties that is of Licensor and Licensee. Two, that the Corporate Debtor was in arrears of rent. This is just to note the conduct of the Corporate Debtor.
21. The Operational Creditor has also annexed the sheet in the petition at page 52 showing certain payments made by the Corporate Debtor towards the outstanding rents. Perusal of the same shows that the last payment was received somewhere in September, 2019 by the Operational Creditor. We are referring this sheet from the point of view of the limitation which is raised by the learned Counsel for the Corporate Debtor. The Corporate Debtor has also given in its reply a break-up of claim (Exhibit-B) showing that an amount of Rs. 15,68,933/- out of the claimed amount being older than three years is clearly barred by limitation.
22. Even assuming for the sake of the arguments that said amount is barred by limitation even then the balance amount which admittedly the Corporate Debtor is in default

of is in excess of minimum amount stipulated under Section 4(1) of the IB Code.

23. We made it clear that we are not taking into consideration, as argued by the learned Counsel for the Corporate Debtor, the letter dated 11.12.2013 written by the Corporate Debtor thereby giving acknowledgment to the arrears of rent. We are clear in our mind having regard to the sheet annexed at page no. 52 of the petition that the last payment was received by the Operational Creditor somewhere in September, 2019 and therefore, in our considered opinion the petition having been filed in the year 2019 itself is well within limitation. We hold that claim is not barred by limitation.
24. For the aforesaid reasons, we hold that the default stands established and there is no reason to deny the admission of the petition.
25. In view of above, present petition under section 9 of the IB code filed by the Operational Creditor to initiate CIRP in the matter of the Corporate Debtor deserves consideration and accordingly stands **Admitted** under section 9(5)(I) of the IB Code.
26. We, therefore, pass the following order.

### **ORDER**

This Application being C.P.(IB) No. 4482/2019 filed under Section 9 of the I & B Code, 2016, filed by **KAVITA KUMAR**, Operational Creditor/applicant against **C. S. HOSPITALITY AND MANAGEMENT SERVICES** (*formerly WINDBUILD METALS 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 Operational 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 operational 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 hereby appoints **Mr. Mahesh Kumar Gupta**, a registered insolvency resolution professional having **Registration number- IBBI/IPA-001/IP-P00478/2017-2018/10866** and Email ID- **camkg59@gmail.com** 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.
- VII. The Operational creditor shall deposit a Sum of Rs. 5,00,000/- (Rupees Five Lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC). The

Remuneration of Interim Resolution Professional shall be Rs. 1,00,000/- p.m. till the constitution of CoC and decision of CoC in relation to remuneration of IRP/RP, in case it is not fixed by the operational creditor so far.

- VIII. A copy of this order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the corporate debtor.
- IX. 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/-**  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**

*Sapna*