

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - II
Company Petition (IB) No. 689/ND/2020**

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

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

AND

In the matter of :

T&D HOSPITALITY INDIA LLP

Plot No. 1, 3rd floor,
Balaji House, Ram Kumar Marg,
Motia Khan, Delhi-110055

...Operational

Creditor

VERSUS

EXPLO MEDIA PRIVATE LIMITED

Registered Office at:
78A, 1st floor, Zamrudpur,
Greater Kailash, Part-1,
New Delhi-110048

Also at:

EXPLO MEDIA PRIVATE LIMITED

525 Paras Trade Center,
Gwalpahari, Gurgaon,
Haryana-122003

...Corporate

Debtor

ORDER DELIVERED ON: 08.02.2022

CORAM:

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. L. N. Gupta, Hon'ble Member (Technical)

PRESENT

For the Operational Creditor: Adv. Bharat Arora and Jaskirat Singh

**For the Corporate Debtor: Mr. Avadh Kaushik, Advocate for
Respondent No. 3**

ORDER

AS PER SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Applicant/ operational creditor, i.e. ***"T & D Hospitality India LLP"*** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company ***"Explo Media Pvt. Ltd."***.

2. Brief Facts of the case are as follows:

- i. That around February-March, 2018, the Corporate Debtor had approached the Operational Creditor for the supply of Head Rest Covers directly to Air India Limited and in this regard, Air India Limited had also issued a letter of Authority dated 19.08.2019 in the name of Corporate Debtor. Accordingly, the said head rest covers were duly supplied by the Operational Creditors to Air India Limited and invoices against the same were issued by the Operational Creditors in the name of Corporate Debtor and the same was also duly acknowledged by the Corporate Debtor.
- ii. Further, it was agreed between the Corporate Debtor and the Operational Creditor that some part payment towards the ordered goods shall be made by Corporate Debtor in advance to the Operational Creditor and balance outstanding amount shall be paid by the Corporate Debtor, at the time of delivery of the said goods.
- iii. Further, it is submitted that the corporate debtor has stopped conducting business with the operational creditor without clearing the balance outstanding amounts.
- iv. It is further submitted that there were various communications between the Corporate Debtor and the Operational Creditor

regarding the outstanding amount due from the Corporate Debtor. However, the Corporate Debtor failed to pay the outstanding amount and interest thereupon.

- v. Further, the Operational Creditor, through their lawyer had issued the Demand Notice dated 15.02.2020, upon the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016, though the said notice sent through speed post upon the registered address of the Corporate Debtor received back with remark "Left without instructions", but the notice sent through speed post upon the corporate address of Gurgaon of corporate Debtor was delivered. The Lawyer of Operational Creditor on 17.02.2020 through email had also served the said notice and till date neither any dispute notice from the corporate debtor has been received nor the payment of outstanding amount and interest thereupon has been received.

3. The total amount of debt due and payable is of Rs. 15,22,941/- (including interest @ 18% per annum upon the outstanding amount calculated w.e.f. 27.11.2019 till 27.02.2020) i.e. the principal amount claimed is Rs. 14,57,360/- and interest amount is Rs. 65,581/-.

4. The Corporate debtor in its reply dated 03.11.2020 has submitted that:

- i. That the respondent herein is a non-government unlisted private limited company incorporated under the Companies Act, 1956 and engaged in the business of outdoor advertisements in various States including Delhi, Uttar Pradesh and Haryana and is registered with various agencies like Air India, Delhi Metro Rail Corporation, Municipal Corporation of Delhi, New Delhi Municipal Council, Delhi Development Authority, Municipal Corporation of Gurgaon etc. to carry out the said business.

- ii. That the respondent received an Order/Contract from Air India Limited vide Work Order/Contract No. 74003033 and 74003035 dated 11.01.2019 for printing & supply of disposable Head Rest Cover (HRC) for two years with third party advertisements on flap on top of Head Rest Cover (HRC) to be placed on the top of the seats in the Aircrafts of Air India. Vide subsequent letter dated 22.04.2019, Air India declared that the first lot shall be supplied by the respondent to Air India from 01.05.2019.
- iii. That the respondent has also received a Purchase Order No. 2019-20/CUDMPL/074 dated 27.01.2019 from M/s Cashur Drive Marketing Private Limited for displaying and advertising its clients' products/names for a period of three months.
- iv. That the applicant had approached the respondent claiming that it would provide best quality printed material to the respondent and would give no complaint whatsoever to the respondent and, for that matter, any of the respondent's clients including Air India or third party whose advertisements would be printed on such material/ Head Rest Cover (HRC). It is submitted that according to the understanding arrived between the parties herein, the design and logo of subject advertisement (generally called as 'Creative') was to be given by the present respondent as per the approvals and instructions given by the respondent's clients and the said Creative was to be printed by the applicant herein on the best quality clothing material i.e. non-woven fabric ('fabric' *in short*) by using best quality ink and colours. The said printed material i.e. Head Rest Covers (HRC) were required to be supplied by the applicant to the present respondent or, on his instructions, to the New Delhi Cargo office of Air India. Needless to say that the applicant assured the respondent that they will supply the HRCs as per the demand and quality told them without any delay.



- v. Further, Air India vide its letter vide Ref No. RO/MM/19/HRC dated on 19.08.2019 instructed to its Cargo Office, New Delhi that no freight be charged from the respondent for booking of the material i.e. Head Rest Cover (HRC) which was supposed to be sent by Air India to various Cities/Airports in India to be used in its different Aircrafts as per the contract.
- vi. That the applicant, in the meantime, started supplying the products/printed material ((HRCs) directly to the New Delhi Cargo office of Air India on the instructions of the present respondent. It is significant to mention here that there was no 'quality check' arrangement by any of the parties at Air India Cargo and therefore, the present respondent was fully trusting and having faith on the applicant herein hoping that, as per assurances given by applicant, the material would be of the best quality.
- vii. That it is submitted that in the above fact, it was clear understanding between the parties that the quality of the material would be checked and seen by the present respondent and/or by his concerned customer i.e. Cashur
- viii. Drive or the actual advertiser only as and when the same were to be used by placing the same on Aircraft seats. Therefore, it was the entire responsibility of the applicant herein to check and maintain the best quality of the products inasmuch as huge stakes of rupees and reputation of the present respondent and his clients in were involved in the entire business transaction.
- ix. That it is a matter of record that applicant herein started supplying the material to the respondent directly in Air India Cargo from August, 2019 for which the respondent had made substantial payment to the applicant in advance and he supplied the same till November, 2019 i.e. for a duration of about three months. Further, as evident from the statement of account annexed by the applicant himself, the respondent had



been making continuous payment to the applicant from time to time and out of total billing of Rs. 65,30,168/-; the respondent has already paid to the applicant a total sum of Rs. 50,72,800/- and last payment was made by present respondent to the applicant on 18.11.2019, whereas applicant supplied the material to the respondent lastly on 27.11.2019 and therefore, it is an admitted fact that the respondent has never defaulted in making legitimate payments to the applicant herein and smooth business dealing were going on between the two by the end of November, 2019.

- x. That in the meantime, the respondent, on 23.12.2019, received some WhatsApp messages with some images of damaged HRCs supplied by the applicant from an executive of Cashur Drive namely Mr. Raghu thereby informing the respondent that various Head Rest Covers (HRCs) were found torn/damaged in the Air India Flights due to poor quality of fabrics and therefore, the respondent was asked to immediately raise the issue with the supplier/applicant herein.
- xi. That while the respondent was discussing the issue with the applicant herein regarding damaged and poor quality HRCs, the respondent again, on 24.12.2019, received an e-mail from his client 'Cashur Drive' that his client Ease-my-Trip was not happy inasmuch as the Creatives/ Logos with name of Easemy Trip were found missing/not printed on various Head Rest Covers (HRCs) placed in some of Air India Flights and the HRCs fabrics were without containing printed logo/Creative which was defeating the very purpose of the entire exercise of advertisement. Further, it was also indicated that many of the HRCs were found in tom/damaged condition due to poor quality of fabric. Therefore, the said Cashur Drive asked as to how they can be compensated or the visibility loss i.e. loss of their advertisements in the Air India Flights. The said client



also sent some photographs/ images of HRCs supplied by the applicant herein showing them in torn/damaged condition.

- xii. The respondent immediately contacted the applicant making enquiry about the unprinted HRCs supplied by it without any Creative/advertisement display of the respondent's client. So far as the torn/damaged HRCs due to poor quality are concerned, applicant assured that they would look into the same and revert back soon after examining the issues.
- xiii. That it was decided that the competent executives of both the parties shall visit to the Air India Cargo Warehouse in January, 2020 and find out the defective and damaged HRCs and the applicant thereafter, replace the unprinted HRCs with the printed one duly having Creative of the respondent's advertiser and further, all damaged HRCs shall also be replaced by the applicant with new ones. In so far as the quality of the fabrics were concerned, it was decided that the applicant's executive shall visit to the office of Cashur Drive together with respondent's executive and would try to satisfy Cashur Drive on quality and if required, they all would meet to the people of Ease-My-Trip/the actual advertiser and try to satisfy them. However, still if the issue of quality persists, the applicant shall give a substantial rebate and discount to the present respondent who shall further compensate the parties in line/his clients viz. Cashur Drive and Ease My Trip.
- xiv. However, instead of finding a solution of the complained action and its own wrongs, applicant herein stopped supplying further material to the respondent and started avoiding the phone calls of the respondent and despite mutually decided action, applicant did not join the respondent to conduct a joint inspection of the material stored in the Air India Warehouses and avoided to attend the respondent under one excuse or the another.



- xv. That it is a matter of fact that whenever the respondent requested to release the payment against the advertisements of Ease-My-Trip already displayed; Mr. Raghu, the executive of Cashur Drive insisted upon to first sort-out the aforesaid complaint and thereafter only, the payments shall be released to the respondent by his client Cashur Drive and thus, a huge amount of the present respondent had stuck in the market because of the impugned action of the applicant herein.
- xvi. Not only this, even the Air India started pressurizing the respondent to supply proper HRCs, as per the contract which was to be last for two years but due to aforesaid irresponsible and unfair trade deal of the applicant, the sword of midway termination of contract with Air India had started hanging over the respondent's head.
- xvii. There is a pre-existing dispute with the applicant due to defective and poor-quality material supplied by it and thus, the amount sought to be recovered by the applicant is not undisputed and not an admitted amount to the respondent.
- xviii. The Respondent has referred to the judgment of the Hon'ble Supreme Court in the matter of "MobiloX Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353 and reiterated in K. Kishan vs. Vijay Nirman Company Pvt. Ltd. (2018) 10 Scale 256 whereby the Hon'ble Apex Court has held that IB Code cannot be used in terrorem to extract the money.
- xix. The Respondent has also relied on the judgment of the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of Umesh Saraf vs. Tech India Engineers Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 548 of 2020) and the decision in the matter of Vinod Mittal vs. Rays Power Exports & Anr. (Company Appeal (AT) (Insolvency) No. 851/2019) in "Mr. Gajendra Parihar vs. Devi Industrial Engineers & Anr." [Company Appeal (AT) (Insolvency) No. 1370 of 2019 dated 18.03.2020] has held that Existence of dispute prior to the



issuance of Demand Notice, the Application under Section 19 IBC is not maintainable and once there is existence of such dispute, the Operational Creditor gets out of clutches of the Code.

5. The applicant has filed the written submissions, the scanned copy of which is reproduced below:

WRITTEN SUBMISSIONS ON BEHALF OF THE OPERATIONAL CREDITOR.

RESPECTFULLY SHOWETH:-

1. It is submitted that the present Application is being filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as "IBC") against the Corporate Debtor, as the Corporate Debtor failed to make the payment of the Operational Debt of Rs. 14,57,360/- and interest thereupon at the rate of 18% per annum w.e.f 27.11.2019 to the Operational Creditor, towards the purchase of head rest covers, which were duly supplied by the Operational Creditor to Air India Limited, as per the instructions of the Corporate Debtor.
2. The Operational Creditor in support of their present Application has Invoices, E-way Bills and Airway Bills issued by the Operational Creditor in the name of Corporate Debtor as **Annexure- A-6 (Colly)**, Ledger Account of the Corporate Debtor maintained by Operational Creditor as **Annexure- A-7**, Copy of demand notice under section 8 of the IBC along with speed post receipts, tracking report and email dated 17.02.2020 as **Annexure- A-8 (Colly)**, Bank Statement of the Operational Creditor in terms of Section 9(3)(C) of the IBC as **Annexure- A-9** and also Affidavits in term of Section 9(3)(B) and Section 9(3)(C) of the IBC.
3. The Corporate Debtor filed its reply to the above said Application of the Operational Creditor, wherein the Corporate Debtor raised frivolous and superficial objections and alleged that there is pre-existing dispute and alleged upon the Operational Creditor to have supplied poor quality material, also the Corporate Debtor raised objection regarding the non-service of the statutory demand notice under section 8 of the IBC, therefore the Corporate Debtor prayed for the dismissal of the present Application of the Operational Creditor.

4. It is also pertinent to mention here that the Corporate Debtor with regard to the above said alleged supply of poor quality material, had not annexed or produced on record even a single proof or document or communication or complaint along with its reply. There are certain documents annexed with reply which doesn't not pertain to Applicant but to some other vendor (Raghu/Cashurdrive). The documents at **page 51 to 60** of reply does not show any defects being communicated to Applicant. Infact goods were duly satisfied to the satisfaction of the Corporate Debtor.
5. It is submitted that thereafter the Operational Creditor filed its Rejoinder to the above said reply of the Corporate Debtor, wherein the Operational Creditor placed on record various emails and what's app chats, between the Operational Creditor and Corporate Debtor, which clearly reveals the malafide of the Corporate Debtor. Moreover the Corporate Debtor vide their email dated 26.12.2019 (**Page 15 of Rejoinder**), requested for supply of more goods and hence there was no dispute regarding quality of goods as Corporate Debtor was interested in doing more business and if supply/quality the Corporate Debtor was not good, then Corporate Debtor would not have asked for supply of further goods.
6. It is also pertinent to mention here that with regard to the delivery of the statutory demand notice under Section 8 of the IBC, the Operational Creditor had sent the said demand notice upon two addresses of the Corporate Debtor, one on the registered address which is mentioned in the master index data of the Corporate Debtor and one on the corporate office of the Corporate Debtor of Gurgoan (Haryana). Though the Notice sent on the registered address of the Corporate Debtor was received back with remark "Left without instructions" but the notice sent on the other address of the Corporate Debtor of Gurgoan (Haryana) was duly delivered to the Corporate Debtor. (the speed post receipt and tracking reports are annexed with the main Application at Page No. 91 to 93)
7. It is pertinent to mention here that the Operational Creditor in addition to the speed post, had also sent the above said statutory demand notice vide email dated 17.02.2020 (**Copy of email is annexed with the main Application at Page No. 94**), upon the email Id mentioned in the master index data of the Corporate Debtor i.e. "finance.explo@gmail.com" (**the Copy of master index data of the Corporate Debtor is annexed with the main Application at Page No. 23**) and also upon the email ID of the director (Sunjjoy Daadhicch) of the Corporate Debtor "unipoles@gmail.com".



8. It is very important to mention here that the Corporate Debtor along with its reply has annexed an email at **Page No. 55 of the Reply of the Corporate Debtor**, which is a communication between the director of the Corporate Debtor and the advocate for the corporate Debtor in the present matter, it is the same email ID i.e unipoles@gmail.com on which the Operational Creditor had also sent the statutory demand notice under section 8 of the IBC on 17.02.2020. Hence it clearly shows the malafide of the Corporate Debtor that despite receipt of the statutory demand notice through post upon the corporate office and also upon the registered email ID and on the email of one of the director, the Corporate Debtor blatantly lied before this Hon'ble Tribunal and refused to have received the said notice.
9. It is submitted the above made submission clearly reveals that the Corporate Debtor has duly admitted the debt to be due and the same has been paid yet, also the Corporate failed to place on record any proof or document or communication addressed to the Operational Creditor with respect to the alleged supply of poor quality material, further with regard to the service of the statutory demand notice under section 8 of the IBC, the above said submissions clearly shows that the Corporate Debtor had duly received the said notice and despite the same, the Corporate Debtor for their malafide motives blatantly denied the receipt of the same before this Hon'ble Tribunal.
10. That the submissions made herein above and the contents of the main Application and Rejoinder and documents of the Applicant, clearly demonstrates that the debt is due and payable by the Corporate Debtor, which the Corporate Debtor despite duly admitting, has not paid till date, therefore in view of the submissions made herein above and in the main Application and in the Rejoinder, as the same are not repeated herein for the sake of brevity, the Applicant prays that the Application of the Applicant be allowed and proceedings be initiated against the Corporate Debtor.



6. The respondent has also filed the written submissions, the scanned copy of which is reproduced below:

WRITTEN SYNOPSIS ON BEHALF OF THE RESPONDENT

MOST RESPECTFULLY SHOWETH:

1. That no notice of demand, as alleged, has ever been served upon the respondent. It is the applicant's own case that the Demand Notice dated 15.02.2020 was addressed on the registered address of the respondent (Please Ref. Annexure-A-8 at Page No. 72) which, as is evident from Page No. 92, 95 and 96, was returned undelivered and delivered back to the counsel for the applicant. Further, the said notice was never addressed by the applicant to the respondent at its corporate office, as was contended during the arguments. Even if the said notice was dispatched to the respondent through speed post at its corporate office, as contended, the same was also not delivered upon the respondent inasmuch as the applicant has failed to place any proof of delivery/tracking report or postal certificate on record. Page 93 only says 'Dispatched to BO' but does not confirm any delivery or service and no further tracking report has been placed on record.
2. That in so far as the contention of the applicant in respect of delivery of demand notice through email (page 94) is concerned, it is submitted that the alleged email was also never delivered upon the respondent and it appears that the same may have been bounced, if at all was sent. This submission is also supported with the fact that the applicant, or, for that matter, its counsel, has not filed any certificate in terms of the provisions of Section 65B of the Evidence Act, which, otherwise, is mandatory to file in order to prove and establish the digital record and communications. Hence, there was no service of demand notice in terms of the provisions of IB Code and hence, the application is not maintainable in absence of service of demand notice.
3. That, during the hearing on 18.01.2021, this Hon'ble Tribunal had enquired from the learned counsel for the applicant as to whether there was any agreement stipulating the terms of supply of goods and payment to be made by the respondent to which the answer was in affirmative on behalf of the applicant and therefore, this Hon'ble Tribunal directed the applicant to bring the said 'agreement' on record. At the same time, counsel for

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respondent drew the attention of this Hon'ble Tribunal to the letter dated 08.04.2019 (ANNEXURE-R-3; Page No. 49-50) filed by the respondent which is an admitted document of applicant and as could be seen from Point No. 10 (Page No. 49) of the said document that payment was to be made in the following manner: -

<u>S. No.</u>	<u>Description</u>	<u>Specification</u>	<u>Narration</u>
10.	Payment Terms	50% Against PO 50% Against Inspection of Goods	

It is, however, submitted that the contention of the applicant was later found to be incorrect inasmuch as, vide its additional affidavit, applicant admitted that there was no agreement between the parties.

4. Be that as it may, it is undisputed fact of the matter that 50% payment was to be made by the respondent to the applicant only after Inspection of the goods, as stipulated in the letter dated 08.04.2019 (Annexure-R-3) and since admittedly, the material was being directly supplied to the Air India Cargo and therefore, the inspection was to be conducted only when the material was to be used. The applicant has failed to bring any document on record that the due inspection was conducted at any point of time and therefore, question of balance 50% amount being 'due to pay' does not arise. It is submitted that this fact of non-inspection of the material, despite repeated assurances and commitment made by the applicant, has very well been raised and contended by the respondent in its reply to the application under the heading 'Brief Facts' particularly in paragraph No. 11 and 12 thereof.
5. That the applicant herein, in his supplementary affidavit dated 27.01.2021, has admitted the fact that it supplied the material directly to the Air India and admittedly, Air India or for that matter, any other entities for whom the material was prepared and supplied for display the advertisements, are not parties in the present proceedings; the amount being claimed by the applicant through present proceedings cannot be termed as 'due' and thus, the application deserves to be dismissed on the ground that the dues are not admitted and undisputed and the same are to be ascertained and adjudicated by a Civil Court where the parties shall have to lead evidence to prove their respective disputed claims and contentions.
6. That it is also applicant's own case that out of total billing of Rs. 65,30,168/-, respondent has already paid an undisputed amount of Rs. 50,72,800/- and balance amount of Rs. 14,57,368/- has not been paid due to dispute in respect of the defective goods, as reflected in the photographs annexed and therefore, it is not a case of non-payment of undisputed

amount but the respondent has already paid substantial amount and was seeking inspection of goods which is otherwise also stipulated in terms of letter dated 08.04.2019 and hence, application is not maintainable before the Tribunal being the Tribunal not a civil recovery Court.

7. That the respondent has relied upon the law laid down by Hon'ble Supreme Court of India in the case of '*Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*' [(2018) 1 SCC 353] and reiterated in '*K. Kishan vs. Vijay Nirman Company Pvt. Ltd.*' [(2018) 10 Scale 256] as also reiterated by Hon'ble National Company Law Appellate Tribunal, New Delhi in the case of '*Umesh Saraf vs. Tech India Engineers Pvt. Ltd.*' [MANU/NL/0385/2020] [Company Appeal (AT) (Insolvency) No. 548 of 2020 decided on 19.10.2020 to contend that the object of the Code, at least in so far as Operational Creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owned does not exist and copies of the said judgments have also been placed on record along with the reply filed on 05.02.2021 vide Filing No. 0710102028642020 and Misc. No. 0710102028642020/3.
8. In view of the aforesaid facts and circumstances and well settled proposition of law, the application of the applicant deserves dismissal.
9. Prayed accordingly.

7. We have heard the Learned Counsel appearing for the applicant as well as the respondent and perused the averments made in the application, reply, rejoinder and the written submissions filed on behalf of the respective parties.

8. On perusal of the averments made in the application, reply, rejoinder and the written submissions, we observe that the contention of the Corporate Debtor / Respondent is that the demand notice was not duly served and the goods, which were supplied are found to be defective and for that dispute was raised prior to the issuance of the demand notice. So, the application under Section 9 of the IBC, 2016 is not maintainable. Whereas the contention of the Learned Counsel appearing for the Operational Creditor is that the demand notice was duly delivered on the corporate office of the Corporate Debtor as well as it was also sent on the email id of the director of the Corporate Debtor.

9. Therefore, at first, we would like to consider whether the demand notice was duly delivered or not? At this juncture, we peruse the tracking report annexed at page 92, 93 and 94 of the application. Admittedly, the demand notice sent on the registered address of the Corporate Debtor was returned with an endorsement that **"Addressee left without instruction"**. Whereas the demand notice sent on another address shown in the application, that is the corporate office of the corporate debtor at Gurgaon was duly delivered, as per the tracking report placed at page 93 of the application.

10. At this juncture, we would also like to refer to the argument advanced on behalf of the Learned Counsel appearing for the applicant who submitted that the demand notice was also sent on the email id mentioned in the master data of the corporate debtor as well as the email id, which is being used by the Director of the Corporate Debtor.

11. Now, we refer to the service report of email placed at page 94. The scanned copy of the same is reproduced below: -

From: bharat arora bharat_ryans@yahoo.co.in
Subject: Demand Notice under IBC Act on behalf of T&D Hospitality India LLP
Date: 17 February 2020 at 10:11 AM
To: finance.explo@gmail.com, unipoles@gmail.com
Cc: T & D Hospitality India tdhospitality@gmail.com

Dear Sir,

Please find attached the Demand Notice under the Insolvency and Bankruptcy Act on behalf of T&D Hospitality India LLP.

The Demand notice has been also sent you through speed post. The present email is in addition to the speed-post.

Thanks and Regards
Bharat Arora 9811628929
A-21, LGF, Defence Colony, New Delhi-110024



NOTICE EXPLC
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12. At this juncture, we would also like to refer to email enclosed at page 18 of the rejoinder. The scanned copy of that email is reproduced below:

tushar@tdhil.com

From: tushar@tdhil.com
 Sent: 17 January 2020 16:10
 To: 'unipoles@gmail.com'; 'shalini@explomedia.com'
 Cc: 'dipakgoyal@tdhil.com'; 'dipakgoyal@hotmail.com'
 Subject: Non-Payment of Due Invoices :: M/s Explomedia :: T & D Hospitality India LLP

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Kind Attn:
 Mr. Sunjjoy / Ms. Shalini Madam

This has reference to our several follow ups with your company for making due payments to our company as per agreed timelines. The total amount due including agreed deposit is as below.

Invoice Date	Invoice No	Invoice Value
17-08-2019	TDHI/HR19-20/243	759920
24-08-2019	TDHI/HR19-20/249	785680
31-08-2019	TDHI/HR19-20/270	600208
17-09-2019	TDHI/HR19-20/290	515200
17-09-2019	TDHI/HR19-20/291	291088
27-09-2019	TDHI/HR19-20/306	515200
28-09-2019	TDHI/HR19-20/309	479136
14-10-2019	TDHI/HR19-20/346	644000
25-10-2019	TDHI/HR19-20/356	772800
27-11-2019	TDHI/HR19-20/405	522928
27-11-2019	TDHI/HR19-20/406	644000
Total Bill amount		6530160
Less: Payment Received till 03.12.2019		4300000
Net Receivable		2230160

As a statutory Compliance to MSME our payments can not be held beyond 45 days. As a result of which our bank has stopped considering this outstanding as a valid debtor amount which has resulted in our drawing power being reduced by the same amount. This has created liquidity crisis in our company and our vendors are un-paid.

This is truly un-professional and violation of our agreed terms of business.

We hereby once again request you to immediately clear our outstanding under confirmation to us. Looking forward for your earnest co-operation in this regard.

Tushar Mangla
 Managing Partner
 T&D Hospitality India LLP (TDHIL)
 New Delhi
 0091-9811906980
 www.tdhil.com

True copy

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13. When we read the email at page 94 of the application and the email at page 18 of the rejoinder together, it is seen that the demand notice was also sent on the email id of unipoles@gmail.com which according to the email annexed at page 18 of the rejoinder is the email id of Mr. Sunjjoy who, as per the master data at page 23 of the application, is one of the Directors of the Corporate Debtors. Therefore, at this juncture, we would like to refer to Rule 5 of IBBI (Application to Adjudicating Authority) Rules, 2016 and the same is reproduced below: -

A

Rule 5 of IBBI (Application to Adjudicating Authority) Rules, 2016

Demand notice by operational creditor.—

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely:-

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub- 1 Published in the Gazette of India, Extra., Part II, Sec.3, No. 828 (E), dated 30th Nov., 2016 (w.e.f. 01.12.2016). section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any

14. A bare perusal of the Rule 5 of IBBI (Application to Adjudicating Authority) Rules, 2016 shows that in terms of Rule 5 sub-Rule-2 Clause (b), the demand notice served to a whole-time director or designated partner or key managerial personnel will be treated as a valid service. Here, admittedly, Mr. Sunjoy Daadhicch is the Director of the Corporate Debtor, on whose email id the demand notice was delivered., hence the demand notice was served in terms of Rule 5 of IBBI (Application to Adjudicating Authority) Rules, 2016. Apart from that, at this juncture, we would also like to refer to the decision of the Hon'ble NCLAT in CA (AT) (Insolvency) 684/2018 decided on 21st January, 2019. The relevant paragraph of the said judgement is reproduced below: -

“6. In view of aforesaid facts we hold that the Adjudicating Authority erred in rejecting the application under Section 9 on wrong presumption that demand notice is to be served on the Registered Office of the Corporate Debtor and not on Corporate Office (Industrial Area Office herein). If the demand notice under Section 8 (1) is served on Corporate Debtor either on its Registered Office or its Corporate Office, it



should be treated to be valid service of notice under Section 8 and application under Section 9 on failure of payment, if filed after 10 days, is maintainable."

15. In terms of the decision referred to Supra, we are of the considered view that since the demand notice was delivered at the corporate office of the Corporate Debtor as well as on the email id of the director, therefore, in terms of Section 8 sub-Section (1) of the IBC, 2016, the demand notice was duly delivered. Hence, we find, no force in the contention raised on behalf of the Learned Counsel appearing for the Corporate Debtor that the demand notice was not delivered.

16. We further observe that admittedly, the Corporate Debtor has not sent the reply to the demand notice, as required in terms of Section 8 sub-Section 2. Now coming to the second point raised by the Corporate Debtor whether there is a pre-existing dispute raised by the Corporate Debtor prior to the issuance of the demand notice or not?

17. On perusal of the reply submitted by the Corporate Debtor, it is seen that the Corporate Debtor has not enclosed any correspondence to show that the Corporate Debtor had ever raised any dispute. Even during hearing, the Learned Counsel appearing for the Corporate Debtor has not shown any correspondence between the parties to establish that the dispute was raised, prior to the issuance of the demand notice.

18. Of course, the Learned Counsel appearing for the Corporate Debtor has referred to the email dated 24th December, 2019 at page 55 of the reply and submitted that the Corporate Debtor has received a complaint regarding the defective goods from one of his clients. At this juncture, we would like to refer to the said email at page 55 of the reply and the scanned copy of the same is reproduced below: -



ANNEXURE-R-5 (COLLY)

55



Avadh Kaushik <avadhkaushik@gmail.com>

Fwd: NEED URGENT ATTENTION

1 message

Explomedia Sunjoy Daadhlch Explomedia <unipoles@gmail.com>
 To: Avadh Kaushik <avadhkaushik@gmail.com>
 Cc: Explomedia Sunjoy Daadhlch <unipoles@gmail.com>, Shalini <shalini@explomedia.com>

Begin forwarded message:

From: "Explomedia55@gmail.com" <explomedia55@gmail.com>
 Subject: Fwd: NEED URGENT ATTENTION
 Date: September 26, 2020 at 5:09:10 PM GMT+5:30
 To: Sanju <unipoles@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: "Explomedia55@gmail.com" <explomedia55@gmail.com>
 Date: 25 August 2020 at 4:55:42 PM IST
 To: Sanju <unipoles@gmail.com>
 Subject: Fwd: NEED URGENT ATTENTION

Sent from my iPhone

Begin forwarded message:

From: Bhavini Srivastava <bhavini@cashurdrive.net>
 Date: 24 December 2019 at 5:21:04 PM IST
 To: Shalini@explomedia.com
 Cc: explomedia55@gmail.com, Raghu Khanna <raghu@cashurdrive.com>, "Nagpal, Nitesh" <nitesh@cashurdrive.com>, Su
 <unipoles@gmail.com>
 Subject: NEED URGENT ATTENTION

Hi Shalini,

This is to bring into your notice that the client is not at all happy with the deliverables as per the recent incident Easemyr
 missing from the headrests of Air India from Delhi-Mumbai flight on 20th December,

a
 solution for the same.

Please do confirm us how can we compensate the visibility loss!

Enclosed the flight details and reference images for your perusal.

Thanks & Regards,
Bhavini Srivastava

Cashurdrive Marketing Pvt. Ltd.
 CUD House, G-37, C-Block,
 Sector-3, Noida-201301 | India
 T: +91 (020) 4365220, 4369216
 M: +91 8168142676
 www.cashurdrive.com

TRUE COPY

19. On perusal of this email, we noticed that it is a correspondence made between the Corporate Debtor and the third person and not with the Operational Creditor. Therefore, we are of the considered view that the Corporate Debtor has failed to show even a chit of paper, on the basis of which; it is established that the Corporate Debtor had ever raised any dispute prior to the delivery of the demand notice.

20. At this juncture, we would also like to refer to paragraph 7 of the reply filed by the Corporate Debtor. The scanned copy of the relevant paragraph is reproduced below: -

5

applicant herein hoping that, as per assurances given by applicant, the material would be of the best quality.

It is submitted that in the above fact, it was clear understanding between the parties that the quality of the material would be checked and seen by the present respondent and/or by his concerned customer i.e. CashurDrive or the actual advertiser only as and when the same were to be used by placing the same on Aircraft seats. Therefore, it was the entire responsibility of the applicant herein to check and maintain the best quality of the products inasmuch as huge stakes of rupees and reputation of the present respondent and his clients in were involved in the entire business transaction.

7. That it is a matter of record that applicant herein started supplying the material to the respondent directly in Air India Cargo from August, 2019 for which the respondent had made substantial payment to the applicant in advance and he supplied the same till November, 2019 i.e. for a duration of about three months. Further, as evident from the statement of account annexed by the applicant himself, the respondent had been making continuous payment to the applicant from time to time and out of total billing of Rs. 65,30,168/-; the respondent has already paid to the applicant a total sum of Rs. 50,72,800/- and last payment was made by present respondent to the applicant on 18.11.2019 whereas applicant supplied the material to the respondent lastly on 27.11.2019 and therefore, it is an admitted fact that the respondent has never defaulted in making legitimate payments to the applicant herein and

smooth business dealing were going on between the two by the end of November, 2019.

8. That, however, in the meantime, present respondent, on 23.12.2019, received some WhatsApp messages with some images of damaged HRCs supplied by the applicant from an executive of CashurDrive namely Mr. Raghu thereby informing the respondent that various Head Rest Covers (HRCs) were found torn/damaged in the Air India Flights due to poor quality of fabrics and therefore, the respondent was asked to immediately raise the issue with the supplier/applicant herein.

True copies of screen shot of WhatsApp Chats held between the executives of respondent and CashurDrive on 20.12.2019 and images of torn/damaged HRCs sent by client are annexed and marked as ANNEXURE-R-4 (Colly).

9. That while the respondent was discussing the issue with the applicant herein regarding damaged and poor quality HRCs, the respondent again, on 24.12.2019, received an e-mail from his client 'CashurDrive' that his client *Ease-my-Trip* was not happy inasmuch as the Creatives/ Logos with name of *EasemyTrip* were found missing/not printed on various Head Rest Covers (HRCs) placed in some of Air India Flights and the HRCs fabrics were without containing printed logo/Creative which was defeating the very purpose of the entire exercise of advertisement. Further, it was also indicated that many of the HRCs were found in torn/damaged condition due to poor quality of fabric. Therefore, the said CashurDrive asked as to how



21. On perusal of the relevant paragraphs, it is seen that the Corporate Debtor has admitted that out of the total sum of Rs. 65,30,168/-, only an amount of Rs. 50,72,800/- was paid by the Corporate Debtor and the remaining balance has not been paid as yet. Therefore, in our considered view, the Corporate Debtor has also admitted that the balance amount claimed by the applicant has not been paid. Since the Corporate Debtor has failed to establish that there is any pre-existing dispute, therefore, in our considered view, the Operational Creditor has succeeded in establishing that the demand notice as required under Section 8 sub-Section 1 of the IBC, was duly delivered and the Corporate Debtor has failed to raise any dispute in terms of Section 8 sub-Section 2 of the IBC, 2016.

22. We find that the application filed by the Operational Creditor is complete and there is an unpaid operational debt, therefore, in terms of Section 9 sub-Section 5 (i) we are of the considered view that the present application is maintainable.

23. **Accordingly, we hereby ADMIT the petition.** A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation 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 the possession of the corporate debtor.*



Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

24. Since the Operational Creditor has not proposed the name of any IRP. Therefore, we appoint the insolvency professional from the panel sent by the IBBI. Accordingly, we appoint **Mr. Rakesh Takyar, an Insolvency Professional**, Registration No. **IBBI/IPA-001/IP-P00160/2017-18/10329** and registered e-mail id – **rtakyar.rt@gmail.com** duly empaneled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

25. The Operational Creditor is directed to deposit a sum of Rs. one lakh to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.



26. Copies of the order be sent to both the parties as well as to the IRP.

S/d

(L. N. Gupta)
Member (T)

S/d

(Abni Ranjan Kumar Sinha)
Member (J)