

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 726/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.11.2020**

Name of the Company: Shree Rani Sati Travel House
V/s
Altius Travels Pvt Ltd

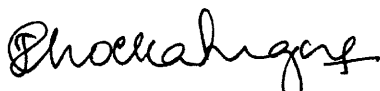
Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

Advocate, Mr. Naishal Mody appeared on behalf of the Petitioner.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**



**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 2nd day of November, 2020

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 726/9/NCLT/AHM/2019

In the matter of:

Shree Rani Sati Travel House
2013, World Trade Centre
Ring Road
SURAT 395 002

Petitioner
Operational Creditor

Versus

M/s. Altius Travels Private Limited
1, Mudra Apartments
Nr. Stadium Petrol Pump
Navrangpura
AHMEDABAD 380 014
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 2nd November, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Petitioner : Mr. Pavan Godiawala, Advocate
Respondent : Mr. Monal Davawala, Advocate

ORDER

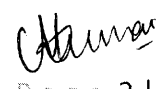
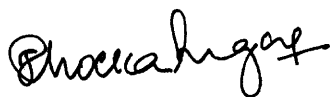
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Atul Gupta, proprietor of **M/s. Shree Rani Sati Travel House** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

Chockalingam

Manorama

2. The applicant/operational creditor is proprietary concern involved in the business of providing services in the field of Tours & Travels industries having PAN AEQPG4459M and having registered office at Surat, Gujarat State.
3. The respondent/corporate debtor is a private limited company registered on 29.10.2009 under the provisions Companies Act and having identification No. U63040GJ2009PTC058466 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,000/- and paid up share capital is Rs. 1,00,000/-.
4. It is stated by the applicant that, on the basis of order placed by Corporate Debtor for managing the group tour, operational creditor provided all assistance, arranged the travel tickets and booking done for the groups and raised invoices for the same on the corporate debtor as per details annexed to the application (page 14-21). That, despite the corporate debtor duly received/acknowledged the invoices, the corporate debtor has not paid a sum of Rs. 4,92,064/- (Rupees four lacs ninety-two thousand sixty-four only) along with accrued interest @ 24% per annum upto 30th April, 2019. Thus, the total operational debt due and payable by the corporate debtor comes to **Rs. 7,31,298.94 (Rupees seven lacs thirty-one thousand two hundred ninety-eight and paise ninety-four only)**. That, despite repeated reminders the respondent has not paid the operational debt due and payable, therefore this petition.
5. The applicant has further submitted that having failed to receive the operational debt due and payable by the respondent, the petitioner was compelled to issue notice to the respondent under section 8 in form No. 3 and form 4 dated 11.03.2019 (page 11-13). The applicant filed



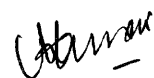
application supported with affidavit, invoices, computation of the outstanding invoices, track report, ledger account, demand notice etc.

6. The respondent filed affidavit in reply inter alia admitting that the operational debt claimed by the operational creditor is in fact due and payable, however, alleged that the interest calculated @ 24% per annum is unilateral.

Findings:

7. Heard the advocates appearing for both the sides. During the course of final hearing on 15.10.2010, advocate appearing on behalf of the respondent admitted the liability.
8. On perusal of the record it is also found that the demand notice issued by the applicant under section 8 of the I & B Code on 26.08.2019 has been served upon the corporate debtor, but, no dispute has been raised.
9. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.
10. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.





11. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
12. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -
- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
and
 - (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
- If any of the aforesaid conditions is lacking, the application would have to be rejected.
13. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has ever been raised by the respondent at any point of time.
14. Moreover, the corporate debtor has admitted the debt during the course of hearing. However, while going through the reply affidavit it is found that corporate debtor denied the allegation and claim. At para No. 5 of the reply, the respondent has categorically pleaded that "corporate debtor




will strive to make the necessary payments as and when the business kick starts in the travel industry".(sic)

15. The Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.
16. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
17. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
18. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

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- (i) 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;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
19. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
20. The order of moratorium shall have effect from the date of receipt of authenticated copy 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 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.




21. The applicant/operational creditor has proposed the name of Mr. Kailash T. Shah to act as Interim Resolution Professional. Therefore, the Adjudicating Authority hereby appoint Mr. Kailash T. Shah, 505, 21st Century Business Centre, Nr. World Trade, Ring Road, Surat 395 002 (e-mail ipktshah@gmail.com) having registration No. IBBI/IPA-001/IP-P00267/2016-17/10511 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.
22. This Petition is accordingly admitted.
23. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
24. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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