

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT-I**

**CP (IB) 3796/MB/2019**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**Ruptub Solutions Private Limited**

**[CIN: U74900KA2015PTC080316]**

AMR Tech Park – Block 1, Level 1, 23/24, IT Industry Naganathapur, Hosur Road, Bommanhalli, Bengaluru 560068.

...Petitioner/Operational Creditor

Versus

**Panoramic Holidays Limited**

**[CIN: U45201MH2006PLC166115]**

Aman Chambers, 4<sup>th</sup> Floor, Opp. New Passport Office, Veer Savarkar Road, Prabhadevi, Mumbai-400025

...Respondent/ Corporate Debtor

**Order Delivered on 22.07.2022**

***Coram:***

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances:***

For the Operational Creditor : Mr. Ajay Kumar, Counsel

For the Corporate Debtor : None

**ORDER**

*Per: Shyam Babu Gautam, Member (Technical)*

1. The present Company Petition is filed by **Ruptub Solutions Private Limited**, (hereinafter referred to as the “Petitioner”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against **Panoramic Holidays Limited** (hereinafter referred to as the “Respondent”).
2. The Respondent is company incorporated under the Companies Act, 1956 and has its registered office at Aman Chambers, 4<sup>th</sup> Floor, Opp. New Passport Office, Veer Savarkar Road, Prabhadevi, Mumbai-400025. Its Company Identification Number (CIN) is U45201MH2006PLC166115. Therefore, this Bench has the jurisdiction to entertain this Petition.
3. The excerpts of operational debt as per part IV of form 5 is reproduced hereunder:

PARTICULARS OF OPERATIONAL DEBT		
2.	Amount claimed to be in default and the date on which the default occurred (attached the working for computation of amount and dates of default in tabular form as Annexure “W”)	As on 01.09.2019, the amount claimed to be in default is INR 57,02,494.33 (Rupees Fifty-Seven Lacs Two Thousand Four Hundred and Ninety-Four Only) along with interest at the rate of 18%.

**Submissions made by the Ld. Counsel of the Petitioner by the way of  
Petition:**

4. The Respondent is engaged in the hospitality industry. Its business is to provide a vacation ownership product under the name of Magic Holidays (hereinafter referred to as "the Product").
5. By availing of the product, a customer can book holidays in advance at the price prevalent at the time of booking. In order to carry out its business, the Respondent has affiliations with several hotels where customers of the Respondent book holidays in advance at a discounted price.
6. The Respondent had a similar affiliation with the Petitioner whereby customers could book holidays at the hotels operating under the 'Treebo' brand at 16 locations by availing the said Product.
7. As per the understanding between the parties, the Petitioner would raise invoices on the Respondent for the services provided and each invoice raised by the Petitioner on the Respondent would specify the date by which the same had to be paid.
3. On 12.12.2017, the Respondent started defaulting on payments of the invoices raised by the Petitioner, even after repeated requests and reminders by the Petitioner.
4. The Respondent continuously assured the Petitioner that it would clear its outstanding dues and also requested the Petitioner to continue providing its services in the interim. However, despite verbal assurance, the default continued.
5. It was also resolved that the Respondent would make an on-account payment of minimum INR 20-25 lakhs until the final reconciliation; commencing in February, 2018.

6. On 27.02.2018, the Petitioner sent an invoice reconciliation statement, for the period from April 2017 to October 2017, to the Respondent stating that the outstanding amount was INR 47,76,436.81 (Rupees Forty-Seven Lakh Seventy-Six Thousand Four-Hundred and Thirty-Six only). A copy of the email dated 27.02.2018 is annexed as Annexure "E" to the Petition.
7. A reminder email was sent by the Petitioner on 01.03.2018 to the Respondent calling upon them to revert with respect to reconciliation statement which had been sent to the Respondent on 27.02.2018. A copy of the email dated 01.03.2018 is annexed as Annexure "F" to the Petition.
8. The Respondent by an email dated 01.03.2018, admitted its liability of INR 47,76,436.81 (Indian Rupees Forty-Seven Lakh Seventy-Six Thousand Four-Hundred and Thirty-Six only). A copy of the said email is annexed as Annexure "G" to the Petition.
9. Numerous email correspondences were exchanged between the parties pertaining to the debts. However, the Respondent continued to default. Copies of the email correspondences between the parties are annexed as Annexure "H-Colly" to the Petition.
10. Although the Petitioner continued to provide the services to Respondent throughout this period, the Respondent neglected to fulfil its obligation of clearing the outstanding dues of the Petitioner.
11. As no payments were received despite following up repeatedly with the Respondent, the Petitioner sent an email dated 26.04.2018 to the Respondent, reminding the Respondent of the understanding arrived at by the parties at the meeting which took place in February 2018 and during the subsequent conference call.

12. The Petitioner by its email dated 26.04.2018 also informed the Respondent that the amount payable to the Petitioner by the Respondent had increased to INR 50,00,000 (Indian Rupees Fifty Lakh only) and called upon the Respondent to clear the same in two tranches i.e. a first tranche of INR 25 lakhs to be paid on or before 30.04.2018 and the second tranche clearing the balance payment to be paid on or before 10.05.2018.
13. The Respondent was also informed that in case the Respondent neglected to make the payment as demanded, the Petitioner will be compelled to initiate insolvency proceedings against the Respondent. A copy of the email dated 26.04.2018 sent by the Petitioner is annexed as Annexure "I" to the Petition.
14. The Respondent replied to the email dated 26.04.2018, on the same day itself, stating that it was aware of the commitment it had made to the Petitioner. However, there was no explanation as to why the payments were not made. A copy of the reply of email dated 25.04.2018 sent by the Respondent is annexed as Annexure "J" to the Petition.
15. The Petitioner once again on 30.04.2018, sent an email to the Respondent reminding of the payment of INR 25 lakhs due under the first tranche and they should make a payment towards it before the end of the day. Annexed hereto and marked as Annexure "K" is a copy of the email dated 30th April 2018 sent by the Petitioner to the Respondent.
16. Upon receiving no payment from the Respondent, the Petitioner sent an email dated 01.05.2018 to the Respondent stating that in the event the Petitioner did not receive the payment details of the first tranche of INR 25 lakhs by 7:00 p.m. that day, the Petitioner would deactivate the account of the Respondent with the Petitioner and that all future

bookings will stand cancelled. A copy of the email dated 01.05.2018 sent by the Petitioner to the Respondent is annexed as Annexure "L" to the Petition.

17. The Respondent replied to the Petitioner's email dated 01.05.2018 on 03.05.2018, proposing to make a payment of INR 10 lakhs on 07.05.2018 and thereafter to make a payment of INR 5 lakhs every 10 days. In exchange for this offer, the Respondent requested the Petitioner to continue to honour bookings made with the Petitioner for the next 8 days. A copy of the email dated 03.05.2018 sent by the Respondent to the Petitioner is annexed as Annexure "M" to the Petition.
18. The Petitioner acceded to this request of the Respondent, but the Respondent once again neglected to honour the commitments made by it to the Petitioner.
19. Despite having given such a specific assurance to the Petitioner, the Respondent neglected to make the payments as promised. The Petitioner thus kept reminding the Respondent of its obligations and the Respondent repeatedly disregarded the requests and reminders sent by the Petitioner.
20. The Petitioner, however, out of goodwill, continued to provide services to the Respondent till 31.05.2018, by which time the amount due and payable by the Respondent to the Petitioner was an amount of INR 57,02,494.33 (Indian Rupees Fifty Seven Lakh Two Thousand Four Hundred and Ninety Four Only).
21. On 13.06.2018, the Petitioner issued a Demand Notice in Form-4 to the Respondent under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016). A copy of the

Demand Notice dated 13.06.2018 is annexed as Annexure "N" to the Petition.

22. Despite receiving aforementioned Demand Notice, the Respondent neglected to clear the outstanding dues within the statutory time frame of 10 days. Therefore, the Petitioner was constrained to file a Petition under section 9 of the Insolvency and Bankruptcy Code, 2016, being Company Petition (IB) No. 3341 of 2018.
23. The said Company Petition was listed before this Tribunal on 04.02.2019. However, due to a technical deficiency in the board resolution, the Petitioner was asked by this Tribunal to withdraw the said Petition with a liberty to file a fresh Petition. A copy of the order dated 04.02.2019 passed by this Tribunal in Company Petition (IB) No. 3341 of 2018 is annexed as Annexure "O" to the Petition.
24. The Petitioner through its advocate issued a fresh Demand Notice in Form-3 dated 27.06.2019 for INR 57,02,494.33 (Indian Rupees Fifty-Seven Lakh Two Thousand Four Hundred and Ninety-Four Only) to the Respondent under Section 8 of the Insolvency and Bankruptcy Code, 2016, read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Registered Post Acknowledgement Due (R.P.A.D.) at its registered office. A copy of the Demand Notice dated 27.06.2019 is annexed as Annexure "P" to the Petition.
25. However, the packets (three envelopes), comprising the Demand Notice and Invoices, were returned with the remark "Not Delivered Address Moved". Copies of the postal receipts and tracking reports are annexed as Annexure "Q-Colly".

26. As the Demand Notice dated 27.06.2019 was returned unserved, the Petitioner inquired about the actual status of the registered office of the Respondent/Corporate Debtor. Upon such inquiry, the Petitioner learnt that the registered office of the Respondent has been sealed/attached by a bank under proceedings initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, proceedings.
27. As the Respondent's registered office was sealed, the Petitioner through its Advocates once again issued a Demand Notice dated 04.07.2019 (Form - 3) along with invoices for INR 57,02,494.33/ (Rupees Fifty Seven Lacs Two Thousand Four Hundred and Ninety Four and Thirty Three Paise only) on the address of the corporate office of the Corporate Debtor situated at Plot no. 410/411, Lower Ground Floor, Khatau House, Mogul lane, Mahim, Mumbai- 400 016, by way of hand delivery. A copy of the office copy of the Demand Notice dated 04.07.2019, bearing the acknowledgment of receipt by the Respondent is annexed as Annexure "R" to the Petition.
28. After delivery of the Demand Notice, the Respondent by its email dated 12.07.2019, requested the Petitioner to provide them with necessary documents to enable them to reconcile the amounts due and payable by the Respondent. This email sent by the Corporate Debtor is itself an admission of debt due and payable by the Corporate Debtor to the Petitioner. Annexed hereto and marked as Annexure "S" is a copy of the email dated 12.07.2019.
29. Further, in response to the Demand Notice dated 04.07.2019, the Respondent through its Advocate addressed a reply letter dated 15.07.2019, denying the existence of any liability on the part of the

Respondent to pay the Petitioner. A copy of the letter dated 15.07.2019 is annexed as Annexure "T" to the Petition.

30. The alleged objections/disputes raised by the Respondent are raised after the service of the Demand Notice. Pursuant to the judgment passed by the Hon'ble Supreme Court in the matter of "MobiloX Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited. (Appeal No. 9405 of 2017)", the existence of the dispute must be pre-existing i.e. it must exist before the issue of the demand notice or invoice. However, in the present case, no dispute of whatsoever nature was raised by the Respondent before the receipt of the demand notice. Hence, it can be construed that there is no dispute existing. The above reply dated 15.07.2019, was rejoined by the Applicant vide its Advocate's rejoinder letter dated 13.08.2019. A copy of the letter in rejoinder dated 13 August 2019 issued by the Petitioner is annexed as Annexure "U" to the Petition.
31. A list of the unpaid invoices under which the debt has fallen due is annexed as Annexure "V".
32. As on 01.09.2019, the amount default claimed to be in default is INR 57,02,494.33 (Rupees Fifty-Seven Lakh Two Thousand Four Hundred and Ninety-Four and Thirty-Three Paise Only) along with interest at the rate of 18 percent per annum from the date of issue of invoice/s till payment or actual realization.
33. The working for computation of amount claimed to be in default and the dates of default against each of the pending invoice is annexed as Annexure W.
34. It was observed from the records that on 17.12.2019, counsel for the Respondent was present and thereafter they stopped appearing before the bench and despite of giving various opportunity to the Respondent,

they failed to file the affidavit in reply. In that view of the matter, Corporate Debtor is proceeded ex-parte.

**Findings:**

35. We have heard the arguments of the Petitioner and perused the records.
36. Vide E-mail dated 03.05.2018, the Respondent requested to reinstate bookings with check ins for 10 days to the Petitioner and also acknowledged its liability arising out of such services rendered by the Petitioner. Pursuant to the request, the Petitioner continued its services from 03.05.2018 to 31.05.2018, in terms of which the liability ascended to Rs.57,02,494.33.
37. We note that on 26.04.2018 the alleged liability was Rs.50,00,000+ and the same was admitted by the Respondent vide e-mail dated 03.05.2018 to the Petitioner which was prior to Demand Notice dated 04.07.2019.
38. On 12.07.2019, the Respondent requested the Petitioner for excel file to reconcile extra bills received and crystallise the final amount payable.
39. However, on 15.07.2019, in response to the Demand Notice dated 04.07.2019, the Respondent through its advocate addressed a reply, denying the existence of any liability on the part of the Respondent to pay the Petitioner. This clearly shows that within a span of three days the Respondent contradicted its own statement and is trying to avoid the repayment of its liability.
40. Therefore, it can be construed that defense raised by the Corporate Debtor is moonshine defense in response to the Demand Notice dated 04.07.2019 to shy away from the liability.

41. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that Corporate Debtor owes money to the Financial Creditor.
42. The Corporate Debtor while replying to the demand notice has not brought to light any pre-existing dispute as required under the Code.
43. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
44. The petition bearing **CP (IB) 3796/MB/2019** filed by **Ruptub Solutions Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Panoramic Holidays Limited (CIN: U45201MH2006PLC166115)** the Corporate Debtor, is **admitted**.
45. There shall be a moratorium under section 14 of the IBC, in regard to the following:
  - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) 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.
46. Notwithstanding the above, during the period of moratorium: -
- a. 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;
  - b. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
47. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
48. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

49. **Mrs. Rashmi Pushpak Gangwal**, Registration No. IBBI/IPA-002/IP-N01058/2020-2021/13401, Email Id: [iprashmigangwal@gmail.com](mailto:iprashmigangwal@gmail.com), (Mobile: 9422214071), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
50. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
51. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
52. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
53. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate

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Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

54. Ordered accordingly.

**Sd/-**

**SHYAM BABU GAUTAM**

**Member (Technical)**

22.07.2022

DSB

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**Member (Judicial)**