



Representatives, Mr. Deepak Awatramani, Mr. Kishin Awatramani and Mr. Suraj Awatramani, who are authorized by Board Resolution dated 06.09.2019 (for brevity '**Operational Creditor**'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Funbars Hospitality Pvt. Ltd. (for brevity '**Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Funbars Hospitality Pvt. Ltd. is a Company incorporated on 18.02.2014 with CIN No. U55103DL2014PTC284977 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at Flat No. N-57, N-58, N-59, and N-60 half of N-61 1<sup>st</sup> Floor, Munsi Lal Building, Connaught Place, New Delhi-110001, which comes within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 2,51,00,000/- and Paid-up Share Capital is Rs. 1,01,00,000/- as per the Master Data of the Corporate Debtor.

4. That it is submitted by the Operational Creditor that it is dealing in the business of supplying liquor. It is added that the Corporate Debtor is engaged in the Hospitality sector and operates cafes and fine dining restaurants.

5. That it is further submitted by the Operational Creditor that the Corporate Debtor had from time-to-time placed verbal purchase orders with the Applicant for the supply of liquor of certain specifications

reflected in the respective invoices. These invoices were due and payable within fifteen days from the receipt of each invoice raised.

6. That it is stated by the Operational Creditor that as on the date of filing this application, the outstanding Principal amount of the unpaid Operational Debt is to the tune of Rs.20,06,331/-. The scanned computation sheet of the 19 unpaid invoices reflected in Part-IV of the Application is reproduced below:

<u>Date of Invoice</u>	<u>Invoice No.</u>	<u>Overdue Days</u>	<u>Amount Due (in Rs.)</u>	<u>Interest – 31 % p.a.</u>
27/10/2018	SB/2018-19/283588	293	84,155.00	24,866.77
28/11/2018	SB/2018-19/297152	261	2,85,729.00	68,442.73
30/11/2018	SB/2018-19/298215	259	35,325.00	8,389.66
30/11/2018	SB/2018-19/298216	259	3,18,351.00	75,608.12
30/11/2018	SB/2018-19/298217	259	1,00,044.00	23,760.37
30/11/2018	SB/2018-19/298301	259	29.00	6.89
18/12/2018	SB/2018-19/305294	241	1,56,318.00	34,281.71
24/12/2018	SB/2018-19/308223	235	87,098.00	18,578.28
24/12/2018	SB/2018-19/308224	235	4,35,141.00	92,816.97
24/12/2018	SB/2018-19/308225	235	77,960.00	16,629.12
24/12/2018	SB/2018-19/308226	235	1,42,862.00	30,472.92
27/12/2018	SB/2018-19/309546	232	17.00	3.58
30/12/2018	SB/2018-19/312209	229	69,225.00	14,352.31
31/12/2018	SB/2018-19/313057	228	75,706.00	15,620.84
31/12/2018	SB/2018-19/313074	228	20.00	4.13

31 % P/a

31/12/2018	SB/2018-19/313075	228	62,497.00	12,895.35
31/12/2018	SB/2018-19/313080	228	30.00	6.19
07/01/2019	SB/2018-19/315084	221	58,037.00	11,573.04
07/01/2019	SB/2018-19/315085	221	16,587.00	3,307.58
TOTAL PRINCIPAL AMOUNT (A)			Rs. 20,06,331/-	
TOTAL INTEREST (B)			Rs. 4,51,851/-	
TOTAL AMOUNT DUE (A+B)			Rs. 24,58,182/-	

7. That it is further stated by the Operational Creditor that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 18.11.2019 (Annexure-P-8) under Section 8 of IBC, 2016 at the Registered office of the Corporate Debtor. The Operational Creditor has also annexed the Notice of Dispute dated 05.12.2019 (Annexure-P-9) sent by the Corporate Debtor through Ahlawat & Associates Advocates. The Applicant has also filed its Affidavit under Section 9(3)(b) of 2016.

8. That it is submitted that the Corporate Debtor has admitted its liability to the extent of Rs.17,85,000/- vide its reply/Notice of Dispute dated 05.12.2019 sent through Ahlawat & Associates Advocates, scanned copy of which is reproduced overleaf :



1  
72  
Annex. - 7/9

Through Courier/ Speed Post/E-Mail

Dated: 05.12.2019

To,  
M/s Candy Enterprises Private Limited  
(For Mardi Gras Spirits),  
Jaylaxmi Industrial Premises Co-op. Society Ltd.,  
Gala No. 2, Khetani Compound,  
Bazar Ward, Kurla(W), Mumbai-400070  
(hereinafter referred to as "You /Yours")

From:-  
Ahlawat & Associates  
A-33 & 61, LGF,  
Defence Colony,  
New Delhi-110024

On Behalf of:  
Funbars Hospitality Private Limited  
Flat No. N-57, N-58, N-59, and N-60  
half of N-61, 1<sup>st</sup> Floor, Munsil Lal  
Building, Connaught Place, New Delhi-  
110001

SUBJECT: REPLY WITHOUT PREJUDICE TO YOUR DEMAND NOTICE DATED  
18.11.2019 RECEIVED ON 26.11.2019



2  
73

Under instructions and on behalf of M/s Funbars Hospitality Private Limited (hereinafter referred to as "our Client"), having their registered office at: Flat No. N-57, N-58, N-59, and N-60 half of N-61, 1st Floor, Munsil Lal Building, Connaught Place, New Delhi-110001, we acknowledge the receipt of Your Demand Notice dated 18.11.2019 (hereinafter referred to as "Demand Notice"), and after obtaining detailed instructions we reply to the same as under:

1. At the outset, it is brought to Your attention that Your Demand Notice is neither admissible nor tenable. It is clearly stated that You had agreed to settle the matter for the total outstanding amount with our Client, pursuant to which a proposal vide email dated 19.02.2019 was made to You and the same was duly accepted by You vide email dated 22.03.2019. The proposed amount with respect to the outstanding amounts for the Mardi Gras and Candy Spirits invoices, was yet again confirmed by You vide whatsapp message dated 02.08.2019 (*annexed herewith*).
2. That pursuant to Your acceptance, the payable outstanding amount was reduced from INR 20,06,331/- (Rupees Twenty Lakh Six Thousand Three Hundred and Thirty One only) to INR 17,85,000/- (Indian Rupees Seventeen Lacs Eighty-Five Thousand only). Thus, the principal outstanding amount claimed by You in the Demand Notice is incorrect and is not maintainable.
3. It is hereby stated that the Demand Notice under reply is Your second demand notice, with the first one being dated 06.09.2019, to which a reply dated 17.09.2019 was issued by our Client. Our client in the reply had reaffirmed the commitment to pay INR 17,85,000/- as was previously agreed by You. A payment scheme was also proposed to You, but instead of accepting the payment, You chose to issue another reply dated 27.09.2019.
4. Our Client vide the rejoinder reply dated 07.10.2019 again reaffirmed the intention of our Client to make the payment of INR 17,85,000/-. In spite of such clear understanding and acceptance, You deliberately and with the intention to harass our Client, have not

accepted the outstanding payment and have again issued the Demand Notice under reply.

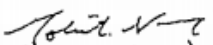
5. Additionally, You continue to claim some frivolous amount of interest, and the same has been under the garb of a deliberate delay caused by You in not accepting the agreed payment.
6. It is notable to state that even after accepting the payment proposal *vide* email dated 22.03.2019, You have not accepted the payment and it is our Client that has been chasing You to accept the payment of Your principal outstanding amount. Since the delay has been deliberately caused by You, there arises no scenario where such interest is either accrued or payable.
7. In view of the aforesaid facts, it is hereby once again clarified that our Client has always been and is willing to make the payment of agreed amount of INR 17,85,000/- (Indian Rupees Seventeen Lacs Eighty-Five Thousand only), the same being previously agreed by You. You are requested to note that the principal amount shall be paid as per the schedule hereinbelow as our Client is currently under a severe financial constraint due to the present external business circumstances and economic slowdown-

S. No.	Payment Date	Amount in INR
1	20/01/2020	2,97,500.00
2	20/02/2020	2,97,500.00
3	20/03/2020	2,97,500.00
4	20/04/2020	2,97,500.00
5	20/05/2020	2,97,500.00
6	20/06/2020	2,97,500.00
<b>Total.</b>		<b>17,85,000.00</b> <b>(Indian Rupees Seventeen Lacs Eighty Five Thousand only)</b>

8. You are hereby called upon to withdraw the frivolous Demand Notice under reply, with immediate effect. You are further required to promptly issue to our Client a no dues certificate simultaneously to the receipt of the total outstanding payment. Any further legal proceedings, if initiated by You, are not maintainable and shall be fiercely defended and the same shall entirely be at You own risk, cost and consequences thereof.

Yours Sincerely,

For Ahlawat and Associates

  
(MOHIT NAIN)  
D/1482/12.

Enclosed:

- Emails dated 19.02.2019 and 22.03.2019.
- WhatsApp message dated 02.08.2019.

9. That during the hearing of the Application on 23.07.2021, the Counsel for the Corporate Debtor has submitted that the Corporate Debtor does not wish to file its reply and the Corporate Debtor admits the debt of the Operational Creditor.

10. We have heard the parties, gone through the averments made by the Applicant in the Application and the notice of dispute raised by the Corporate Debtor. During the hearing while going through the application, this Bench had observed that the Applicant has not annexed the proof of dispatch and delivery of the Demand Notice. In response, the Ld. Counsel appearing for the Operational Creditor placed reliance on the Notice of Dispute dated 05.12.2019 sent to him by the Corporate Debtor through Ahlawat & Associates Advocates. Obviously, the Corporate Debtor would not have been able to reply or raise notice of dispute, had he not received the demand notice. Hence, it is deemed that the Demand Notice was successfully delivered by the Operational Creditor to the Corporate Debtor.

11. That, on perusal of the Affidavit [annexed at page 16-17 of the Application filed by the Operational Creditor] under Section 9(3)(b) of IBC 2016, it is observed that it has been averred by the Applicant that Operational Creditor has not received any notice of dispute of the Operational Debt from the Respondent/Corporate Debtor. However, during the course of hearing, the Ld. Counsel for the Operational Creditor admitted that the same was received and is enclosed as Annexure P-/9 with the Petition. Therefore, we are of the view that

since the Notice of Dispute has been annexed by the Petitioner with the Application, no prejudice shall be caused to anyone.

12. That since the Corporate Debtor has admitted its liability in its reply to the Demand Notice / Notice of Dispute dated 05.12.2019 as well as during the course of hearing on 23.07.2021, in our considered opinion, the Operational Creditor has been able to prove the default in payment of the operational debt by the Corporate Debtor.

13. That in the facts and circumstances as mentioned above, the Operational Creditor has been able to establish the default on the part of Corporate Debtor in payment of the operational debt. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the IBC, 2016.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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.”

14. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Harvinder Singh having IBBI Registration No. IBBI/IPA-001/IP-P00463/2017-18/10806 ([harvinder@akgandassociates.com](mailto:harvinder@akgandassociates.com)) as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

*“Mr. Harvinder Singh having IBBI Registration No. IBBI/IPA-001/IP-P00463/2017-18/10806 is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”*

15. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

16. A copy of this Order shall be communicated immediately to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**