

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.176/Chd/Chd/2023

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Municipal Corporation,
Chandigarh, through its Commissioner, Municipal
Corporation,
New Deluxe Building, Sector-17, Chandigarh.
(PAN No.-AAALM0758K)

...Petitioner-Operational Creditor

Vs.

M/s Pashchatya Entertainment Pvt. Limited,
2533, Punjabi Basti, Old Subzimandi,
Delhi - 110009,
Local Address - SCO 10-12, 1s floor,
Sector-17-B, Chandigarh.
CIN No. is U92199DL2002PTC11779
(PAN No.-AADCP2932N)

...Respondent-Corporate Debtor

Judgment delivered on: 07.05.2024

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. L.N. Gupta, Member (Technical)**

For the Petitioner- Operational Creditor : Ms. Diya Sodhi, Advocate with
Karishma Sharma, Advocate

For the Respondent-Corporate Debtor : ex-parte vide order dated
29.04.2024

**Per: Harnam Singh Thakur, Member (Judicial)
L.N. Gupta (Technical)**

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Municipal Corporation (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Pashchatya Entertainment Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, is a Company incorporated on 26.11.2002 under the provisions of the Companies Act, 1956 with CIN No. U92199DL2002PTC117798 with its registered office at 2533, Punjabi Basti, Old Sabzi Mandi, Delhi-110009. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A-14.

3. It is averred that the Municipal Corporation, Chandigarh (Operational Creditor) being the local governing body in pursuance of its duties floated a tender for the operation and management of 57 paid parking lots in Chandigarh and initially, issuing Letter of Intent dated 16.01.2020 and thereafter, allotted the same to the Corporate Debtor being the highest bidder for a period of 3 years by issuing allotment letter dated 23.01.2020, wherein Corporate Debtor agreed to pay Rs. 5,51,11,111/-per annum for operation and management of 57 paid parking lots in Chandigarh. However, the Corporate Debtor has defaulted in making payments despite repeated reminders.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.7,26,26,617.61/- (Seven Crores Twenty Six Lakhs Twenty Six Thousand Six Hundred and Seventeen Rupees and Sixty

One paisa) which is outstanding/due on the part of M/s Pashchatya Entertainment Pvt. Ltd including Rs. 7,23,000/- on account of violation of challans issued to the corporate debtor. Out of the total outstanding dues, an amount of Rs. 7.19.03,617.61/- is calculated on account of license fee with interest@12% per annum from July 2020 up to 01.03.2023. The default occurred on 07.04.2021 i.e. when license fee of Rs.45,92,593/- fell due (amount fell due on 7th of each month). The last payment of Rs. 20,00,000/- was received on 26 December, 2022 (as per bank statement attached as Annexure-a10). Therefore, the date of default can also be taken as 26.12.2022. Copy of RFP (Annexure A1), Letter of intent dated 16.01.2020 (Annexure A2), allotment letter dated 23.01.2020 (Annexure A3), calculation sheet (Annexure A4), chart showing details of debt due (Annexure A6), Bank Gaurantees dated 18.01.2020 (Annexure A7), FIR No. 24 dated 18.02.2023 (Annexure A8), certificate of registration of charge issued by ROC dated 26.11.2002 (Annexure A9), Bank statement for the period January 2020 to 2023 of operational creditor (Annexure A10), communications/undertakings by corporate debtor to deposit outstanding due (Annexure A11), reminders/ emails sent by the operational creditor requesting for clearing the outstanding dues and show cause notice (Annexure A12), judgments dated 22.02.2022 02.04.2022 & 31.01.2023 (Annexure A13) are attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 13.03.2023 and the same has been delivered to the corporate debtor vide registered post as the postal receipts and tracking report are attached as Annexure-A5 with the petition. The corporate debtor has not replied to the demand notice.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavits of service have been filed vide Diary Nos. 2022/1 dated 26.09.2023 and 02463/1 dated 01.12.2023. None appeared on behalf of the respondent-corporate debtor on 16.10.2023 and 29.11.2023. However, last opportunity was granted to corporate debtor to appear vide order dated 18.01.2024, despite that none appeared on behalf of the respondent-corporate debtor and no reply was filed. Therefore, the respondent corporate debtor was proceeded ex-parte vide order dated 29.04.2024.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether this application is filed within limitation. A demand notice issued dated 13.03.2023 in Form 3 attached as (Annexure A5) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default of 07.04.2021 i.e. when license fee of Rs.45,92,593/- fell due (amount fell due on 7th of each month). Further, it is seen from the records that the last payment of Rs. 20,00,000/- was received on 26 December, 2022 (as per bank statement attached as Annexure A10). Therefore, the date of default can also be taken as 26.12.2022. In both the cases, the date of default is well within the limitation period. This application was filed vide Diary No. 02022 on 16.06.2023 and was re-filed on 06.07.2023. Therefore, this Adjudicating Authority finds that this application is filed within limitation period of 3 years.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by learned counsel for the

petitioner by way of affidavit filed under Section 9(3)(b) dated 14.03.2019 that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on day.

Moreover, despite several notices to the respondent-corporate debtor, there was no reply filed on behalf of the respondent. So, it can be assumed that they have nothing to say in the present matter. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

10. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.7,26,26,617.61/- (Seven Crores Twenty Six Lakhs Twenty Six Thousand Six Hundred and Seventeen Rupees and Sixty One paisa) which is outstanding/due on the part of M/s Pashchatya Entertainment Pvt. Ltd including Rs. 7,23,000/- on account of violation of challans issued to the corporate debtor. Out of the total outstanding dues, an amount of Rs. 7.19.03,617.61/- is calculated on account of license fee with interest@12% per annum from July 2020 up to 01.03.2023 still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. The default is evident from the calculation sheet (Annexure A4), chart showing details of debt due (Annexure A6), Bank statement for the period January 2020 to 2023 of operational creditor (Annexure A10). The respondent-corporate debtors failed to make the payment despite the repeated reminders/ emails sent by the operational creditor requesting for clearing the outstanding dues and show cause notice (Annexure A12). In support of his arguments learned counsel placed reliance upon the judgments

dated 22.02.2022 (bearing CWP-2943-2022), 02.04.2022, (bearing CWP-7078-2022) & 31.01.2023 (bearing CWP-1776-2023(O&M)) filed by the respondent-corporate debtor against the petitioner which have been dismissed as withdrawn are attached with the main petition (Annexure A13).

Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore by the respondent-corporate debtor.

11. In the present petition all the requirements of Section 9 of IBC i.e. debt, default and no dispute between the parties have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s Pashchatya Entertainment Pvt. Ltd. and declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002;
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

12. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. We appoint Mr. Navneet Gupta, Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619, E-mail: navneetguptaca@gmail.com, Mobile No. +91- 9814333213 from the list provided by the Insolvency and Bankruptcy Board of India. The Law Research Associate of this Tribunal has checked the credentials of Mr. Navneet Gupta and there is nothing adverse against him. This Adjudicating Authority further directs that:

- i.) The term of appointment of Mr. Navneet Gupta shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution

Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in

managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any

non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the

determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

13. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

14. The order of moratorium shall have effect from the date of this order till 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.

15. The petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two lakhs Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

16. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

17. This petition is accordingly admitted.

Sd/-
(L.N. Gupta)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

May 07, 2024
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