

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - II
KOLKATA**

C.P. (IB) No. 204/KB/2022

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Dhanashree Electronics Limited [CIN L31103WB1987PLC042594],], a Company incorporated under the Companies Act, 1956, having its registered office at Plot No. XI, 16 Block EP &GP, Salt Lake City, Kolkata - 700091

...Operational Creditor

-Versus-

DKLH Hospitality Service Private Limited [CINU55209WB2017PTC222369], a Company incorporated under the Companies Act, 2013, having its registered office at Sree Tower-VI, AC-3 Saha Bagan Flat No. 5, 5th floor, Baguiati Kolkata – 700059.

... Corporate Debtor

Date of Hearing: 04.08.2022

Date of pronouncing the order: 29.08.2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Operational Creditor

Mr. Abhijit Majumdar, Advocate.

ORDER

Per : Balraj Joshi, Member (Technical):

1. This Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“*the Code*”) by Mr. Nitesh Toshniwal, Managing Director of Dhanashree Electronics Limited (“*Operational Creditor*”) duly authorized *vide* Board Resolution dated 17 March, 2022¹ seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against DKLH Hospitality Service Private Limited (“*Corporate Debtor*”).
3. The present petition was filed on **10 July, 2022** before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of Rs.2,73,26,656.77/- (Rupees Two Crores Seventy-Three Lakh Twenty Six Thousand Six Hundred Fifty Six and Seventy Seven Paise only) [including interest @18% till 01 February, 2022 of Rs.1,96,04,465/-).
4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.10,00,000/- (Rupees Ten Lakh only) with paid up Capital as Rs.1,00,000/- (Rupees One Lakh only). The amount fell ***due from February, 2018***.

Submission of the learned Counsel for the Operational Creditor

5. The Operational Creditor is a public limited company and is in the business of manufacturing and supplying of LED Bulbs and other allied items including providing of leasing and rental services. Whereas, the Corporate Debtor is engaged in the business of catering, running restaurants and hospitality services.
6. On 06 July, 2017 ‘*Dum Laga Ke Haisa*’, a partnership firm (later on the control, ownership and management was taken over and merged with the Corporate Debtor *vide* a Board resolution dated 25 August, 2017 of the Corporate Debtor and started functioning as a unit of Corporate Debtor) entered into two Agreements (one is for Leave & Licence Fee and another for Service Charges) with the Operational Creditor.

¹Page 134 of the Petition.

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7. Whereby one premises admeasuring about 5000 Sq.Ft. located at ground floor of Annexure Building, Room no.A-01, Plot No.XI-16, Block EP & GP, Salt Lake Electronic Complex, Sector-V, Salt Lake, Kolkata- 700091 was taken on leave and licence for the period from 01 July, 2017 to 30 June, 2020 at a licence fees of Rs.3,00,000/- per month and service charges of Rs.3,00,000/- per month plus Service/Tax/GST for the said period.
8. Accordingly, the Operational Creditor started raising monthly invoices in accordance with the clauses of the aforesaid Agreements. But, after 4 months, the Corporate Debtor expressed their inability to pay the monthly invoices and requested the Operational Creditor, verbally to reduce Leave and Licence fees and Services charges from Rs.3,00,000/- per month plus GST to Rs.2,00,000/- per month plus GST, which the Operational Creditor agreed verbally.
9. According, to the new arrangement the Operational Creditor started raising monthly bills for Leave & Licence fees and Service charges on the reduced rates at the rate of Rs.2,00,000/- plus GST each but the Corporate Debtor after paying the invoices of June, 2018 partly stopped payment of monthly bills, without any reason.
10. Thereafter, on 16 February, 2019, as a part discharge of their liabilities, the Corporate Debtor issued and handed over an account payee cheque in favour of the Operational Creditor amounting to Rupees 10,00,000/bearing no.622205 drawn on Axis Bank, Electronic Complex branch, Kolkata-700091, but the said cheque was dishonored by their banker on the ground of insufficient fund on 22 February, 2019.
11. The Operational Creditor made repeated requests to the Corporate Debtor to make payment of the outstanding amount. Despite such requests and commitments, the Corporate Debtor failed to clear the above amounts that fell due by virtue of the invoices raised by the Operational Creditor.
12. The Operational Creditor issued Demand Notice dated 13 September, 2021 (*Annexure – G*) under section 8 of the Code to the Corporate Debtor, but no response was received from the Corporate Debtor. Despite such requests and

commitments, Corporate Debtor failed to clear the above amount that fell due by virtue of the submitted invoices.

Analysis and Findings

13. We have heard the Ld. Authorized Representative appearing for the Operation Creditor and perused the records and the concerned documents annexed to the Petition.
14. Before delving into the merits of the case, which would have required hearing the corporate debtor as well, it is pertinent to mention that Petitioner states on page 10 of the Petition, default first occurred in February, 2018. However it is seen that this instant application has been filed by the Operational Creditor on 10 July, 2022.
15. As envisaged Article 137 of the Limitation Act, 1963, time from which period begins to run is “when the right to apply accrues” the right to apply accrues when invoices issued by the Operational Creditor to the Corporate Debtor were not paid. However, in this case the invoices are due from June, 2018, which are more than three years earlier from the date of filing of Section 9 Application. Hence, the Application is barred by limitation, and, is hereby rejected.
16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
17. File be consigned to record.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The Order is pronounced on 29th day of August, 2022

SA, LRA