# IN THE NATIONAL COMPANY LAW TRIBUNAL
# JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,**
**HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,**
**HON'BLE TECHNICAL MEMBER**

***IA (IBC) No. 312/JPR/2023***
***& CP No. (IB)- 26/9/JPR/2019***

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)*

**IN THE MATTER OF:**

**AKBAR TRAVELS OF INDIA PVT. LTD.**

**...Operational Creditor**

**VERSUS**

**RITCO TRAVELS & TOURS PVT. LTD.**

**...Corporate Debtor**

**MEMO OF PARTIES**

**AKBAR TRAVELS OF INDIA PVT. LTD.**
R/o: 69-71, Akbar Bhavan, 1st Floor,
Janjikar Street Near Crawford
Market, Mumbai- 400002

**...Operational Creditor**

**VERSUS**

**RITCO TRAVELS & TOURS PVT. LTD.**
R/o: Transcorp Tower, Moti
Doongri Road, Jaipur- 302004

**...Corporate Debtor**

**FOR THE APPLICANT:** Jitendra Mishra, Adv.
Prateek Kedawat, Adv.



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**FOR THE RESPONDENT:** Susshil Daga, Adv.
Akshita Koolkwal, Adv.

**Order Pronounced On: 30.11.2023**

**ORDER**

**Per: Shri Rajeev Mehrotra, Technical Member**

1. The present Application has been preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/'Code') by *M/s Akbar Travels of India Pvt. Ltd.* ('Operational Creditor') seeking Corporate Insolvency Resolution Process of *M/s RITCO Travels & Tours Pvt. Ltd.* ('Corporate Debtor') on account of default in payment of Rs.1,21,52,221/- (Rupees One Crores Twenty-One Lakhs Fifty Two Thousand Two Hundred and Twenty One Only).

2. The Application has been filed on the basis of the following set of facts:

   2.1. The representatives of the Respondent Company requested the Petitioner to process and issue *Sold Outside, Ticketed Outside* ('SOTO') tickets on urgent basis for certain clients. The Respondent placed similar orders for urgent bulk booking of SOTO Tickets for immediate travel on credit cards. The Respondents booked 33 SOTO tickets through the Petitioner amounting to Rs. 49,63,182/- (Rupees Forty-Nine Lakhs Sixty-Three Thousand One Hundred and Eighty-Two Only).



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2.2. On 08.04.2017, the Respondent requested the Petitioner not to hold/cancel any tickets and undertook full responsibility in the event a debit note is issued for the said transactions. The Respondent's representative namely, *Ms. Severine Fernandes*, conducted a meeting with the Petitioner's Chief Operating Officer, *Mr. Amey Almadi*, regarding the same. On 11.04.2017, an e-mail was preferred by the Respondent to the Petitioner requesting to ensure that there is no delay/reluctance in processing the reservations. From 04.04.2017 to 13.04.2017, 87 of SOTO Tickets for an aggregate sum of Rs. 1,25,87,533/- (Rupees One Crore Twenty-Five Lakhs Eighty-Seven Thousand Five Hundred and Thirty-Three Only) were processed by the Petitioner.

2.3. On 17.04.2018, the Petitioner received an e-mail from Emirates Airline informing about a charge back intimation. As many as 37 Agency Debit Memos ('ADM') were raised by the Emirates Airline for Rs. 46,96,835/- (Rupees Forty-Six Lakhs Ninety-Six Thousand Eight Hundred and Thirty-Seven Only). The Petitioner requested the Respondent to make the necessary payments regarding the same. As a result, the Respondent's representative requested Petitioner through e-mail that the dispute of the ADMs be called fraudulent transactions. It was informed



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by the Petitioner that the ADM's disputed were rejected by Emirates Airlines in accordance with IATA Rules. The Respondent's representative via e-mail dated 20.06.2018 shifted the burden and mentioned that the Petitioner failed to exercise due care while booking the tickets. The Petitioner had earlier on multiple occasions expressed their concern to the Corporate Debtor's representatives.

2.4. The First cycle of ADM's aggregating to Rs. 44,92,880/- (Rupees Forty-Four Lakhs Ninety-Two Thousand Eight Hundred and Eighty Only) was due to be paid on 26.06.2017. The Petitioner informed the Respondent that the next cycle of ADM's was due to be paid and requested to clear the existing overdue of Rs. 44,92,880/- (Rupees Forty-Four Lakhs Ninety-Two Thousand Eight Hundred and Eighty Only). Further ADMs amounting to Rs. 22,17,207/- (Rupees Twenty-Two Lakhs Seventeen Thousand Two Hundred and Seven Only) were received by the Petitioner due on 31.08.2017. On 22.08.2018, a demand notice under Section 8 of the Code was preferred by the Petitioner calling upon the Corporate Debtor to make payment of the aggregate sum of Rs. 1,21,52,221/- (Rupees One Crore Twenty-One Lakhs Fifty-Two Thousand Two Hundred and Twenty-One Only).



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2.5. The Corporate Debtor replied to the demand notice via letter dated 08.09.2018 stating that there is no debt owed payable by the Corporate Debtor to the Operational Creditor and the transactions were not deemed to be on credit basis. The Petitioner sent another letter dated 20.10.2018 calling upon the Corporate Debtor to make the payment due. The aforementioned details as mentioned in PART IV of the Application is reiterated below:

| ***Sr. No.*** | ***Particulars of Operational Debt*** | |
|---|---|---|
| 1. | Total amount of debt granted<br><br>Date(s) of disbursement | Rs. 1,21,52,221/- (Rupees One Crore Twenty-One Lakhs Fifty-Two Thousand Two Hundred and Twenty-One Only)<br><br>Booking of 87 SOTO tickets during a period of 4th April to 13th April 2017 on express assurance of the Corporate Debtor.<br><br>Amounts due from 22nd May2017 on continuing basis. |
| 2. | Amount claimed to be in default and the date on which the default occurred | Rs. 1,21,52,221/- (Rupees One Crore Twenty-One Lakhs Fifty-Two Thousand Two Hundred and Twenty-One Only)<br><br>Amounts due from 22nd May2017 on continuing basis. |



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3. The Corporate Debtor has preferred reply to the Application delineating the following points:

3.1. The C orporate Debtor is an International Travel Agent recognized by International Air Transport Association ('IATA') engaged in business of giving assistance to travelling and touring public. The Corporate Debtor received bulk orders for SOTO tickets from a global corporate client i.e. *M/s Elumatec UK Ltd.* in the month of April, 2017. The Corporate Debtor passed/referred the booking orders received to the Applicant. The transactions relating to the booking of the tickets referred by the Corporate Debtor was accepted by the Applicant and the tickets were booked for the passengers of *M/s Eluma tec UK Ltd.* ('Elumatec') during the period from 04.04.2017 to 13.04.2017. The entire process of issue and booking was done by the credit cards of the intending purchaser of air tickets in accordance with the ongoing trend and requirement of business. Hence, the payment against such bookings was made through credit cards referred by the purchaser of such tickets i.e. *Elumatec*.

3.2. The Corporate Debtor submits that the payment through credit card is process by the bank issuing such credit card wherein as soon as the card is swiped, followed by entering the pin number; the actual amount to be charged is transmitted to the bank issuing such credit card. Once the payment is received by the bank and confirmation of payment is received by the travel agency within few minutes of the transaction from the bank, the travel agency issues the air tickets. The Corporate Debtor merely acted as a referral agent against commission and only provided the details of the credit cards through which the corporate client intended to make such payment.

3.3. Subsequent to the successful completion of the payment against issuance/booking of tickets, the Applicant raised a financial claim upon the Corporate Debtor after alleging that the transactions done through credit cards have failed. The Corporate Debtor aggrieved by the act of the Applicant, in sending goons to the Corporate Debtor's office demanding the payment against alleged credit card transactions, send a legal notice dated 11.08.2017 to the Applicant. The Applicant replied vide letter dated 22.08.2017 demanding payment from the Corporate Debtor.

3.4. It is submitted that the Applicant despite receiving the payment confirmation, asked the Corporate Debtor to indemnify it in respect of the charge back intimation received by *Emirates Airlines* owing to the bookings/ reservations of SOTO tickets vide the credit cards. The airline subsequently raised ADMs owing to the reason that the reservations/bookings were fraudulent credit card transactions.

3.5. It has been contended that the Applicant does not fall within the ambit of Operational Creditor as defined under Section 5(21) of the Code for the Applicant has not rendered any services nor provided any goods to the Corporate Debtor but only acted as a referral agent to the Applicant. Moreso, the Corporate Debtor denied the alleged debt raised by the Applicant through various correspondences on cogent grounds substantiating its denial. Since, the alleged transactions were never deemed to be on credit basis, a charge back cannot be passed on the shoulders of the Corporate Debtor since the bookings were made by Applicant itself.

3.6. The constant correspondence between the parties clarifies that there is a pre-existing dispute and various correspondences have been annexed to support the same. A Letter was preferred by the Corporate Debtor to the Applicant on 31.08.2017 requesting the Applicant not to indulge in activities like sending goons for recovery. In reply, the Applicant vide letter dated 16.11.2017 demanded a payment of Rs. 1,23,04,479/- (Rupees One Crore Twenty-Three Lakh Four Thousand Four Hundred and Seventy-Nine Only). The Corporate Debtor wrote to the Applicant vide letter dated 06.12.2017 delineating that the transactions were only on referral basis and thereby do not make the Corporate Debtor liable for any payment. The Applicant replied to the same vide letter dated 07.12.2017 explaining that bookings were made by the Applicant on account of the express understanding that in event of any chargebacks from the airlines, the Corporate Debtor will be solely responsible. Lastly, the Corporate Debtor vide letter dated 18.12.2017 requested the Applicant to provide the details regarding the refusal of issuance of tickets on part of the Applicant between the period from 04.04.2017 to 13.04.2017.

3.7. Despite replying to the demand notice and raising dispute regarding the debt as alleged, the Applicant has filed the present Application under Section 9 of the Code. Moreso, no liability can be fastened on the Corporate Debtor for the failed transactions once the tickets are issued by the Applicant. It has also been submitted that in the past, the issuance of tickets has been rejected by the Applicant where the payment was declined by the credit card issuing bank.

4. The Petitioner has preferred rejoinder to the Reply pointing out the following:

4.1. The Petitioner has annexed a copy of the ledger account from 01.04.2017 to 31.03.2018 which demonstrates that the Applicant from time to time paid commission to the Corporate Debtor. The Corporate Debtor has received over Rs. 4 Lacs (approx.) commission towards the booking of ticket through the Applicant. A First Information Report (F.I.R.) was filed by the Corporate Debtor on 15.07.2017 in Mumbai Police Station stating that they have booked the tickets and issuance was done by the Applicant and the commission was also received by the Corporate Debtor. The Applicant contends that the Corporate Debtor has only filed this particular FIR to escape its liability.

4.2. The Applicant has further relied upon the e-mails to show that the tickets had been booked by the Corporate Debtor and issued by the Applicant. The Corporate Debtor used to book the tickets through GDS system, wherein the details were filled by the Corporate Debtor and the PNR was generated which was queued to the Applicant for issuance. Once the PNR was entered in GDS system by the Applicant, all the passenger details, flight details, sector, date of travel and form of payment appeared on the system. While making the payment, the Corporate Debtor usually used to settle the payment through Cash Mode i.e. settlement with Applicant was done through normal banking channels and subsequently, the Applicant made payment to Billing and Settlement Plan ('BSP') according to their cycle; then BSP made payment to respective Airlines.



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4.3. In the present case, the Corporate Debtor opted for Card-Non Face to Face Transaction ('Pass Through Transaction') wherein the Credit Card used by the Corporate Debtor is accepted. While processing, authorization/approval code was generated in GDS system and ticket was issued to the Applicant. Though the ticket issuance was done by the Applicant, payment was directly made to the Airline and thus no confirmation of payment was received by the Applicant. Moreso, there is enough documentation to prove that there is privity of contract between the Applicant and the Corporate Debtor. In due course of time, the Corporate Debtor acted as a sub-agent of the Applicant and booked the ticket for their customer and the applicant rendered the service as per the request of the Corporate Debtor.

4.4. When the airline raised a chargeback to the Applicant by issuing ADM, in accordance with IATA Rules, the Applicant was forced to make the payment for the said ADM since the Corporate Debtor denied to make the payment. The Applicant wasn't aware that the tickets were booked by the Corporate Debtor for their client i.e. *Elumatec.* An e-mail was preferred by the Corporate Debtor on 11.04.2017 wherein it offered the business for their Corporate Client to provide the ticket for corporate card and the ticket can be issued after acceptance of corporate card by the Airline. The Corporate Debtor assured and undertook guarantee for any issue in respect of the credit card or debit note raised by the Airline. The Applicant replied on the very same date and accepted the guarantee. The PNR queued by the Corporate Debtor is an admitted proof of the fact that services were being rendered by the Applicant.

4.5. Further, the Hon'ble Supreme Court in several judgments have clarified that the definition of an Operational Creditor is any person whom an operational debt is owed, and the Operational Debt means any claim regarding services rendered, including a debt in respect of repayment of dues. The Applicant fulfils all the requisite qualifications for being categorized as an Operational Creditor. The parties were in business for more than 10 years and from time to time the Applicant rendered the services and paid commission to Corporate Debtor on booking of the tickets through the Applicant.

4.6. The Corporate Debtor's representatives induced the Applicant to believe that the tickets were being booked on the behest of a global corporate client and Applicant was requested to process the bookings on the basis of credit card details furnished by the said corporate client. On and around 07.04.2017, the Applicant intimated Respondent's representative its concern and reservation about the transactions regarding 33 SOTO tickets. It was conveyed that in event the aforesaid payments, vide credit cards fails, the respective airlines would have a claim against the Applicant. The Respondent assured Applicant's representatives that the reservations were being made for a well-known corporate client and that no such difficulty would arise. Again on 08.04.2017, the Respondent through mail requested the Applicant not to hold/cancel any tickets on the above ground and undertook full responsibility in the event a debit note is issued; hence, the Corporate Debtor would indemnify the Applicant against any loss that may arise on account of such transactions.

4.7. On 10.04.2017, the applicant was given to understand that the recurrent bookings were being made for one of Respondent's reputed corporate clients. Moreso, an e-mail has been attached dated 10.04.2017 which says that *"We are taking full responsibility if you get any debit note from the airline"*. Further in a mail dated 11.04.2017, the Respondent's representative namely *Ms. Severine Fernandes* assured the representative of the Applicant namely *Mr. Amey Almadi* that the Corporate Debtor will indemnify the Applicant for any claims arisen in connection with the said transactions. The particular e-mail reads as below:

> *"We refer to our ticketing through Corporate Credit card kindly be advised that the card holder is our Corporate Client*



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*and the tickets are issued only after the acceptance of the payment through Corporate Card by the airline.*
*We assure that there won't be any issue of any kind of debit notes and we are taking full responsibility of the same……… "*

4.8. The Applicant continued to issue tickets despite apprehension solely on the basis of the Respondent's undertaking. Thereafter, via e-mail dated 13.04.2017, the Corporate Debtor informed the Applicant that it had requested its corporate client to henceforth make payments by way of bank transfer and once the client agreed, no further requests for bookings on credit card would be made. During the same time, the Applicant sought to verify details of a customer on whose behalf the tickets were requested to be booked; when the Applicant came across a newspaper article regarding the arrest of the same person *Mr. Babtunde Abiola*. The same was informed to the Applicant. Later, on 17.04.2017, the Applicant received an e-mail from *Emirates Airline* informing about a charge back on one of the aforesaid bookings, which was immediately informed to the Corporate Debtor. As on 22.05.2017, as many as 37 ADMs were raised by the Airlines against the Applicant.

4.9. The Corporate Debtor requested the Applicant to dispute the ADMs, to which the Applicant said that the time to dispute certain ADMs had already expired, hence, the Corporate Debtor was liable to make the necessary payment. The other ADMs were disputed by the Applicant.



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The Corporate Debtor also mentioned that complaints have been lodged against the said transactions. The e-mail communication dated 29.05.2017 validating the aforementioned has been duly annexed. The Corporate Debtor made lumpsum payment of Rs. 3,40,000/- (Rupees Three Lakhs Forty Thousand Only) towards the aforementioned ADMs and requested the Applicant not to adjust the sum till the matter is resolved at the Corporate Debtor's end.

4.10. On 15.06.2017, the Applicant informed the Corporate Debtor that the disputed ADMs have been rejected by the respective Airlines, hence as per IATA Rules, the payments were required to be made on or before the remittance dates. Thereafter, on the request of the Corporate Debtor, the Applicant approached the Airlines again to reconsider the ADMs but the same was rejected by the Airlines. The first cycle of ADMs of Rs. 44,92,880/- (Rupees Forty-Four Lakhs Ninety-Two Thousand Eight Hundred and Eighty Only) was due to be paid of 26.06.2017. On failure of the Corporate Debtor in making the payment, the Applicant was compelled to make the payment as the IATA rules stipulate cancellation of the agent's license on failure to make the requisite payments within stipulated time. Thereafter, the Applicant paid a further sum of Rs. 7,18,195/- (Rupees Seven Lakhs Eighteen Thousand One Hundred



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and Ninety-Five Only) to the Airlines on the due date mentioned therein. The Applicant called upon the Corporate Debtor to make the payment via e-mail dated 07.08.2017.

4.11. Later, the Applicant received further ADMs of Rs. 22,17,207/- (Rupees Twenty Two Lakhs Seventeen Thousand Two Hundred and Seven Only) due on 31.08.2017. The Applicant called upon the Corporate Debtor to make payments but to no avail. It is contended that the tickets were booked on a pass-through basis where though the tickets are issued by concerned travel agent, the payments directly pass through respective Airlines. The process for reservation of the said tickets was initiated by the Corporate Debtor by generating PNR on its own system and thereafter, the bookings so made by the Respondent were forwarded to the Applicant for the purpose of processing and issuance of tickets. The said bookings, at times, include the updated Credit Card details or else would be accompanied by an email stating credit card details including the card number and expiry date of the respective credit cards wherein, the Applicant were required to process the bookings by filing the said credit card details in the designated Computer Reservation System ('CRS'). Upon punching in the said details, an approval code was generated through the CRS along with the ticket. Once the approval code



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and the ticket were generated, the control of the booking went back to Respondent, who had initiated the booking in the first instance. The payments were to be received by the Airlines directly from the respective card-holders. Hence, the ticket were issued on generation of approval code based on the credit card details furnished by the Corporate Debtor and payments were to be honored only at a later date. The Applicant had also cautioned the Corporate Debtor and the Corporate Debtor had time and again assured the Applicant that in the event of any charge back, the Corporate Debtor was to bear the complete responsibility.

5. The Applicant also filed a set of Written Submissions vide Diary No. 2744/2022 dated 13.09.2022 wherein the following has been submitted:

5.1. It has been reiterated that the Applicant provided the services to the Corporate Debtor by processing and issuing tickets booked by the Corporate Debtor amounting to Rs. 1,25,87,533/- (Rupees One Crore Twenty-Five Lakhs Eighty-Seven Thousand Five Hundred and Thirty-Three Only) and invoices were raised by the Applicant upon the Corporate Debtor. The payment of the tickets to the concerned airlines was to be done through Credit Card, the details of which were provided by the Corporate Debtor while booking the tickets. Since the value of tickets was high, the Applicant conveyed its concern regarding the



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failure of payment through credit card and subsequent issuance of ADMs by the Airlines. The Corporate Debtor expressly and unconditionally undertook the responsibility for the payment if the debit notes were raised by the Airlines.

5.2. Several ADMs were issued by the concerned Airlines due to fraudulent Credit Cards and the amount was demanded by the Applicant. The Corporate made part payment of Rs. 3,40,000/- (Rupees Three Lakhs Froty Thousand Only) on 31.05.2017 against certain ADMs but failed to pay the amount due against other ADMs aggregating to Rs. 1,04,61,320/- (Rupees One Crore Four Lakhs Sixty-One Thousand Three Hundred and Twenty Only). The Petitioner did not have any role in payment based on Credit Card details but was only required to do limited activities for issuance of tickets upon getting the PNR number from the Corporate Debtor. The Corporate Debtor undertook full responsibility in event of any debit note from the Airline. The Applicant has pointed out the e-mails through which the Corporate Debtor undertook the complete responsibility with respect to the said transactions.

6. An Application numbered as *IA(IBC) No. 312/JPR/2023* has been filed by the Corporate Debtor to place certain additional documents on record. Along with



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the same the Corporate Debtor has highlighted certain e-mails including e-mail dated 18.04.2017 preferred by the Applicant to the Corporate Debtor, e-mail dated 20.07.2017 preferred by the Corporate Debtor to the Applicant, e-mail dated 04.09.2018 preferred by the Applicant to the Corporate Debtor and e-mail dated 31.05.2017 preferred by the Corporate Debtor to the Applicant. The Applicant has preferred reply to the said Application while relying upon the judgment of the Hon'ble NCLAT in *Tek Travels Pvt. Ltd. vs. PCM Worldwide Flights Pvt. Ltd.* and submitting that the application has been filed at a belated stage.

7. The Corporate Debtor on 31.10.2023 has filed Written Submissions contending that initially a credit card was swiped followed by entering a three digit pin number and then the actual amount to be charged was transmitted from the bank account of the purchaser to the bank account in which the payment was made. After the successful completion of the transaction, the travel agency issued air tickets to the purchaser and the entire process shows that only after the confirmation of payment was received by the Bank, the Operational Creditor booked and issued tickets to the passengers. The Corporate Debtor played no part in booking apart from referring the booking orders and receiving the commission out of the bookings. The Applicant raised a claim against the Corporate Debtor after completion of the entire

aforesaid process. Various correspondences were exchanged between the parties to the case where the Corporate Debtor only played the role of a Referral Agent/Facilitator; the nature of business was that of Principal and Agent. The Applicant also preferred Written Submissions vide Diary No. 2711/2023 dated 16.11.2023 reiterating the points made earlier.

8. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Rejoinders, Written Submissions and Applications along with the documents enclosed therein.

9. To determine the present matter, we have to look into the facts of the case so as to ascertain whether the ingredients as required to be fulfilled to initiate CIRP in an Application filed under Section 9 of the Code are met with. The undisputed facts of the case reveal that the Corporate Debtor placed orders for issuance of SOTO Tickets to the Applicant against certain Corporate Credit Cards. The Applicant alleges that the tickets were booked through GDS system, by virtue of which the details were filled by the Corporate Debtor and the PNR generated was entered in the GDS by the Applicant; then ticket was issued and payment was directly made to the Airline, hence no payment/confirmation of payment was received by the Applicant. The Corporate Debtor on the other hand has mentioned that initially a Credit Card was swiped followed by entering a 3 digit pin number and the actual amount



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charged was transmitted from the bank account of the purchaser to the bank account where the payment was made; only upon successful completion of transaction, the travel agency issued air tickets to the purchaser.

10. It is derived out of the context of the pleadings that when payment was not made for the tickets issued by the Airlines, the Airlines would issue Agency Debit Memos (ADMs) which were payable by the Agency issuing the tickets. Further, when the ADMs were initially issued by the Airlines to the Applicant, the correspondence between the parties demonstrates that the Corporate Debtor had requested the Applicant to dispute the said ADMs as fraudulent transactions. The Applicant disputed some of the ADMs and for the other ADMs the time to dispute had expired. Later, after dispute was raised, the Airlines rejected the ADMs disputed by Emirates Airlines in accordance with IATA Rules. Hence, the Applicant called upon the Corporate Debtor to pay the ADMs but when the Corporate Debtor failed, the Applicant had to bear the cost of the ADMs.

11. To understand the liability of the Corporate Debtor towards the ADMs, we refer to certain e-mails exchanged between the parties:

E-mail dated 10.04.2017 from Corporate Debtor to Applicant:

> *"Dear Abu,*
> *We are taking full responsibility if you get any debit note from the airline."*



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E-mail dated 11.04.2017 by Corporate Debtor to Applicant:

> *"We refer to our ticketing through Corporate Credit card kindly be advised that the card holder is our Corporate Client and the tickets are issued only after the acceptance of the payment through Corporate Card by the airline.*
> *We assure that there won't be any issue of any kind of debit notes and we are taking full responsibility of the same.*
> *Kindly instruct your day/night staff to offer quick service as there is a reluctancy/delay in service which is felt"*

E-mail dated 12.04.2017 from Corporate Debtor to Applicant:

> *"Dear Team,*
> ***Issue below tickets on VISA CARD***
> *4046************ - 09/17*
> *4121************ - 02/21*
> *4046************ - 01-19*
> *4121************ - 02/21*
> ***If any debit note comes against those tickets then we will be responsible."***

12. From the e-mails mentioned above and several other e-mails annexed, it is evident that the parties to the case had an understanding where the Corporate Debtor had undertaken unwavering responsibility for the issuance of debit notes, if any, from the airlines. If it were the case as alleged by the Corporate Debtor that the tickets were issued post swiping the Credit Card, there was no reason for the Corporate Debtor to undertake responsibility for the issuance of tickets by the Applicant. The responsibility taken by the Corporate Debtor and issuance of tickets by the Applicant on the basis of the said responsibility entitles the Corporate Debtor to make payment for failed transactions or



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ADMs issued by the Airlines. The payment made by the Corporate Debtor towards the ADMs also acts as an acknowledgement of debt towards the Applicant.

13. Thereafter, upon failure in payment of the ADMs by the Corporate Debtor, the Applicant preferred a Demand Notice under Section 8 of the Code dated 22.08.2018 which was replied to by the Corporate Debtor vide letter dated 08.09.2018. Section 8 requires the Corporate Debtor to, within a period of 10 days from the receipt of the demand notice, inform the Operational Creditor regarding an existence of dispute towards the debt as alleged. While the present matter was not within the time prescribed under the statute, the letters exchanged between the parties before the issuance of the demand notice read with the e-mails annexed with the Application clearly establish the dispute existing with regard to the debt as alleged by the Applicant.

14. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down the conditions precedent for triggering the CIRP under Section 9 of the Code. Para 34 is as follows: -

> *"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*
> *(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (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*



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*(iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 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 one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."*

15. Therefore, to initiate CIRP in the present matter the conditions have to be satisfied. At this juncture it is also important to quote the judgment of the Hon'ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:

> *"32. ……… On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed."*

16. It has very well been established that under Section 9 of the Code, to initiate CIRP proceedings, the Applicant is required to prove that the debt is due, it has not been paid and the debt is an undisputed debt. Correspondence between the parties is general proof of dispute in matters pertaining to Section 9 of the Code. The Hon'ble Supreme Court in *'Transmission Corporation of*



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*Andhra Pradesh Limited' V/s. 'Equipment Conductors and Cables Limited', (2019) 12 SCC 697*, while deciding the issue of Pre-Existing Dispute and in *'Mobilox Innovations Pvt. Ltd.' Vs. 'Kirusa Software (P) Limited'- 2017 1 SCC OnLine SC 353* has clearly laid down the law that the 'existence of dispute' must be Pre-Existing' i.e. it must exist before the receipt of the Demand Notice or invoice as the case may be. The material on record and documentary evidence annexed establishes that there exists a pre-existing dispute between the parties before the issuance of the demand notice. The facts of the case *Tek Travels Pvt. Ltd. vs. PCM Worldwide Flights Pvt. Ltd.* are distinguishable from the present matter, hence, have no applicability here.

17. Also, there is no contract entered into between the parties to the case which can help us decide that the onus lies in favor of the a particular party in circumstances as mentioned between the parties. In the instant case, the ingredients laid down under Section 9 read with the requirements laid down by the judicial pronouncements are not fulfilled. Therefore, in the present matter owing to the pre-existing dispute between the parties, we are not inclined to initiate CIRP of the Corporate Debtor.

18. Therefore, the Application numbered as *CP No. (IB)- 26/9/JPR/2019* is dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016 and based on the facts and pleadings submitted by the



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parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.

19. Pending applications, if any, shall stand disposed off. Let the copy of the Order be served to the parties.

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**DEEP CHANDRA JOSHI,**
**JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,**
**TECHNICAL MEMBER**