

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**C.P. NO.1693/IB/NCLT/MAH/2017**

**Under Section 9 of IBC, 2016**

**In the matter of**

Heritage Marble Private Limited ... Petitioner

**Vs.**

GStaad Hotels Private Limited ... Respondent

Order delivered on: 26.04.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Dharmesh J Shah, i/b GMS Legal

For the Respondent: Mr. Ajay Kumar, Practising Company Secretary

*Per: Ravikumar Duraisamy, Member (Technical)*

**ORDER**

Heritage Marble Pvt. Ltd an Operational Creditor (OC) has filed a Company Petition to initiate Corporate Insolvency Resolution Process (CIRP) in respect of GStaad Hotels Pvt. Ltd (CD) U/s 9 of I & B Code 2016, for failure to make total payment of ₹. 108,52,259 out of which ₹. 63, 12,728 towards principal and ₹ 44,39,531 towards interest accumulated till 25<sup>th</sup> Aug 2017 @ of 18% P.a. by the CD.

2. Operational Creditor issued the demand notice dated 12/09/2017, as per Form 4 under Rule 5 of I & B Code (Application to Adjudicating Authority) Rules 2016 and the details are given in the table below.

Sr. No.	Invoice /Bill Nos.	Date of Invoices	Invoice Amount (Rupees)	Amount Received and adjusted	Outstanding Invoice/Invoice Amount (Rupees)
1	000568	12.02.2013	21,00,0003.00	(5,00,000.0)	16,00,003.00
2	000601	05.03.2013	22,38,965.00		22,38,965.00
3	000614	12.03.2013	19,62,448.00		19,62,448.00
4	000648	30.03.2013	5,11,312.00		5,11,312.00
		<b>TOTAL</b>	<b>68,12,728.00</b>	<b>(5,00,000.0)</b>	<b>63,12,728.00</b>

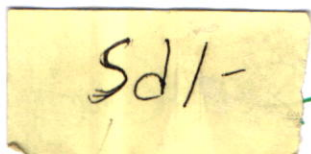
3. Operational Creditor has adjusted an Amount of ₹. 5 lacs paid by the Corporate Debtor towards Invoice No 000568 dated 12/02/2013. Operational Creditor has submitted copies of 40 reminder letters sent/addressed to Corporate Debtor starting from 17/12/2013 till 24/08/2016. Since Corporate Debtor has not honoured its outstanding payment, Operational Creditor issued the demand notice on 12/09/2017.
4. Corporate Debtor vide its letter dated 19/9/2017 denied the claim of Operational Creditor on various grounds viz failed to supply required material, submitted invoices which do not pertain to Corporate Debtor, bills enclosed do not have supporting evidence of supply, denied receipt of material from Operational Creditor and Operational Creditor do not have locus standee in Law.
5. Operational Creditor has submitted copy of the statement of accounts for the year 1/4/2012 to 31/3/2013 as confirmed by the Corporate Debtor on 25/10/2013, copy of covering letter along with 4 Invoices, copy of bank statement showing ₹ 5 lacs received by Cheque No. 948775, reminder letters demanding payment, copy of demand notice dated 12/09/2017, Copies of postal receipts and Acknowledgment Card/ Delivery Record from India Post for having sent the reminder letter/notice, copy of reply letter dated 19/09/2017 received from the Corporate Debtor , particulars of claim and default amount, HDFC



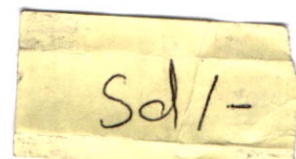
Bank statements, copy of Board Resolution 17/07/2017 etc. Operational Creditor has also submitted Tax Invoice raised against Corporate Debtor, along with cargo details and covering letters addressed to Corporate Debtor.

6. Operational Creditor has also proposed Mr. Anshuman Chaturvedi, as Interim Resolution Professional having Registration No-IBBI/IPA-001/IP-P00158/2017-18/10327, having Address:- A-404, Express Zone, Off. Western Express Highway, Goregaon (East), Mumbai, 400063
7. However, upon perusal of reply of the Corporate Debtor letter dated 19/9/2017, it's noted that Corporate Debtor itself stated that he had purchased material worth Crores of Rupees during the period of April 2010 to March 2013, but in the same letter Corporate Debtor has denied as not received any such material from Operational Creditor.
8. Upon perusal of the documents, materials submitted by Operational Creditor, we are satisfied that Corporate Debtor has failed to make payment towards supply of material/goods made by Operational Creditor, application has been filed in the prescribed Form (application form also contains relevant information) proposed an IRP and the application is complete in all respects and debt and default is established, therefore, it's a fit case to admit U/s 9 of I & B Code 2016, to declare moratorium and to appoint IRP as proposed.
9. In view of the reasons mentioned above, we hereby admit this case by declaring moratorium u/s 14 of the Code with the following directions:
  - I.(a) That this Bench hereby prohibits 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 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.
  - (II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
  - (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - (IV) That the order of moratorium shall have effect from 26.04.2018 till the 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.
  - (V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
10. Accordingly, this Company Petition No. 1693/2017 admitted.



**RAVIKUMAR DURAISAMY**  
**MEMBER(TECHNICAL)**



**B.S.V. PRAKASH KUMAR**  
**MEMBER(JUDICIAL)**