



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 397/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

In the matter of

KTR Management Services Private Limited

Having its address at 107, Floor-1,3
Shivmudra CHS, Laxinarsingh Papan Marg,
Gandhi Nagar, Worli, Mumbai- 400018

..... Petitioner/ Operational Creditor

Versus

Sahara Hospitality Limited

Having its address at Hotel Sahara Star,
Opposite Domestic Airport, Vile Parle
(East), Mumbai- 400099

..... Respondent/Corporate Debtor

Order Delivered on :- 21/11/2024



Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Sachin Daga a/w Mukul Bhagtani

For the Corporate Debtor : Adv. Sandeep Bajaj a/w Parijat

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") by **KTR Management Services Limited** (hereinafter called 'Operational Creditor') praying, inter-alia, for initiation of Corporate Insolvency Resolution Process ('CIRP') against **Sahara Hospitality Limited** (hereinafter called 'Corporate Debtor') for resolution of an unresolved Operational Debt of Rs. 8,22,82,004/- (Rupees Eight Crores Twenty Two Lakhs Eighty Two Thousand and Four)

The submissions of the Operational Creditor are as follows:

2. The Corporate Debtor entered into an agreement with the Operational Creditor to provide manpower supply services since 2009 renewable on yearly basis. The Operational Creditor provided all the services as required under the aforesaid agreement. In pursuance of the said services provided, the Operational Creditor raised as per the agreement running bills payable within 7 days from the date of invoice and which were accepted by the Corporate Debtor without raising any protest or demur.



5. Since April 2016, the Corporate Debtor started paying ad hoc amounts as against invoices and not the complete amount that were due and payable upon raising of running bills by Operational Creditor.
4. The Operational Creditor had time and again informed the Corporate Debtor about the accumulating principal outstanding amounts that are due and payable so that immediate payment of the operational debt can be made by the Corporate Debtor. Due to the short payments of the Corporate Debtor, the Operational Creditor struggled to manage its finances and had challenges to fulfill its statutory compliances such as GST, ESIC, and PF arising out of its services to the Corporate Debtor.
5. The Operational Creditor sent a legal notice to the Corporate Debtor on 01st July, 2019 for recovery of unpaid dues resulting in the Corporate Debtor agreeing for reconciliation of the dues payable for making the payment. Consequently, both the parties met together and agreed to a reconciliation in order to determine the amount which was due and payable. The amount, which was determined between the parties after sitting for reconciliation, is INR 8,22,82,004/- due as of November 20, 2019 by the Corporate Debtor to the Operational Creditor. The aforesaid amount was also acknowledged by the Corporate Debtor upon reconciliation.
6. Despite reminders for repayment of the reconciled principal amount referred to herein before, the Corporate Debtor failed to make payment of the above outstanding amount. Thereafter, the Corporate Debtor terminated the Contract with Operational Creditor vide Notice dated 26.12.2019, without paying outstanding operational debt. The Operational Creditor, through its



Notice dated 03.01.2020, responded to the Corporate Debtor's notice stating that the actions of the Corporate Debtor were malafide with an intent to purely avoid making payment of the outstanding operational debt which was due and payable by the Corporate Debtor to the Operational Creditor and such termination does not in any way constitute a pre-existing dispute under the provisions of the Code.

7. The Operational Creditor issued a Demand Notice in terms of Section 8 of the Code to the Corporate Debtor on 03rd January, 2020 in Forms 3 and 4. The said Demand Notice was attempted to be physically delivered to the Registered Office of the Corporate Debtor on 04th January, 2020. However, the same was not accepted by the office of the Corporate Debtor. The said Demand Notice was also sent by Speed Post on 04th January, 2020 to the Registered Office of the Corporate Debtor on 04.01.2020, which was received by the Corporate Debtor on 06th January, 2020. The said Demand Notice was also served by way of an email on 05th January, 2020 on the registered email address of the Corporate Debtor mentioned in the Company Master Data. The Corporate Debtor had not provided a notice of dispute to the Operational Creditor in response to the demand notice and further, the Corporate Debtor has not annexed a record of the pending suit or arbitration proceedings filed before the receipt of the demand notice. Also, the Corporate Debtor has not given any notice of payment of the operational debt as required u/s 8(2)(b) of the Code.

8. **Reply:** The Corporate Debtor has filed its reply on an affidavit dated 23rd June, 2021.

Pre-existing dispute: (i) Before filing the above-captioned Petition, the Operational Creditor had already issued a legal notice dated 01.07.2019 to



the Corporate Debtor seeking recovery of the alleged unpaid amount. The aforesaid notice was duly replied to by the Corporate Debtor on 21.08.2019 wherein it was specifically mentioned that there exists “deficiency in the operation of services” of the Operational Creditor and the same was duly informed to the Operational Creditor by email dated 15.06.2019. The Operational Creditor, vide its email dated 20.06.2019, had admitted the issues with respect to services and also requested to provide some money in order to pay its outstanding statutory liabilities.

(ii) The Operational Creditor has also concealed the fact that the Corporate Debtor vide letter dated 26.12.2019 raised the issues with regard to the absence of workers at the hotel of the Corporate Debtor due to non-payment of monthly salary by the Operational Creditor.

9. Hence in the light of the above facts and circumstances, it is clear that the disputes between the parties existed before the issuance of the demand notice dated 30.01.2020 and therefore, the present petition deserves to be dismissed.
10. Counter Claim of the Corporate Debtor: On account of the poor performance and regular strikes by the employees of the Operational Creditor, who were involved in performing various activities at the hotel of the Corporate Debtor, the Corporate Debtor suffered from losses in business and therefore, vide demand letter dated 26.12.2019, an amount of Rs. 10,00,00,000/- (Rupees Ten Crores Only) were claimed by the Corporate Debtor from the Operational Creditor in respect of the hardships, losses and damages. Thus, the Corporate Debtor pleads that the Tribunal cannot exercise its jurisdiction in settling the claims and counter-claims between the parties to the above-captioned Petition.



Debt Recovery: The Operational Creditor is utilizing the mechanism of IBC to recover its disputed amounts from the Corporate Debtor. It is submitted that the provisions of the Code cannot be invoked only for the purpose of recovery of money as the same would lead to the “corporate death” of a solvent company which will be against the basic tenets of the IBC.

Written submissions filed by the Corporate Debtor:-

12. The Operational Creditor has filed the said Petition with the sole motive of seeking recovery of the disputed amount. Therefore, the said Petition is liable to be dismissed in limine with exemplary costs. It is a settled position of law that the Code is not intended to be a substitute for a recovery forum and whenever there is the existence of a real dispute, the provision of the Code cannot be invoked.
13. The present Petition was initiated only after the Facility Agreement dated 18.04.2018 was terminated by the Corporate Debtor vide Termination Letter dated 26.12.2019. The Facility Agreement was terminated due to the following reasons: a) continuous deficiency in service on the part of the Operational Creditor resulted in cancellation of major events at the hotel of the Corporate Debtor; b) despite receiving the requisite amounts from the Corporate Debtor, the Operational Creditor withheld the salaries and wages of the contract labourers employed by the Operational Creditor thereby breaching the terms and conditions of the Facility Agreement; c) organised Strikes by contract labourers led to causing of huge financial loss to the Corporate Debtor.
14. Pre-existing Dispute: Demand Notice u/s 8 of the Code was issued only after the termination of the facility agreement and the reason for the termination of the facility agreement, as discussed above, is mainly the deficiencies in



providing services on the part of the Operational Creditor. It is a matter of record that the Corporate Debtor vide its email dated 15.06.2019 informed the various deficiencies in the services being provided by the Operational Creditor. Interestingly, the said deficiencies in the services were duly admitted by the Operational Creditor vide its email dated 20.06.2019. Therefore, there is a pre-existing dispute, and hence, the present petition is liable to be dismissed on this ground alone.

Analysis and Findings:

15. We have heard the Counsel for the parties and gone through the record.
16. During the course of the arguments, Counsel for the Operational Creditor has argued that the present Petition has been filed in respect of the outstanding dues of Rs. 8,22,82,004/-. Counsel for the Operational Creditor has further contended that outstanding dues were duly reconciled and acknowledged by the Corporate Debtor in the month of November, 2019. In this regard, Counsel for the Operational Creditor has further referred to the agreement for facility management which was exchanged between the parties for providing services to the Corporate Debtor. According to the Counsel for the Operational Creditor, the Corporate Debtor reconciled the outstanding dues in the meeting held on 16.10.2019, minutes of which have been placed on record. Counsel for the Operational Creditor has further referred to the e-mails executed between the parties and more particularly, the email dated 03.12.2019 addressed by one Manish Sodhi on behalf of the Corporate Debtor to the Operational Creditor stating that the salaries of the staff should not be withheld as the Corporate Debtor has remitted the amount.



Counsel for the Operational Creditor has further argued that the defence raised by the Corporate Debtor in reply to the demand notice is nothing but a moonshine defence. Counsel for the Operational Creditor has further contended that once the Corporate Debtor was unable to make the payment of the outstanding dues, it contrived false defences by issuing a notice terminating the contract and raising false and frivolous disputes. Therefore, according to the Counsel for the Operational Creditor, the Petition deserves to be admitted.

18. On the other hand, Counsel for the Corporate Debtor has argued that the present Petition is not maintainable and is liable to be dismissed on the ground that there is a pre-existing dispute between the parties which was raised even prior to the issuance of the demand notice by the Operational Creditor. Counsel for the Corporate Debtor has further pointed out that the Operational Creditor issued a legal notice dated 01.07.2019 upon the Corporate Debtor, to which a reply dated 21.08.2019 was sent on behalf of the Corporate Debtor and in the said reply itself, it was mentioned that a genuine and bona fide dispute existed between the parties. Similarly, in reply dated 26.12.2019 to the demand notice issued by the Operational Creditor, the disputes have been raised which are quite genuine and cannot be dubbed as moonshine or fake defences. Counsel for the Corporate Debtor has further contended that since there is a pre-existing dispute between the parties and the contract was terminated by the Corporate Debtor due to the pre-existing disputes, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 cannot be admitted at all and is liable to be dismissed.
19. We have weighed the contentions raised by the Counsel for the parties and have also carefully gone through the record.



By way of this Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor is seeking initiation of insolvency proceedings against the Corporate Debtor for having committed a default in payment of outstanding operational debt of Rs. 8,22,82,004/-.

21. We have gone through the record carefully. In this case, no reply was e-filed on behalf of the Corporate Debtor nor there is any reference of the reply having been filed on behalf of the Corporate Debtor in any of the daily orders passed by this Bench. However, a physical copy of the reply has been filed which does not indicate the date of its filing nor does it bear the stamp or seal of the Registry of this Tribunal. The reply is shown to have been filed by an authorised representative namely Mahipal Jain who is stated to have been authorised by way of a board resolution dated 28.12.2019. However, a perusal of the copy of the said resolution dated 28.12.2019 reveals that the name of Mahipal Jain does not figure in the resolution. Therefore, it is doubtful whether Mahipal Jain was even authorised to file a reply on behalf of the Corporate Debtor. Anyway, we have considered the points raised in the reply even though the reply does not seem to have been properly filed.
22. The Operational Creditor has relied upon a minute of a joint meeting held between the parties on 16.10.2019. A perusal of the minutes of the said meeting reveals that the meeting was held to discuss the matter pertaining to overdue payment by the Corporate Debtor. In the conclusion part of the minutes, it is clearly stated that after prolonged discussions, Mr. Manish Sodhi, C.E.O of the Corporate Debtor agreed that once the final outstanding figures are derived, the Corporate Debtor would submit a payment plan as to how the overdues should be cleared as soon as possible. It is further stated that Mr. Manish Sodhi informed the team of the Operational Creditor that



considering the situation of the company, it may take six months time to clear the entire overdues. As per the minutes of the meeting dated 16.10.2019, which has not been disputed on behalf of the Corporate Debtor, there is no mention of any pre-existing dispute nor anything was pointed out on behalf of the Corporate Debtor that there was some deficiency in the services being provided by the Operational Creditor.

23. Counsel for the Corporate Debtor has laid much stress on the reply dated 21.08.2019 which was sent by the Corporate Debtor in response to the legal notice dated 01.07.2019 issued by the Operational Creditor. By way of the legal notice dated 01.07.2019, the Operational Creditor had demanded outstanding dues of Rs. 10,59,78,114/- along with GST dues of Rs. 1,42,78,846/-. In the reply dated 21.08.2019, no substantive dispute has been raised on behalf of the Corporate Debtor. It has simply been mentioned in paragraph no. 7 that a genuine and bona fide dispute existed between the parties. Here, one cannot be oblivious to the fact that this reply was sent on 21.08.2019 whereas the reconciliation took place between the parties on 16.10.2019 and in the said meeting, no such issue with regard to any pre-existing dispute was raised.
24. Counsel for the Corporate Debtor has further laid much stress on the fact that the contract was terminated by the Corporate Debtor vide Termination Letter dated 26.12.2019 whereby a counterclaim of Rs. 10 crores was also raised by the Corporate Debtor. Here again, it needs to be pointed out that a termination notice was issued subsequent to the reconciliation meeting held on 16.10.2019 whereby the matter was settled between the parties and liability of Rs. 8,22,82,004/- was admitted and the Corporate Debtor further promised to pay the same at the earliest possible. Had there been any genuine



dispute between the parties which necessitated the termination of the contract on the part of the Corporate Debtor, the same would have been raised at the time of the reconciliation meeting itself. Therefore, it is clear that termination notice is nothing but an afterthought to escape from the financial liability payable by it.

25. No other points have been raised on behalf of the Corporate Debtor.
26. As a result of the above discussion, we hold the Operational Creditor has been able to prove the existence of operational debt and its default committed by the Corporate Debtor and the liability was duly admitted on behalf of the Corporate Debtor in the month of November 2019 as is evident from the document available as per the reconciliation available on page no. 179 of the Company Petition. Therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in the following terms:-

ORDER

- a. **The above Company Petition No. (IB) 397/(MB)/2020 is hereby admitted** and initiation of the Corporate Insolvency Resolution Process (CIRP) is ordered against
- b. This Bench hereby appoints **Mr. Ganesh Venkata Siva Rama Krishna Remani** , Registration No. IBBI/IPA-001/IP-P-01386/2018-2019/12176 as the Interim Resolution Professional having his address at 302, Nahar Business Center Chandivali ,Mumbai Suburban, Maharashtra, 400076, Email Id:- ganesh.remani@nliten.in, to carry out the functions



as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 3,00,000/- towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.

- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

27. **Accordingly, this Petition is admitted.**

28. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)