

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No.40/NCLT/AHM/2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.03.2021**

Name of the Company: Rakesh Yadav
V/s
OYO Hotels & Homes Pvt Ltd

Section 9 of the Insolvency and Bankruptcy
Code,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

(through video conferencing/physical)

None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 30th day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 40/9/NCLT/AHM/2020

In the matter of:

Mr. Rakesh Yadav
Penthouse No. 1
Tower D
The Villas
DLF Phase 2
GURGAON 122 002

:

Petitioner
Operational Creditor

Versus

Oyo Hotels & Homes Private Limited
(formerly known as Alcott Town Planners Private Ltd.)
Ground Floor, 001, Mauryansh Elanza
Nr. Parekh Hospital
Satellite
AHMEDABAD 380 015
GUJARAT STATE

:

Respondent
[Corporate Debtor]

Order delivered on 30th March, 2021

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

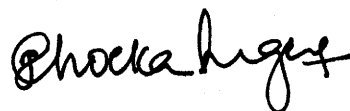
Appearance:

Petitioner : Mr. Jatin Kapadia, PCS
Respondent : Mr. Kunal Nanavati, Advocate

ORDER

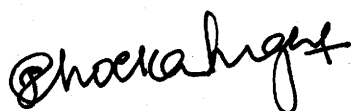
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Rakesh Yadav, filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.





2. The applicant/operational creditor is the sole and absolute owner of a hotel, located at Sector - 17C Gurgaon, consisting of approximately 21 rooms, which was previously running under the brand name "Yellow White Residency".
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 21.4.2015 and having identification No. U74900GJ2015PTC107035 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 23,31,00,000/- and paid up share capital is Rs. 22,75,07,670/-.
4. The applicant/operational creditor has stated that vide the Management Services Agreement (the agreement) dated 16.11.2018 (page 21-46), duly executed between the applicant and the respondent, the respondent company was granted an exclusive licence to operate and maintain the hotel under the brand "OYO" or "OYO Rooms". That, in accordance with Article - 1 read with Schedule - E of the agreement, the respondent is under the liability to pay the "Benchmark Revenue" amount of Rs. 4,50,000/- to the applicant on or before the 10th day of each calendar month and terms and conditions of the said agreement was reconfirmed by both the parties by exchanging certain email communications (page (47-50)).
5. The applicant/operational creditor has stated that the respondent was regular in payment of the Benchmark Revenue amount as per the agreed terms from December, 2018 to June 2019, however, the respondent company defaulted in fulfilling its contractual obligation and the details of the amount due to be paid are as under: -



- For July 2019 – Rs. 1,26,000/- (Rs. 3,24,000/- out of Rs. 4,50,000/- has been paid);
- For August, 2019 – Rs. 1,26,000/- (Rs. 3,24,000/- out of Rs. 4,50,000/- has been paid);
- For September, 2019 – Rs. 4,50,000/-
- For October, 2019 – Rs. 4,50,000/-
- For November, 2019 – Rs. 4,50,000/-

As per the above stated details, the cumulative amount of operational debt due to be paid by the respondent is Rs. 16,02,000/- (Rupees sixteen lacs two thousand only).

6. The applicant has further stated that he made several requests to the respondent company with regard to the Benchmark Revenue in accordance with the terms of the agreement, however, the payment of outstanding operational debt has been refused by the respondent which clearly shows unwillingness of the company to pay the outstanding operational debt, therefore, this petition.
7. It is further stated by the applicant that having failed to get the payment of operational debt, the applicant was compelled to issue demand notice dated 11.11.2019 in form 3 under Section 8 of the Code which was duly received by the respondent on 13.11.2019. That, the applicant has not received any reply to the demand notice.
8. In support of its claim, the operational creditor has annexed to the application documents like; copy of management service agreement (page 21-46), copy of email communications between the parties (page 47-50), computation of the outstanding amount (51) authorisation (page 32), true copy of ledger account of the operational creditor (page 52-53), bank statement (page 54-88), copy of demand notice (92-99) etc.

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9. The respondent/corporate debtor filed affidavit in reply inter alia raising objections like;
- that, the instant petition preferred under Section 9 of the Code would have been filed against My Preferred Transformation and Hospitality Private Limited (MTH) instead of the instant respondent as the business of the present respondent was transferred to MTH with effect from 01.06.2019;
 - that, the claim is arising out of transactions related to an immovable property and the liabilities and dues in relation to such transactions are not categorized as "Operational Debt" under the provisions of the Code;
 - that, assuming without admitting that MTH is liable to pay the dues towards the alleged claim, then also there exists a bona fide pre-existing dispute between the petitioner and MTH;
 - that, the remedy for adjudication of the issue lies before a different forum and not NCLT;
 - that, the application is incomplete as the applicant has not filed bank certificate along with the petition;
 - that, no debt is due and payable by the respondent;

Findings:

10. Heard the learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
11. On perusal of the records it is found that the respondent has contended that the present petition has been wrongly filed against the present respondent – Oyo Hotels and Homes Private Limited as the business of the present respondent was transferred to MTH with effect from 01.06.2019 and the same had been expressly intimated to all its partners, including the present petitioner. Therefore, even if the applicant has any grievance, the same can be raised only against MTH and not against the present respondent. It is

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pertinent to refer to intimation letter dated 30.04.2019, a document relied upon by the respondent, addressed to the petitioner by Alcott Town Planners Private Limited (Page 40 – Annexure R/1), contents of which are reproduced herein below: -

"April 30, 2019

To:

Rakesh Yadav

rockyrocksr@gmail.com

"Ref: Lease deed/Management Services Agreement/letter of acceptance executed (Agreement) by and between Alcott Town Planners Private Limited (Alcott) and yourself

It is a pleasure being associated with you as a valued partner. With your trust, faith and overwhelming support, we at OYO, work tirelessly to achieve our common goal of providing safe, affordable, secure and reliable quality living spaces to millions of our valued customers across the globe and are privileged to have you as a part of this mission.

In synchronisation with our common goal of creating affordable quality living space for our customers and as a part of imperative business conduct, some restructuring may be required to be performed by us to bring us closer to the objective. It is through our collective efforts and cooperation that we shall continue to achieve new heights in the hospitality industry.

Accordingly, as a part of our ongoing restructuring, we wish to share with you that **Alcott is transferring its rights and obligations under the aforementioned agreement to its group company, Mypreferred Transformation and Hospitality Private Limited (MTH) with effect from June 1, 2019.**

Please note that **this does not impact your rights and obligations under this Agreement in any way and your property will continue to be managed under the OYO Brand.**

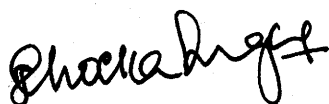
Consequently, **all payments due to you under the agreement shall now be made by MTH in accordance with the existing payment terms of the agreement.**

We thank you for your continuous support and as always, look forward to a long term association with you,

For Alcott Town Planners Private Limited

Sd/-"

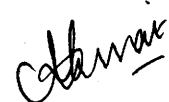
12. On perusal of the above referred letter it is difficult to make out by what mode the letter has been sent to the applicant on 30.04.2019. That apart, there is no name and designation of the signee, however, the letter is printed on the letterhead of Alcott Town Planners Private Limited. Even





it is assumed that the letter is issued to the applicant, it is clear that the agreement so entered into between the applicant and OYO is intact and the obligations under the agreement will continue to be managed under the OYO Brand. The very letter discloses that there is no change in the earlier agreement entered into between the original parties. Under such circumstances, the liabilities accrue upon the respondent to make payment of the dues of the operational creditor.

13. On perusal of the records it is found that the petitioner has received part payment towards Bench Mark Revenue for the months July and August, 2019 from MTH in accordance with Article - 1, Schedule - E of the Management Services Agreement dated 16.11.2018 entered into between the petitioner and respondent and thereafter respondent started making default. This act and subsequent developments like MTH issuing Breach & Cure Notice to the applicant demanding copy of several documents from the petitioner clearly establishes that these are arm-twisting acts of MTH on behalf of the present respondent/corporate debtor to pressurise the petitioner to accept the changes in the Benchmark Revenue which was fixed under the Management Services Agreement.
14. The aforesaid chain of events clearly establish that the petitioner is operational creditor and the amount outstanding is operational debt.
15. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.



16. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.
17. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
18. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
19. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -
- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (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**
- (iii) Whether there is existence of a dispute between the parties or the record of the 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 of the aforesaid conditions is lacking, the application would have to be rejected.


20. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority

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is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

21. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
22. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
23. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -






- (i) 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;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

24. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

25. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.

26. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint CS Mr. Keyur J. Shah, 408, Chitrarath Complex, Off. C.G. Road, Navrangpura, Ahmedabad 380 009, Gujarat (cs keyurshah@gmail.com) (9909702182) having registration No. IBBI/IPA-002/IP-

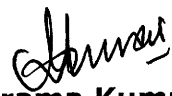




N00244/2017-18/10729 to act as an interim resolution professional under Section 13(1)(c) of the Code.

27. This Petition is accordingly admitted.
28. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
29. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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