

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

In the matter of

(IB)-334(ND)2019

M/s. Ambience Commercial Developers Pvt. Ltd.

.....Operational Creditor

V/s

M/s. Jot Impex Pvt. Ltd.

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 14.05.2019

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SH. V.K. SUBBURAJ, HON'BLE MEMBER (T)

Present: Mr. Vikas Malhotra,
Mr. M.P. Sahay, Advocate for the Petitioner.
Respondent proceeded ex parte.

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner seeks initiation of the Corporate insolvency Resolution
Process of the Corporate Debtor for its inability to pay its outstanding debts.

2. As per averments made the petitioner as owner of the commercial space in a mall, had leased out retail space to the Corporate Debtor, being unit No. UG-14, U.G.F. containing by admeasurement of area of 1450 sq. ft. lease rent was agreed to be paid @ Rs. 280/- per sq. ft. per month for the first 18 months and at Rs. 300/- sq. ft. for the subsequent months. The tenure under the lease was for period of three years.

3. The commercial unit was handed over to the Corporate Debtor upon execution of MOU. However, the Corporate Debtor failed to liquate its monthly license fee, CAM and electricity charges in terms of the agreement executed between the parties. Arbitration was resorted to which culminated in an award in favour of the Operational Creditor. The security amount tendered by the Corporate Debtor was duly adjusted and the balance amount of Rs. 38,70,398/- was awarded to them. The property has been re-possessed by the Operational Creditor pursuant to warrants of possession issued by the competent court. However, on account of the unpaid license fee/lease rent, the Operational issued a demand notice under Section 8 of the Code. Though this notice sent vide speed post was returned back unserved, the same sent by email was successfully delivered at the email id of the Corporate Debtor registered with the MCA.

4. Upon notice being issued by this Bench, none appeared on behalf of the Corporate Debtor and they were proceeded ex-parte.

5. Keeping in view the averments made in the petition which remain uncontroverted, the petitioner's prayer for initiating a Resolution Process of the Corporate Debtor merits consideration. Accordingly, this petition stands Admitted. A Moratorium in terms of Section 14 of the Code comes into immediate effect forthwith, a staying:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.

Further,

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be

terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) Further, the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

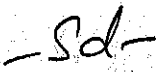
“Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

6. The Operational Creditor has not named any Insolvency Resolution Professional. Accordingly, we appoint Mr. Akhilesh Kumar Gupta, Registration No. IBBI/IPA-001/IP-P00780/2017-2018/11353, E-mail Id: akhilesh@llca.net Mobile No: 09810077370 from the list of IRPs' duly empaneled with the IBBI. The Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- with the IRP to meet the immediate CIR cost which shall be reimbursed to them by the COC, to be recovered as costs of the CIR process. The IRP is directed to take all such steps as are mandated under


the Insolvency and Bankruptcy Code, 2016 and file his report as per statutory requirements.

7. Copy of the order be communicated to both the parties as well as to the IRP.

8. To come up on 1st July, 2019 for further consideration.



(V.K. Subburaj)
Member (T)



(Ina Malhotra)
Member (J)