

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. No. 360/2016**

**IN THE MATTER OF:**

Maharashtra Tourism Development Corporation  
.... Operational Creditor/Petitioner  
v.  
Luxury Train Private Limited .... Corporate Debtor

**Judgement delivered on 11.12.2017**

**Coram:**

**CHIEF JUSTICE (RETD.) M.M.KUMAR**  
**Hon'ble President**

**Ms. Deepa Krishan**  
**Hon'ble Member (T)**

For the Operational Creditor: Mr. Gourab Banerji, Sr. Advocate  
Mr. Harsha Peechara,  
Mr. Aashish Tiwari, Mr. S.P.  
Mukherjee, Ms. Vidhi Jain, Advs.

For the Respondent :

**M.M.KUMAR, PRESIDENT**

**JUDGMENT**

This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The petitioner claims that it is an 'Operational Creditor' and the respondent is a 'Corporate

Debtor'.The Corporate Identification number of the petitioner is U99999MH1975SGC018086 and it is based at Mumbai.

2. The petitioner in the application has stated that it is a fully owned concern by Government of Maharashtra and was incorporated for the purpose of systematic development of Tourism on commercial lines. It receives financial assistance from the State Government of the Maharashtra in the form of share capital and grants. The State Government has entrusted all commercial and promotional tourism activities to the petitioner and since its inception, petitioner is engaged in the development and maintenance of the various tourist locations of Maharashtra.

3. Ms. Kavita Solunke, Legal Advisor of the petitioner company has been authorized by the letter of authority dated 28.12.2015(Annexure P-1) to sign and submit the petition.

4. The Corporate Debtor 'Luxury Train Private Limited' was incorporated on 06.06.2011 under the Companies Act, 1956. It has two directors namely Mr. Sajivee Trehaan and his son Mr. Rohan Trehaan, both are having 50-50 (%) shareholding in the



respondent company. It has its registered office at 36, Chanderlok Building, Janpath, Connaught Place, New Delhi-110001. The object of the respondent company has also been unfolded in the application that it was to take on lease and run luxury trains, to carry out business as a tourist agent and to act as a consultant in the field of travel and such other allied field thereto.

5. It is appropriate to mention that before filing the instant petition the petitioner has filed a petition under Section 439(1) (b) of the erstwhile Companies Act, 1956 before the Hon'ble Delhi High Court. The Hon'ble High Court vide its interim order dated 02.05.2016 had restrained the respondent company not to dispose of or alienate or encumber any assets of the company with certain other directions. Thereafter on account of notification No, D.L.-33004/99 dated 07.12.2016 issued by the Ministry of Corporate Affairs the petition was transferred to this Tribunal vide order dated 22.02.2017 passed by Hon'ble High Court. Subsequently in pursuance of order dated 22.03.2017 passed by this Tribunal, compliance in accordance with various notifications and the provisions of the Code, 2016 has been made





by the petitioner and in this regard appropriate affidavit dated 21.04.2017 filed by him.

6. The case of the 'Operational Creditor'-petitioner is that in year 2004, the petitioner got an exclusive right from the Railways to operate "Deccan Oddessy Luxury Train" against the payment of haulage and other additional charges as fixed by the Railways from time to time. In year 2009-10, with intent to act as a tour operator to charter the aforesaid luxury train, Managing Director of the respondent company approached the petitioner and expressed his interest to operate the said luxury train by explicating that his group is the largest consolidator & GSA for Palace on Wheels, Royal Rajasthan on Wheels & based in New Delhi, India. A copy of the EOI submitted by respondent company has been placed on record as Annexure P-3.

7. Consequently, the expression of interest of respondent company was accepted by the petitioner by issuing sanction letters dated 06.12.2010 & 19.09.2011 and agreement dated 05.02.2013 executed between the petitioner and respondent company which was covered with full detailed terms and

conditions as agreed. Copies of the sanction letters and the agreement have been placed on record as Annexure P-4, P-5 & P-6. As per the terms and conditions stipulated in the agreement and sanction letters for each tour operated by the respondent company, he was required to pay agreed amount towards operational cost and profit to the petitioner. In addition to that, the respondent company was also required to pay other charges i.e. Haulage charges and other applicable charges to the Railway from time to time. As per the recital and intention put in the agreement, the entire dues were to be paid by the respondent company on or before 31.12.2013.

8. Respondent company issued various cheques towards the aforesaid liabilities in favour of petitioner however, on presentation all bounced back with the endorsement of 'insufficient funds'. Copies of the cheques as well as return memos have been placed on record as Annexure P-7 (Colly).

9. Subsequently in the year 2014, Mr. Sajivve Trehan transferred the entire business of the sole proprietor of "M/s The Luxury holidays" i.e his sole proprietorship to the respondent

company and in this regard business transfer agreement was executed between respondent and the transferrer company through Mr. Sajivve Trehaan. Copies of the business transfer agreement and valuation report have been placed on record as Annexure P-8 (Colly).

10. The petitioner has further asserted that respondent company also illegally assigned the guarantee given to the petitioner in favour of the Central Bank of India to avail credit facilities in order to frustrate the claim of the petitioner, which came to the knowledge of the petitioner only through the Bank's letter dated 15.01.2016, when the bank raised demand against the petitioner. Hence, the respondent company has not only cheated the petitioner but also the Bank as well and an outstanding due of about Rs. 25 crores are owed to the Bank by the respondent company. Copy of letter dated 15.01.2016 issued by the Bank has been placed on record as Annexure P-12.

11. The total amount of operational debt including interest claimed by the 'Operational Creditor' is Rs. 20,07,53,000/- as on 15.02.2015.





12. After making various attempts to serve the respondent when they were avoiding to accept notice and did not choose to come before this Tribunal, an order for substituted service was passed on 28.08.2017 directing the Operational Creditor to adopt the procedure as laid down under Rule 38(4) of the NCLT Rules, 2016 r/w Order V Rule 20 CPC. Thereafter in compliance of aforesaid order publication in two newspapers was carried but this also all in vain and afterwards vide order dated 13.10.2017 of this Tribunal respondent were proceeded ex-parte.

13. We have heard Mr. Gourab Banerji, learned Senior counsel for the petitioner and have perused the pleadings along with various affidavits with his able assistance. As per the agreement and sanction letters Annexure P-4 to P-6 tour operated work was entrusted by the petitioner to the respondent and in pursuance to that respondent was required to pay to the petitioner, agreed amount towards operational cost, profit and other charges. It is proved beyond doubt that 'job work' i.e. 'services' in terms of Section 5 (21) of the Code were procured by the Corporate Debtor from the Operational Creditor. For determination of the aforesaid issue it would be necessary to read the definition of the

expressions 'Operational Creditor' and 'Operational Debt' given in Section 5 (20) & (21) of the Code and the same is set out below:-

**Section 5 (20) & (21)**

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

Operational Creditor is a person to whom operational debt is owed and includes any person to whom such debt has been assigned or transferred. The definition of Operational Creditor is not exhaustive but illustrative. It is capable of covering those heads which are not specifically mentioned in the definition. The definition of operational debt postulates that it is a claim in respect of the provision of 'goods' or 'services' including



employment etc. A perusal of Annexure P-4 to P-6 suggests beyond doubt that the work i.e. tour operated by the respondent company fulfils the requirement of word i.e. 'services' as defined in Section 5 (21) of the Code. Therefore, 'Operational Creditor' fulfils and comes under the purview of aforesaid Sections.

14. It is also evident that Corporate Debtor has committed default and the amount of Rs. 20,07,53,000/- has remained unpaid since 15.02.2015. For extinguishing such liability to some extent Corporate Debtor had issued various cheques in favour of 'Operational Creditor' which were returned back with the endorsement of 'insufficient funds' and at present proceedings under Section 138 of Negotiable Instrument Act are in progress before the learned Metropolitan Magistrate, Mumbai. Suit for recovery of money under Order XXXVII of the Code of Civil Procedure, 1908 is also pending before the Hon'ble High Court of Bombay. Thus, there is default committed on the part of the Corporate Debtor within the meaning of Section 3 (12) read with Section 4 and Section 9 (1) of the Code, 2016.



15. The Operational Creditor has also proposed the name of Interim Insolvency Professional namely Mr. Manoj Kulshrestha, 4<sup>th</sup> Floor, CS 14, Ansal Plaza, Vaishali (Opp. Dabur), Ghaziabad, UP-201010, who has made declaration in accordance with the provisions of Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

16. As a sequel to the above discussion, this petition is admitted and Mr. Manoj Kulshrestha is appointed as an Interim Resolution Professional. His registration number is IBBI/IPA-003/IP-N00005/2016-17/10024.

17. In pursuance of Section 13 (2) of Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of imposition of the moratorium resulting from the provisions of Section 14 (1) (a), (b), (c) & (d) would thus be that the following prohibitions come in operation:

