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BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH


CP(IB) 419/9/NCLT/AHM/2019

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.11.2019

Name of the Company: Udaybhai Maheshbhai Dave  
V/s.  
Orbis Infinium Pvt. Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	KRISTY BAPTIST	Adv.	OPERATIONAL CREDITOR	
2.				

ORDER

Learned Counsel Ms. Kristy Baptist is present for the Petitioner

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 27th day of November, 2019.

**BEFORE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**CP (IB) No.419/9/NCLT/AHM/2019**

[An application under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the matter of:**

Mr. Udaybhai Maheshbhai Dave  
Plot No. 95, Shrinathjinagar Vibhag-3,  
Bhavnagar-364002  
Gujarat

**.. Operational Creditor/  
Petitioner**

**Versus**

M/s. Orbis Infinium Pvt. Ltd.  
CIN U92190GJ2014PTC078907  
Plot No. 2137 Nr. Golden Arc  
Atabhai Road, Bhavnagar,  
Gujarat

**..Corporate Debtor/  
Respondent**

**Order delivered on 27<sup>th</sup> November, 2019.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)**

**Appearance:**

Learned Counsel Ms. Kristy Baptist for the Petitioner  
Mr. Nikhil Gupta (Manager) of the Respondent Company

**ORDER**

**[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)]**

- 1) Mr. Udaybhai Maheshbhai Dave being a proprietor and Operational Creditor has filed the present petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



- 2) It is stated that the Petitioner/Operational Creditor being a Proprietor provided has consultancy services to the Corporate Debtor Company M/s. Orbis Infinium Pvt. Ltd.
  
- 3) As per the Petitioner Corporate Debtor/Respondent Company is registered under the Companies Act, incorporated on 25<sup>th</sup> February, 2014 having identification no. U92190GJ2014PTC078907 having registered office at Plot No. 2137, Nr. Golden Arc, Atabhai Road, Bhavnagar, Gujarat-364002. Authorized Share Capital of the Respondent Company is Rs. 6,00,000/- and paid up Share Capital of Rs. 1,00,000/-.
  
- 4) It is further stated that the Petitioner provided Consultancy Services to the Corporate Debtor Company during the period of 1<sup>st</sup> April 2018 to 31<sup>st</sup> March, 2019 and raised Invoices for making payment of amount due which are annexed at page no. 17A to 17E to the petition but such amount is not paid, hence, the Corporate Debtor is liable to pay a total sum of **Rs. 4,00,000/- (Rupees Four lacs only)** to the Petitioner as per Invoice dated 31.03.2019. It is also stated that said debts become due when the invoices were issued. The Corporate Debtor did not raise any dispute with regard to services provided by Petitioner.
  
- 5) On perusal of the record it is found that Mr. Mithlesh Kumar Singh being Managing Director of the Corporate Debtor Company has filed an Affidavit-in-Reply dated 21.09.2019 by



admitting the total debt of **Rs. 4,00,000/- (Rupees Four lacs only) as on 31.03.2019.**

- 6) He further made effort to explain the difficulties being faced and circumstances of the Corporate Debtor for making arrangement of funds, which are narrated in para no. 2 to 4 of the reply the same are being reproduced herein below:

***“2. The Corporate Debtor states that the Corporate Debtor Company is in the business of Motion pictures, radio, television and other entertainment activities from last 5 years and currently, company operations are active. The Operational Creditor came in contact with the Respondent in 2018. The Corporate Debtor was a looking for some fresh ideas for television shows and short films in the form of stories and scripts which could be produced by the Corporate Debtor. Therefore, the Corporate Debtor in good faith entered into business transaction with the operational creditor whereby the operational creditor has been a story writer himself for more than 5 years and has thorough knowledge of the television industry and upcoming short film industry therefore the operational creditor provided consultancy regarding:***

- (1) the new story line while targeting middle age women viewers***



**(2) 2 stories along with script of 25 episodes for a television show was provided targeting the teenage and single working adult viewers.**

**(3) 2 story lines while targeting the senior citizens for a short film.**

**This Service of Operational Creditor was taken for a period of 12 months from 01.04.2018 till 31.03.2019, it was decided before hand that the Operational Creditor shall get a total of the month of March 2019 for Rs. 4,00,000/- (Rupees Four Lacs Only).**

**“3. The Corporate Debtor could neither bringing in investors nor bring in money from different sources to invest in the business for the production of the films and television serials, for which consultancy was taken from the Operational Creditor. After the default in payment, the Corporate Debtor gave a proposal of making the payment at the end of the financial year none of the projects for which operational creditor was consulted has been finalized or even close to execution itself therefore there was delay in generating funds, but the said request was denied by the operational creditor. The Corporate Debtor accepts that there has been some delay on the part of the Corporate Debtor to make payment due to financial crunches.**

**4. The Corporate Debtor hereby accepts that the debt of total sum of Rs. 4,00,000/- (Rupees Four lacs only) has been pending on**



**account of unpaid invoice towards the operational creditor. The Corporate Debtor accepts that as there is no ongoing assignment in hand with the Corporate Debtor therefore, it is not possible for the Corporate Debtor to pay the due amount to the Operational Creditor”.**

- 7) By going through the content of the Petitioner as well as Affidavit in Reply, it is undisputed position that the operational Creditor rendered his consultancy service to the Corporate Debtor between the period of 1<sup>st</sup> April 2018 to 31<sup>st</sup> March, 2019 and raised necessary Invoices for making payment of bill amount of Rs. 4,00,000/- which is still unpaid and due since 31<sup>st</sup> March, 2019 which the present IB petition is filed on 19<sup>th</sup> June, 2018, hence, the same is found to be filed well within limitation.
- 8) As, there is no pre-existing dispute further Learned Counsel appearing for the Petitioner during the course of argument has submitted, if the petition is admitted and an IRP is appointed, the Operational Creditor will bear the entire cost of CIRP if case no other Financial Creditor is found to be member of the CoC. The Petitioner in the present IB petition has proposed the name of **Mr. Tejas Shah as an I.R.P.**
- 9) As per the record, the Operational Creditor issued a Demand Notice under Section 8 of the IBC, 2016 to the Corporate Debtor Company, which was not replied by the Corporate



Debtor/Respondent. The petitioner further obtained willingness and necessary declaration from the proposed IRP i.e. CA Mr. Tejas Shah to explain the assignment. It has also enclosed a copy of the Invoice dated 31.03.2018 of bill amount of Rs. 4,00,000/-, which is stated to be unpaid till the date of filing of the present petition. It is matter of record, the Corporate Debtor did not respond to the Demand Notice, but after filing of the present IB petition, filed Affidavit in Reply through its Managing Director Mr. Mithlesh Kumar Singh by admitting the debt liability towards Corporate Debtor to the tune of Rs. 4,00,000/. Hence, the filing of the present IB petition is found to be in order and is found complete so as to commenced the CIRP. Because the Corporate Debtor itself in its Affidavit in Reply has admitted the debt liability and not expressly opposed the commencement of CIRP. Therefore, the present IB petition deserves to be admitted hence it is hereby admitted with following direction(s).

- 10) As the Operational Creditor/Petitioner has proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoint **CA Tejas Shah, IP registration No. IBBI/IPA-001/IP-P00089/2017-18/10185, having address ( B- 201, Narayan Krupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahemdabad-380015)** to act as an IRP under Section 13(1) (c) of the Code.



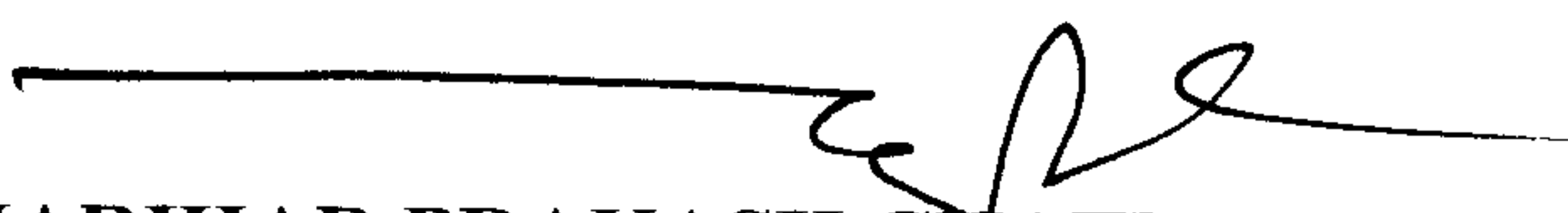
- 11) Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purpose referred to in Section 14, to cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submission of claims 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 IRP. This Adjudicating Authority direct the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- 12) The moratorium in respect of Corporate Debtor company is hereby declared in terms of Section 14(1) of the Code with following directions.
- (a) ***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 Securitisation 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.**

- 13) It is further directed that the supply of goods/service to the Corporate Debtor Company, 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 Govt. in consultation with any Financial Creditor Regulator.
- 14) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016 as the case may be.
- 15) Accordingly, the present IB petition is admitted and stands disposed of. No order as to costs.
- 16) A copy of this order be communicated to the Petitioner, Corporate Debtor and to the IRP (CA Mr. Tejas Shah).

  
(HARIHAR PRAKASH CHATURVEDI)  
ADJUDICATING AUTHORITY  
MEMBER (JUDICIAL)

Dated this the 25th day of November, 2019.