(2021) 02 NCLT CK 0050

In the National Company Law Appellate Tribunal

Case No : IB-1926/(ND) Of 2019

Knight Frank (India) Pvt. Ltd. — APPELLANT

Vs

CAPL Hotels And Spa Private Ltd. — RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9, 14, 15, 17, 18
Negotiable Instruments Act, 1881 — Section 138

Citation : (2021) 02 NCLT CK 0050

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Judgement

1. This is a petition filed by Knight Frank (India) Private Limited (Operational Creditor) seeking to initiate CIRP against the Respondent company

/Corporate Debtor CAPL Hotels and Spa Private Ltd, under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor for an

amount 1,53,69,221/- along with including the interest component towards the goods supplied.

2. It is the case of the applicant is that on 16.02.2018, it was engaged as an exclusive agency for arranging lease/rent of Galaxy Hotel, 32nd Village,

NH-8 Gurgaon (hereinafter referred to as 'leased premises') by Corporate Debtor.

3. It is stated that on being engaged, the applicant managed the leased premises with We Work India Management Private Ltd.

4. On 01.10.2018, after obtaining the necessary approvals the lease agreement was signed by the Corporate Debtor and the lessee. Thereafter on

24.01.2019 the lease deed was duly stamped and registered.

5. On successful execution of the lease deed, the applicant completed their scope of work as was agreed upon on 16.02.2018. On 29.01.2019, the

applicant communicated to the Corporate Debtor that on successful completion of the scope of work as per the terms, the agreed sum of Rs.

2,62,32,887/- was due as consideration for the services provided by the Operational Creditor, which was then revised to Rs. 1,77,85,008/-.

6. On 30.04.2019, the Corporate Debtor paid a sum of Rs. 1, 50,97,060/- by way of a Cheque. However, on 09.05.2019 the cheque was returned as

unpaid to the applicant due to insufficient funds in the Corporate Debtors bank account.

7. On 21.06.2019 and 25.06.2019, the applicant served demand notice to the Corporate Debtor on their addresses including the address available on

the website of Ministry of Corporate Affairs.

8. The Operational Creditors' have filed a complaint against the Corporate Debtor under Section 13 8 of the Negotiable Instruments Act, 1881.

9. The applicant has filed its bank account statement to show that no payment was made by Corporate Debtor. The copies of invoices have been

placed on record. After issuance of notice memo of appearance along with Board Resolution was filed on behalf of the corporate debtor. However,

despite due opportunity no reply has been filed by the Corporate Debtor.

10. It is pertinent to mention here that the Corporate Debtor tried to settle the dispute and opportunities were granted for the same, but no settlement

arrived between the parties.

11. There is no dispute that the services were provided by the applicant to the corporate debtor. Additionally, on 30.04.2019, the Corporate Debtor

paid a sum of Rs. 1, 50,97,060/- by way of a Cheque. However, on 09.05.2019 the cheque was returned as unpaid to the applicant due to insufficient

funds in the Corporate Debtors bank account. The Corporate Debtor has not filed any reply in the matter in response to the Section 9 application. Nor

present at the time of final hearing of the matter. The Corporate Debtor has not shown adequate interest to defeat the claim filed against him. In these

circumstances having regards to the facts of factual matrix the arguments advanced by the operational creditor were heard on 13.01.2021. The

applicant has placed sufficient evidence in support of its claim. Going by the above details the operational creditor has clearly established the existence

of debt and default on the part of the corporate debtor. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.

12. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

(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 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.

(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) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

13. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Satya Prakash Registration No.IBBUIPA-002/IP-

N00906/2- 19-2020/12920 email--- cs.satyaprakash@gmail.com duly empanelled with the IBBI as the IRP. He shall take such other and further steps

as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days.

14. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable

by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIRP costs.

15. The office is directed to communicate a copy of the order to the Operational Creditor, the corporate debtor and the Interim Resolution

Professional at the earliest possible but not later than seven days from today.

