

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB)-1885(ND) 2019

In the matter of

APEEJAY TRUST

**Apeejay House, 3 Dinshaw Vachha Road,
Mumbai 400020**

.....Operational Creditor

V/s

AVIVA LIFE INSURANCE CO. INDIA LTD.

**2nd Floor, Prakashdeep Building,
7 Tolstoy Marg,
New Delhi -110001**

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on 04.11.2019

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE, HON'BLE MEMBER (J)

SMT. SUMITA PURKAYASTHA, HON' BLE MEMBER (T)

**PRESENT- Mr. Krishnedu Datta, Mr. Pervinder, Mr. Deepak Agarwal, Mr.
Rahul for the Petitioner**

Mr. Gurmeet Bindra for the Respondent

ORDER

Per Justice (Retd.) Rajesh Dayal Khare (Member Judicial)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The petitioner and respondent entered into an agreement of Leave and License on 25.06.2008, for office premises and other services at Apeejay Express, 2nd floor, Plot No. 87, Sector-17, Vashi Mumbai, 3

Dinshaw Vacha Road, Churchgate, Mumbai. Pursuant to the original agreement and renewals thereof the Petitioner had provided office premises and other services as agreed and required by the Respondent. However, the Respondent despite several requests has defaulted in making payments towards service tax and license fees to the tune of Rs. 27,67,203/-. The Petitioner has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 27,67,203/-.

3. As per averment the Corporate Debtor has not paid license fees, car parking, maintenance/service charges and service tax. The Corporate Debtor has made last payment on 05.10.2017. As such above said debt is lying due from 05.10.2017.
4. The Operational Creditor has claimed as detailed as under: -

Particulars	Amount (Rs.)
Total Amount Receivable in F.Y. 2017-2018	11,62,076/-
Total Amount Receivable in F.Y. 2011-2017	5,78,462/-
Rent/Car Parking/Service Bill of 2007-08	91,158/-
Rent/Car Parking/Service Bill of 2008-09	38,914/-
Service Tax Amt of 2007-08	1,61,389/-
Service Tax Amt of 2008-09	2,46,216/-
Service Tax Amt of 2009-10	2,29,317/-
Service Tax Amt of 2010-11	2,59,671/-
Total	27,67,203/-

5. The Operational Creditor issued the demand notice dated 05.04.2019 as required under Section 8 of the Code, demanding a total sum of Rs. 27,67,203/-. The Corporate Debtor, vide reply dated 27.05.2019,

denied any liability and stated that no dues are payable to the Operational Creditor.

6. It was contended by the Operational Creditor that the Corporate Debtor failed to liquidate lease rental dues payable to the petitioner for the premises taken on lease by the respondent and inspite of demand, the same has not been paid. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.
7. Ld. Counsel for the Corporate Debtor has raised a preliminary objection regarding maintainability of the petition on the ground that they are an insurance company and therefore, they are "Financial Services Provider", the business of which is strictly regulated by the "Financial Sector Regulator" and, therefore, as per the provisions of the IBC, the present petition cannot lie against the respondents and the same deserves to be dismissed. Ld. Counsel for the Corporate Debtor has further given the example of Banks, where any such proceedings against the Banks cannot be initiated and has contended that no such proceedings are initiated against the banks also on the ground of absolute bar. Reliance in this regard has been placed upon



the provision of Section 3(17) and 3(18) of the Insolvency and Bankruptcy Code, 2016. The provision of which are quoted below:-

“Section 3 (17): -

“financial service provider” means a person engaged in the business of providing financial services in terms of authorization issued or registration granted by a financial sector regulator;

Section 3 (18): -

“financial sector regulator” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;”

8. Ld. Counsel for the Corporate Debtor has, thus, submitted that there is an absolute bar under the Insolvency and Bankruptcy Code, 2016 for initiation of any proceedings also against the insurance company like the Corporate Debtor and therefore it is strongly contended that the present petition is not maintainable and is liable to be dismissed.



9. Learned Counsel for the Operational Creditor has strongly opposed the arguments as raised by the Learned Counsel for the Corporate Debtor and it is contended that the arguments on behalf of the Corporate Debtor are clearly fallacious. There is no absolute bar of any kind, as contended by the Learned Counsel for the Corporate Debtor, and the bar is only operative for such institutions which are covered under financial services as defined under Section 3 (16) of the IBC, 2016. For the sake of convenience and ready reference, the provisions of Section 3 (16) are quoted below: -

“Section 3 (16): -

“financial service” includes any of the following services, namely: -

- (a) Accepting of deposits;*
- (b) Safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;*
- (c) effecting contracts of insurance;*
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;*
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—*
 - (i) buying, selling, or subscribing to, a financial product;*
 - (ii) availing a financial service; or*

- (iii) exercising any right associated with a financial product or financial service;*
- (f) establishing or operating an investment scheme;*
- (g) maintaining or transferring records of ownership of a financial product;*
- (h) underwriting the issuance or subscription of a financial product; or*
- (i) selling, providing, or issuing stored value or payment instruments or providing payment services;"*

10. Further, Ld. Counsel for the Operational Creditor has argued that the Corporate Debtor has not provided any insurance cover or any financial assistance of any kind to the Operational Creditor and the defaulted dues are for the lease and the rentals and, therefore, qua the Operational Creditor, the Corporate Debtor is not a financial services provider as defined in Section 3(17) of the Code.

11. After hearing the oral arguments, order was reserved by the Tribunal. As directed both the parties have also filled written submissions. We have gone through the documents filed by both the parties and heard the arguments and perused written submissions made by both the counsels. The Tribunal observed that:

The definition of financial service under Section 3 (16) of the Code clearly includes the transactions effecting contract of insurance. However, the Operational Creditor does not have any claim in respect



of contract of insurance. The claim is with respect to the outstanding license fees and the service tax amounts. Hence, the Corporate Debtor cannot use the provisions of Section 3 of the Insolvency and Bankruptcy Code, 2016 as a blanket cover to claim exclusion from IBC Proceedings on the ground that it is a financial service provider.

12. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Corporate Debtor. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith 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 debt or 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.*

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) 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."

13. The Operational Creditor has not proposed the name of any IRP.

Accordingly, we appoint Mr. Jatin Madan, an Insolvency Professional, registration no. IBBI/IPA-001/IP/P-00222/2017-2018/10421 email- cajatinmadan@yahoo.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

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 CIR costs.

15. Copy of the order be sent to both the parties as well as to the IRP.
16. To come up on for further consideration.

Sd/-

SUMITA PURKAYASTHA

Member (T)

Sd/-

JUSTICE RAJESH DAYAL KHARE

Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.

5d/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER