

**(2023) 06 NCLT CK 0109**

**In the National Company Law Tribunal**

**Case No : CP (IB) 3416/MB/C-I/2019**

**CBRE South Asia Private Limited Vs Merino Shelters Private Limited ?**

**Date of Decision : 28-06-2023**

**Acts Referred:**

Insolvency and Bankruptcy Code, 2016 — Section 8, 9, 9(5)(2)(d)

**Citation : (2023) 06 NCLT CK 0109**

**Hon'ble Judges :** H.V. Subba Rao, Member (J); Anu Jagmohan Singh, Member (T)

**Bench :** Division Bench

**Advocate :** Lakshyaved Odhekar, Gauraj Shah

**Final Decision :** Dismissed

## **Judgement**

Anu Jagmohan Singh, Member (Technical)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by CBRE South Asia Private Limited ("the Operational Creditor hereafter referred to as Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Merino Shelters Private Limited ("the Corporate Debtor hereafter referred to as Respondent").

2. The Respondent was incorporated on 09.08.2005 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U45200MH2005PTC155215. Its registered office is at 101, Man House, Opposite Pawan Hans, S.V. Road, Vile Parle (West), Mumbai-400056. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

3. The Total Outstanding amount alleged to be in default is Rs.20,91,088/- comprising of interest at the rate of 24% p.a. The Date of Default is considered as the due date of the first outstanding invoice which is 30.01.2019. The date of filing the Petition is 20.09.2019. Hence, the Petition is within Limitation.

Submissions made by the Petitioner:

4. The Petitioner submits that the debt arose owing to services provided to the

Respondent. The Respondent is in the field of construction and

housing realty. The Petitioner submits that Respondent issued a Work Order dated 24.01.2018. Accordingly, the Petitioner provided services to the Respondent. On basis of the services rendered, the Petitioner raised five invoices dated 30.01.2019, 26.02.2019, 26.03.2019, 26.04.2019, 24.05.2019 totalling to an amount of Rs.20,91,088.98/- The said invoices are annexed as Annexure D of the Petition.

5. The Petitioner submits that various emails were written by the Petitioner to the Respondent for repayment of the outstanding amount. However, the Respondent failed to repay the outstanding amount. Therefore, the Petitioner issued a Demand Notice dated 13.06.2019 under section 8 of the Code. The Respondent has replied to the said Demand Notice vide letter dated 26.06.2019.

6. Since, the Respondent failed to clear the outstanding dues even after issuance of Demand Notice under Section 8 of the Code. The Petitioner filed the Captioned Company Petition against the Respondent.

Submissions made by the Corporate Debtor/ Respondent by way of Affidavit in reply dated 17.01.2022

7. The primary defence raised by the Corporate Debtor is that there is a pre-existing dispute.

8. The Respondent submits that there are various issues with regard to the services rendered by the Petitioner and the same was brought to the notice of the Petitioner vide emails dated 19.06.2018 and 02.11.2018 wherein issues relating to replacement of staff, non-performance of staff and billing related issues were highlighted by the Respondent.

9. In the aforesaid circumstances, the Respondent vide email dated 14.05.2019 terminated the Work Order issued to the Petitioner. The said email is annexed as Exhibit-C of the Reply.

10. The Respondent in support of its contention has relied on the following Judgments:

- i. M/s S.S. Engineers vs HPCL and Ors. Civil Appeal No. 4583 of 2022
- ii. M/s Equipment Planet vs M/s Udit Infraworld Private Limited and Ors. NCLAT Company Appeal (AT)(Ins) No. 1110 of 2019
- iii. Mobilox Innovations Private Limited vs Kirusa Software Private Limited AIR 2017 SC 4532.

#### Findings

11. We have heard the submissions of both sides and perused the records.

12. It is settled law that this Adjudicating Authority whilst adjudicating matters

under Section 9 of the Code has to determine the following:

- a) Existence of Operational Debt which exceeds the threshold of Rs. 1 Lakh at the relevant time.
- b) Whether the documentary evidence furnished clearly demonstrates that the Operational Debt is due and has not been paid?
- c) Whether there was existence of any dispute between the parties or record of pendency of a suit or an arbitration proceeding filed before the receipt of demand notice in relation to such dispute?

13. The Hon'ble Supreme Court in Mobilox Innovations Private Limited vs Kirusa Software Private Limited AIR 2017 SC 4532 has clearly held that this Adjudicating Authority is bound to reject an Application under Section 9(5)(2)(d) if notice of dispute has been received by the Operational Creditor and the dispute raises a plausible contention which requires further investigation and is not a patently feeble legal argument.

14. In the present case, the Respondent has placed on record emails dated 19.06.2018, 02.11.2018 and 14.05.2019 which clearly bears out the pre-existing dispute between the parties. In fact, the work order itself was terminated by the Respondent vide email dated 14.05.2019 which was clearly prior in time to the issuance of demand notice dated 13.06.2019.

15. In the aforesaid backdrop of facts and circumstances, this Adjudicating Authority has no option except to reject the Captioned Company Petition filed by the Petitioner.

16. The Petition bearing CP(IB) 3416/MB/C-1/2019 filed by CBRE South Asia Private Limited, the Operational Creditor, under Section 9 of the IBC for initiating Corporate Insolvency Resolution Process (CIRP) against Merino Shelters Private Limited (CIN: U45200MH2005PTC155215), the Corporate Debtor, is dismissed as rejected.