



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-II), CHANDIGARH**

CP (IB) No. 264/Chd/Hry/2023

**Under Section 9 read with of
The Insolvency and Bankruptcy
Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016**

In the matter of:

Fortune Marketing

Through its Proprietor

Mr. Ashish Kumar

Khasra no. 141, P.O. Street, Dalan Pana,

Bijwasan, South-West Delhi- 110061

PAN no. BAVPK3408G

.....Applicant/ Operational Creditor

vs.

M/s MDM Televentures Private Limited

(CIN: U51909HR2019PTC079047)

having its registered office at

411-B, 4th Floor Welldonetechpark,

Sector 48, Sohana Road,

DLF Qe, Haryana-122002

Corporate office at

416, 4F, 4th Floor, ILD Trade Centre,

Sector-47, Gurugram, Haryana-122018

.....Respondent/ Corporate Debtor

Judgement delivered on: 09.05.2025

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)

Hon'ble Mr. Ashish Verma, Member (Technical)

For Petitioner-Operational Creditor:

Mr. Atif Suhrawardy, Advocate

For Respondent-Corporate Debtor:

Ex parte vide order dated 04.09.2024.



Per: Mr. Harnam Singh Thakur, Member (Judicial)
Mr. Ashish Verma, Member (Technical)

JUDGMENT

The present petition is filed by **Fortune Marketing, (for brevity 'Operational Creditor')** vide diary no. 03141 dated 25.09.23 under Section 9 of 'The Insolvency and Bankruptcy Code, 2016' (**for brevity 'IBC' / 'Code'**) read with Rule 6 of the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016' (**for brevity 'The Rules'**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the **M/s MDM Televentures Private Limited (for brevity 'Corporate Debtor')**.

2. The Applicant, namely, Fortune Marketing, is a proprietorship firm having registration no. U17116DL2005PTC134141, and has filed the present Application through its proprietor Mr. Ashish Kumar. The Applicant is a wholesaler and distributor of mobile handsets, including Realme brand.

3. The Respondent, namely, **M/s MDM Televentures Private Limited**, was incorporated on 12.03.2019 and its authorized share capital is Rs. 5,00,00,000/- with a paid up capital of Rs. 5,00,00,000/-. The copy of master data of the corporate debtor is attached as Annexure P-1 with the application.

FACTS OF THE CASE

4. The facts of the case, as stated by the Applicant in its application, are as below:



- I. The Applicant has been engaged in the business transactions with the Respondent, which has positioned itself as a Zonal Distributor for the Realme brand.
- II. The Applicant has paid advance payment to the Respondent to the tune of Rs. 1,68,50,280/- (Rupees One Crore Sixty Eight Lakhs Fifty Thousand Two Hundred and Eighty only) on various dates under various transactions. However, the corporate debtor has failed to supply any Mobile Handsets to the Operational Creditor after 08.06.2022.
- III. Thereafter, the Applicant issued a Demand Notice dated 20.04.2023 to the Respondent vide Courier and Email to the registered Email of the Respondent as well as on all available IDs and postal address of the directors of the Respondent, calling up the Respondent to either supply the goods to the Applicant or refund the outstanding credit balance along with 18% interest from 06.09.2022 till the date of payment. Out of the above said addresses, service was successful on the residential addresses of two directors of the Respondent. A copy of demand notice along with tracking report and delivery confirmation are attached as Annexure- P-4 with the application.
- IV. The Applicant also placed on record reply to the above notice by one of the directors of the Respondent namely, Mr. Ashok Kumar Sahani stating that he is not involved in the company's daily affairs and has no knowledge of the alleged transaction, if any, and the Applicant should approach the CEO Mr. Pradipto Ganguli and CFO Mr. Monish Mittal for



the regular business issues and transactions. A copy of the said reply is attached as Annexure-P-5 of the application.

- V. Thereafter, on 26.05.2023, Demand notice in Form 3, as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was issued by the Applicant to all the directors on their respective residential addresses as well as on the registered address of the corporate debtor, this time service was duly executed on the registered postal address of the Corporate debtor. The copy of the same is attached as Annexure- P-6 with the application.
- VI. The Applicant has submitted the record of transactions with the Respondent in Part-IV of Form 5, which are as follows-

07/03/2022	Payments made to Corporate Debtor vide By NEFT*ICIC0SF0002*26629415921DC*ICICI BANK NODAL AC dated 07.03.2022.	Rs. 19,90,000.00	07/03/2022
16.03.2022	Payments made to Corporate Debtor vide by NEFT*ICIC0SF0002*26754395571DC*ICICI BANK NODAL AC--	Rs.15,00,000.00	16.03.2022
23.03.2022	Materials supplied to the Operational Creditor vide invoice number MDM-7638 dated 23.03.2022.	Rs.31,28,000.00	23.03.2022
26.05.2022	Payments made to Corporate Debtor vide NEFT* ICIC0SF0002*27762739821DC*ICICI BANK NODAL AC--	Rs. 19,90,000.00	26.05.2022
08.06.2022	Materials supplied to the Operational Creditor vide invoice number MDM-8008 dated 08.06.2022.	Rs. 10,98,155.00	08.06.2022
09.06.2022	Credit Note Issued by the Corporate debtor	Rs.70,000.00	09.06.2022
10.06.2022	Payments made to Corporate Debtor vide by NEFT*ICIC0SF0002*2800966*021DC*ICICI BANK NODAL AC.	Rs.19,90,000.00	10.06.2022
17.06.2022	Credit Note issued by the Corporate Debtor	Rs. 56,436.00	17.06.2022
29.06.2022	Payments made to Corporate Debtor vide by CBP8F264C1696841792CDCA96CAE35B2A	Rs. 15,00,000.00	29.06.2022
07.07.2022	Payments made to Corporate Debtor vide By NEFT*ICIC0SF0002*28425144691DC*ICICI BANK NODAL AC--	Rs.19,90,000.00	07.07.2022
24.08.2022	Payments made to Corporate Debtor vide By RTGS UTR NO: ICICR42022082400517871-- ICICI BANK NODAL ACCOUNT HIVELOOP I.	Rs.25,00,000.00	24.08.2022
07.09.2022	Payments made to Corporate Debtor vide By RTGS UTR No: ICICR42022090700514116-- For Fortune Marketing	Rs.24,99,999.00	07.09.2022



	ICICI BANK NODAL ACCOUNT HIVELOOP I.		
14.09.2022	Payments made to Corporate Debtor vide By RTGS UTR NO: ICICR42022091400512584—ICICI BANK NODAL ACCOUNT HIVELOOP I.	Rs.25,00,000.00	14.09.2022
31.10.2022	Payments made to Corporate Debtor vide by CBPB2EA21A52DDB441899C5779134CB88C.	Rs. 24,90,000.00	31.10.2022
	Grand Total of advance Pending with the corporate debtor.	Rs.1,68,50,280.00	

VII. The Applicant submitted that the fact of the matter is that the amounts are due and have not been paid by the Respondent. In this regard, the Applicant has placed on record a copy of Ledger statement and a certificate from the Axis bank that no payment has been received from the Applicant till the date of issuance of the said certificate.

VIII. It is further stated that the Applicant is providing the necessary proof pertaining to the amounts due and not paid by the Applicant. A total amount of Rs. 1,68,50,280/- (Rupees One Crore Sixty Eight Lakhs Fifty Thousand Two Hundred and Eighty only) is due and payable as on date of issuance of Demand Notice. The Respondent is also liable to pay interest till realization of the amount by the Applicant.

5. During the course of hearing on 31.10.2023, the Applicant was directed to serve the notice of the present application to the Respondent and furnish proof of service and delivery. In compliance of the same, the affidavit was filed vide diary no. 03141/1 dated 30.11.2023. However, no one appeared on behalf of the Respondent. Thereafter, the Applicant was again directed to serve notice



to the Respondent, and in compliance, the affidavit vide diary no. 03141/2 dated 09.01.2024 was filed along with courier receipts and tracking reports; and copy of service by email. The same was taken on record vide order dated 18.04.2024

6. In the interest of justice, the counsel for the Applicant was once again directed to the next date of hearing to the counsel opposite through email and place a copy of the email on record, vide order dated 18.04.2024. The compliance affidavit with regard to the same was filed vide diary no. 03141/3 dated 06.05.2024, which was taken on record on 04.09.2024.

7. Vide order dated 04.09.2024, it was noted that despite service of multiple notices, no one appeared on behalf of the Respondent, therefore, the Respondent was proceeded as ex-parte. Vide the same order, the Applicant was directed to file written submissions, which was filed vide diary no. 03141/8 dated 17.09.2024, wherein the Applicant reiterated the same facts.

ANALYSIS AND FINDING

8. We have heard the learned counsel for the Applicant and perused the documents/ records placed on record.

9. The first issue for consideration is **“Whether the present petition is filed within the period of limitation of three years”**. The date of default as mentioned in Part IV of the petition is stated as 08.06.2022, and the petition was filed on 25.09.2023. Hence, we find the present petition well within the period of limitation.



10. The issue for consideration is **“Whether demand notice in form 3 was properly served”**. The operational creditor had served the demand notice dated 26.05.2023 in form 3 and the same was delivered to the corporate debtor on 30.05.2023. Therefore, it is clear that the demand notice was properly served. As per the records placed, the corporate debtor did not reply to the said notice dated 26.05.2023. Further, no payment has been made by the corporate debtor.

11. The next issue for consideration is **“Whether there was a pre-existing dispute between the parties”**.

I. It is deposed by way of an affidavit under Section 9(3)(b) by the Operational Creditor that the demand notice has been served and no dispute is raised or is pending.

II. Further, the Corporate Debtor, despite multiple services of notice of the present application, neither appeared himself nor through any counsel, and due to the same, was proceeded as ex-parte vide order dated 04.09.2024. Therefore, no contention has been raised by the Corporate Debtor with regard to the pre-existing dispute.

12. The other issue for consideration is **“Whether the advance payments made by the Applicant-Operational Creditor is an operational debt or not”**.

I. In this regard, section 5 (21) of the Code is reiterated below-

“Operational debt” means a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment 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.”

- II. Further, the Hon’ble NCLAT vide judgment dated 06.05.2024 in **‘Company Appeal (AT) (Ins.) No. 1234 of 2023** in the matter of **Sanam Fashion & Design Exchange Ltd. versus Ktex Nonwovens Pvt. Ltd’** held as below-

“30. The relevant paragraphs of M/s Consolidated Construction Consortium Ltd. (supra) are:

“D Whether the appellant is an Operational Creditor”

.....;

43. First, Section 5(21) defines ‘operational debt’ as a “claim in respect of the provision of goods or services”. The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. Such an interpretation is also supported by the observations in the BLRC Report, which specifies that operational debt is in relation to operational requirements of an entity. Second, Section 8(1) of the IBC read with Rule 5(1) and Form 3 of the 2016 Application Rules makes it abundantly clear that an operational creditor can issue a notice in relation to an operational debt either through a demand notice or an invoice. As such, the presence of an invoice (for having supplied goods or services) is not a sine qua non, since a demand notice can also be issued on the basis of other documents which prove the existence of the debt. This is made even more clear by Regulation 7(2)(b)(i) and (ii) of the CIRP Regulations 2016 which provides an operational creditor, seeking to claim an operational debt in a CIRP, an option between relying on a contract for the supply of goods and services with the corporate debtor or an invoice demanding payment for the goods and services supplied to the corporate debtor. While the latter



indicates that the operational creditor should have supplied goods or services to the corporate debtor, the former is broad enough to include all forms of contracts for the supply of goods and services between the operational creditor and corporate debtor, including ones where the operational creditor may have been the receiver of goods or services from the corporate debtor. Finally, the judgment of this Court in Pioneer Urban (supra), in comparing allottees in real estate projects to operational creditors, has noted that the latter do not receive any time value for their money as consideration but only provide it in exchange for goods or services. Indeed, the decision notes that “[e]xamples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees”. Hence, this leaves no doubt that a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt.

.....;

31. In the present case, the appellant had placed an advance with the respondent for supply of goods, it does not matter who is the supplier or the receiver of goods and services as laid down in the M/s Consolidated Construction Consortium Ltd. (supra). The present case is squarely covered by the above discussed Judgment, as there is a clear nexus between payment made and supply of goods and services. Accordingly, we decide that the appellant is to be treated as Operational Creditor in the instant case.”

The Hon’ble Supreme Court also in case of **Consolidated Construction Consortium Ltd vs Hitro Energy Solutions Pvt**



Ltd.(2022) 7 SCC 164 held that receiver of goods who has paid advances is also an Operational Creditor.

III. Keeping the above judgments in view, it is clear that the advance payment made to the Corporate Debtor for supply of mobile handsets in the instant case is an 'Operational Debt' and the Applicant is an Operational Creditor.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As per part-IV, there is a total unpaid operational debt amounting ₹1,68,50,280/- (Rs. One crore Sixty Eight Lakhs Fifty Thousand Two Hundred Eighty only), which is more than Rupees one crore threshold for filing the application. The same is due. As per the facts stated by the Operational Creditor, the Corporate Debtor neither delivered the mobile handsets nor refunded the advance paid by the Operational Creditor. In this regard, the Operational Creditor also placed on record a certificate by Axis bank that as on date no payment has been received from Corporate Debtor from September 2022. Accordingly, the Operational Creditor proved the debt and the default.

14. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly shows that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions



provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the Corporate Insolvency Resolution Process in the case of the Corporate Debtor, MDM Televentures Private Limited and also direct moratorium in terms of Section 14 of the code to take effect as below:-

- 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 Operational 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;
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in



consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor;

f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

15. The Operational Creditor has not proposed any Interim Resolution Professional ('IRP') in Part-III of Form 5. The credentials of Mr. Ashok Kakkar has been checked and there is nothing adverse against him. In view of the above, we appoint Mr. Ashok Kakkar, Registration No IBBI/IPA-001/IP-P-01286/2020-2021/13518, E-mail: akkakar.58@gmail.com, Mobile No. 9996909992 as the Interim Resolution Professional with the following directions :-

i.) The term of appointment of Mr. Ashok Kakkar shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent within 7 days of the order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with



Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend



all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The RP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and



viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. The petitioner is directed to deposit an amount of ₹ 1,00,000/- (Rupees one Lac. Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

17. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

18. This petition is accordingly admitted.

Sd/-

(Ashish Verma)
Member (Technical)

May 09, 2025
Vansh

Sd/-

(Harnam Singh Thakur)
Member (Judicial)