

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.732/9/HDB/2018
U/s. 9 of the IB Code, 2016
Read with Rule 6 of the Insolvency & Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of
M/s. Conclave Infatech Private Limited

Between:

Magneto Home Private Limited
Having its Regd. Office at B-29,
Dharam Narayan Ka Hatha Paota,
Jodhpur, Rajasthan – 342 001.

...Petitioner/
Operational Creditor

And

Conclave Infatech Private Limited
Having its Regd. Office at
Plot No.38 & 39, Jayabheri 4 Seasons,
Gowliboddi, Gachibowli,
Hyderabad – 500 032, Telangana.

...Respondent/
Corporate Debtor

Date of Order: 18.09.2019.

Com: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsels present:

For the Petitioner/Operational Creditor:
Mr. Abhay Kumar Jain, PCA.

For the Respondent/Corporate Debtor:
Mr. Uma Shankar G, Counsel.

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. The present petition is filed by 'Magneto Home Private Limited'
(hereinafter referred to as 'Petitioner/Operational Creditor') under
section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter
referred to as **IB Code, 2016**), read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against

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M/s. Conclave Infrotech Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor').

2. Brief facts of the present case are as under:-
- a. That the operational creditor provided premier furniture and home appliances to the Corporate Debtor on rental and later to own basis and it was agreed upon between the parties that the rental period would be 24 months initially.
 - b. That the parties entered into a Master Lease Agreement (MLA) on 27.03.2017 in terms of which all the business transactions took place.
 - c. That on 11.04.2017 the Operational Creditor has delivered its first order in terms of MLA that was confirmed by the Corporate Debtor vide acceptance letter dated 29.04.2017.
 - d. That the worth of the items delivered in the first order works out to Rs. 23,31,500/- and its rental value works out to Rs. 1,24,085/- per month
 - e. That on 26.09.2017 the Operational Creditor has delivered its first order in terms of MLA that was confirmed by the Corporate Debtor vide acceptance letter dated 09.10.2017.
 - f. That the worth of the items delivered in the first order works out to Rs. 35,77,540/- and its rental value works out to Rs. 1,70,571/- per month
 - g. That since beginning, the Corporate Debtor has delayed payment of rentals and after 11 months of its first order stopped paying the rent completely.
 - h. That since November, 2017 onwards the Operational Creditor sent many emails and made several phone calls to the corporate debtor for making pending payments in terms of the invoices raised and as per MLA (Master Lease Agreement) but to no avail.
 - i. That on 30.06.2018 a demand notice under Form 3 of IBC, 2016 was sent to the Corporate Debtor demanding a sum of Rs. 1,07,26,577/-

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and that there was no reply to the Demand notice issued by the Corporate Debtor.

j. Reiterating above, the counsel for the Applicant prayed to allow the Petition, initiating CIRP and appointing an IRP.

3. Respondent filed Counter inter-alia stating as under:

- a. That Corporate Debtor is in the business of hospitality and property management and offers services in finding prospective tenants for the property, lets out the property to the tenants and if required, arranges for the furniture and furnishings in the property on behalf of the owner by entering into agreements with companies.
- b. That as per the MLA, it was incumbent upon the Lessor to supply material that is ordered, in time as agreed upon, as also in good quality condition.
- c. That the Operational Creditor, in case of both the orders, supplied the materials in bits and pieces and not as ordered or delivered in time. The issue persisted and the petitioner company always gave lame excuses for the delay in supply thereby giving raise to serious issues between the Corporate Debtor and the tenants due to which the tenants delayed/evaded payment of rents.
- d. That there have been many instance of breakage/damage of furniture and other items that were supplied by the petitioner company. In spite of requests, the Operational Creditor made no attempts either to replace or repair the same. In some cases, the respondent company had to replace/repair the furniture at its own costs as evident from the mail communications between both the parties and in view of such, the Corporate Debtor stopped making payments from the month of July, 2018.
- e. That though GST has been charged in the invoices during 2017-18, the same had not been paid by the Operational Creditor (on the pretext that

no GST registration number was available when in fact the same was obtained in July, 2017 and intimated to the petitioner) and that the petitioner company has neither rescinded the contract nor ever intimated its intention to take charge of the assets through a proper notice.

4. Counsel for the Petitioner filed Rejoinder inter-alia stating as under:

- a. That it has been contended by the Respondents that the materials were supplied in bits and pieces and delivery was not made in time. On the contrary, the materials were supplied in time and in good condition as confirmed through the certificate of acceptance.
 - b. That the Operational creditor for the first time got the information regarding repairing of the furniture when it reminded the respondent on bouncing of the ECS starting from September, 2018 which is nothing but a counter blast. Whenever the Petitioner got the information from the Respondent that some repair works and needed to be done, the same was attended to and as a goodwill gesture, the petitioner waived off the rent and reflected in the invoices sent from the month of May to Oct 2018.
 - c. That 26 ECS given by the respondent up to Dec. 2018 involving Rs. 37,84,042/- have bounced and that the petitioner has initiated legal process.
 - d. That as per MLA, the lessee will become owner only after making full and final payment and not before it and that the respondent having violated the terms and conditions of MLA has lost option to become owner of the goods supplied.
 - e. That the respondent provided GST number in May 2018 after which it was invariably quoted in rental invoice from May 2018.
5. Heard both the sides and perused the records.

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6. On perusal of the record, it is observed that the Corporate Debtor has provided two acceptance certificates dated 29.04.2017 and 9.10.2017 to the effect that the items referred to in the Rental Schedule have been delivered and accepted. However, the email correspondence exchanged between the parties right from 29.03.2017 onwards shows that the items were not delivered at one time and that there was deficiency in the goods supplied and same was informed to the Operational Creditor. The dispute between the parties can be seen from the Email communication between the parties which are extracted as under:

. Email communication dated 09.05.2017, wherein the Petitioner has stated as follows:

Dear Vittalji,

Apoligies for the delay. The furniture truck has dispatched today 09.05.2017 around 5 pm, it will reach Hyderabad on 13.05.2017. And all other items will reach in or around 13th May 2017. Looking for support and cooperation.

i. Email Communication dated 12.08.2017, wherein the Petitioner has stated as follows:

Hi Vittalji,

As discussed, we are processing with pending wardrobe delivery with the same quality which was delivered for the first order. And the 14 wardrobes which got delivered, we have replaced the locks on 10th Aug 2017, the back ply of the wardrobe which you told will replace once will deliver all wardrobe. Kindly confirm so we can process with pending wardrobes.

i. Email communication dated 19.02.2018, the Respondent has stated as follows:

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Neerav,

The attitude of your staff and the communication you are sending to the wrong people is un acceptable. We have different departments for different work flows as we are a company. We have given you accounts point of contact for you to communicate.

The operations team would send you the issues which need to address and those to be addressed with high priority as the customers would be facing issue. The company reputation is under risk if these issues are not timely addressed.

The collections from tenants to us also would be difficult, thereby it would be critical to pay you on time.

iv. Email communication dated 03.04.2018, the Respondent has stated as follows:

Hi Neerav,

Please find attached damaged furniture pics.

The quality of furniture is very poor. Its damaging our reputation and customer confidence. Its impacting our Brand Value.

Customers are not willing to pay the rents and we are unable to justify.

There is no one turning up from your end to close the repairs in spite of multiple reminders. Do ensure timely service and if needed we need to replace the furniture as well as it is under warranty.


v. Email communication dated 22.04.2017, the Petitioner has stated as follows:


Hi Vittal Ji,

Apologies for the delay in supplying refrigerator.

As confirmed by our vendor it will deliver today positively. Thanks for your cooperation.

7. From the above email correspondences, it is evident that all the goods were not supplied in one tranche and on time and further there were issues relating to the quality of the items delivered. Even in the emails dated 03.04.2018 and 27.07.2018, the Corporate Debtor highlighted the quality of the goods supplied by attaching the photographs of the damaged items with the emails and payment issues in the latter email. Thus it is observed that the disputes between the petitioner and respondent with regard to supply of goods in time, quality of goods and payment of rentals existed much prior to the issuance of the demand notice by the petitioner. Therefore, undoubtedly, there is a pre-existing dispute between the parties in relation to the subject claim made in the instant Petition.
8. Accordingly, the instant Petition is hereby rejected. No order as to costs.


18.09.19
Dr. Binod Kumar Sinha
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial

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