

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 3418/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

CBRE South Asia Pvt. Ltd.

[CIN:U74140DL1999PTC100244]

...Operational Creditor/Applicant

Versus

Man Global Ltd.

[CIN:U65990MH1986PLC039845]

...Corporate Debtor/Respondent

Order Pronounced on 17.01.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Lakshyaved Odhekar,
Advocate.
For the Corporate Debtor : Mr. Gauraj Shah, Advocate.

ORDER

Per: Mr. Prabhat Kumar

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **CBRE South Asia Pvt.**

Ltd. ("the Operational Creditor hereinafter referred to as Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Man Global Ltd. ("the Corporate Debtor hereinafter referred to as Respondent").

2. The Respondent was incorporated on 16.05.1986 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U65990MH1986PLC039845. Its registered office is at 101, Man House, opp. Pawan Hans, S.V. Road, Vile Parle (West), Mumbai-400056. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Brief Facts

3. The Applicant is engaged in the business of providing real estate advisory services, facility management and project management consultancy services all over the country and Asia as well.
4. The Respondent is in the field of construction and housing realty.
5. That, in and around year 2010, the Respondent commenced their plan to develop the property in Mira Bhayander Road and completed it in 2019. Then, in and around year 2010, the Respondent undertook the construction and development of a project called "Man Opus" (hereinafter referred to as 'the said project') located at Mira Bhayander, Thane, 401107. The Respondent appointed the Applicant as the Project Management Consultant (PMC) for speedy completion of the said project.
6. The Applicant and Respondent were working on the basis of Work Order No. WOJMMOP/001/18-19 dated 06.06.2018 (hereinafter referred to as the contract/said Work Order).
7. The services provided by the Applicant to the respondent are as per the said rates and conditions set forth by the Respondent to the Applicant only after due deliberations and discussions with

the officials of Respondent, which were as per the Work order issued by the Respondent to the Applicant.

8. For the services provided by the Applicant to the Respondent, following invoices were raised:

a) Invoice no. TMH1819002686 dated 30.01.2019 of Rs.10,54,920/-.

b) Invoice no. TMH1819003066 dated 26.02.2019 of Rs.09,53,987.52/-.

c) Invoice no. TMH1819003555 dated 26.03.2019 of Rs.09,30,068.92/-.

d) Invoice no. TMH1920000276 dated 26.04.2019 of Rs.08,65,884.00/-.

e) Invoice no. TMH1920000594 dated 24.05.2019 of Rs.01,88,684.36/-.

Total amount due is hence Rs.34,25,931.66/- (Rupees Thirty Four Lakhs Twenty Five Thousand Nine Hundred and Thirty One and Sixty Six paise only).

9. The Applicant then sent various emails to the Respondent demanding the payment of the due amount raised vide the invoices. However, the Respondent failed to give any positive response to the Applicant. Even after numerous emails from the Applicant, the Respondent has failed to pay the outstanding amount to the Applicant.

10. The Applicant then sent a demand notice dated 13.06.2019 under Section 8 of the IBC Code, 2016 demanding payment of the unpaid operational debt due from the Respondent to which the Respondent sent a reply dated 26.06.2019.

11. Hence, the present Application has been filed to initiate Corporate Insolvency Resolution Process in respect of the Respondent under Insolvency & Bankruptcy Code in terms of the work order issued to the Operational Creditor and the demand

notice dated 13.06.2019. The Corporate Debtor failed to make the payment to the Operational Creditor and hence the present application has been filed.

12. The total amount of debt payable by the Respondent to the Applicant is Rs.34,25,931.66/- (Rupees Thirty Four Lakhs Twenty Five Thousand Nine Hundred and Thirty One and Sixty Six paise only) being the principal amount due in terms of the invoices raised and retention money along with interest @24%.

Contentions of the Respondent

13. The Respondent had filed IA 2512/2022 for placing on record Affidavit in Reply. Vide order of this bench dated 04.01.2022, the Respondent's right to file Affidavit in reply was forfeited. However, having considered the submissions and on perusal of averments made in this Interlocutory Application, this bench has allowed the said Interlocutory Application vide order dated 20.07.2023 thereby taking on record Affidavit in reply.
14. The Respondent has contended that the Applicant has no "claim" as defined u/s 3 (6) of the IBC, since the Applicant has no "right to payment" as defined under the said definition. The Applicant's dues do not get covered under the term "Debt" u/s. 3 (11) of the Code, since there is no liability or obligation in respect of the so called claim. Further, the term default relates to non-payment of debt and since there is no claim or debt, there is no question of there being any default.
15. Further, there is a dispute with the very existence of the debt. There is no operational debt whatsoever. The Respondent has in fact vide their reply letter dated 26th June, 2019 notified the Applicant the existence of the said dispute. Hence, the Applicant was put to notice of the existence of dispute U /s. 8 (2) (a) of the Code read with section 5 (6) of the Code.

16. That, the Applicant has breached the terms of the Work Order which led to the termination of the same. The Applicant has failed to object the said termination thereby accepting the breach of Work Order by the Applicant.
17. That, the Applicant has also abandoned the site and has not complied with the terms of the work order. Due to abandonment of the site, the Respondent experienced delays in completion of the project as a result of which there were number of RERA Complaints filed alleging delay.
18. That, some of the invoices included in the Petition were never submitted for certification and some were submitted post termination. There was a pre-existing dispute at the time of raising invoices.
19. That, time was essence in the said Work Order no. WOJMMOP/001/18-19 executed between the Petitioner and Respondent. The completion date was fixed as 6th January, 2019.
20. That, Invoice no. TMH1920000276 dated 26.04.2019 page no.44-46 and Tax Invoice bearing no. TMH1920000594 dated 24.05.2019 page no.55-57 were never submitted by the Applicant to the Respondent's account and the same has never been received by the Respondent.
21. That, under Invoice bearing No. TMH1819002686 dated 30th January, 2019, the Respondent had paid Rs. 8,87,3441- (Rupees Eight Lakhs Eighty Seven Lakhs Three Hundred and Forty Four Only) after deducting TDS as applicable and with regards to other two Invoices bearing TMH 819003066 dated 26th February, 2019 and TMH1819003555 dated 26th March, 2019, the said amounts are under serious dispute. As per the Work Order the payment to the contractor is based on performance/ working hours and per man basis which broadly described therein. As the Applicant's Staff absconded the Project site and failed to perform their duty

as per the Work order, the said invoices remained uncertified by Engineer in Charge. In fact, the Respondent's project remained paralyzed for said period due to which the Respondent had to suffer huge loss. In view of the aforesaid facts, the alleged invoices raised by the Petitioner are contrary to the terms and conditions of work order. The amounts claimed therein are hence not payable.

22. That, the contract value was of Rs. 89,35,000/- (Rupees Eighty-Nine Lakhs Thirty-five thousand only). The Respondent has paid substantial amount of Rs.81,19,700/- (Rupees Eighty-One lakhs Nineteen Thousand Seven Hundred only) to the Applicant against the bills submitted by the Petitioner, which is in excess of rightful claim of the Operation Creditor. Despite this, the Petitioner failed to complete the work as per the Contract till 6th January, 2019. The claim for balance does not arise as the work for the same is not done and the bills aforesaid are disputed.
23. The Respondent has submitted that there were various shortfalls on the part of the Applicant with respect to the completion of the said project, which were notified by the Respondent to the Applicant on various occasions vide emails. The project was abruptly abandoned by the Applicant on 08th May, 2019 without any knowledge resulting into complete paralysis of ongoing works. Hence, the Respondent terminated the work Order under clause 9.0 vide its email dated 14th May, 2019 stating the aforesaid serious defaults and further calling upon the Petitioner to hand-over the entire documents, Records and belongings with respect to all services and discipline within 24 hours of the said termination notice to the Respondent's authorized representative at the Project office without fail.

Contentions of the Applicant

24. Upon the contentions made by the Respondent in its email terminating the said Work Order, vide its email dated 16.05.2019, the Applicant has submitted that,
- i. The Applicant was engaged as a Project Management Consultant (PMC) for the Respondent's project Man Opus, for supervising and coordinating the activities of third-party vendors/contractors engaged by the Respondent. The Applicant did not have any direct involvement in execution of the works by other vendors of the Respondent, except for the limited role of supervising and coordinating their work and reporting the same to the Respondent in a timely fashion. According to the Applicant, the Applicant has performed its work diligently and in accordance with the terms of the Work Order, and all issues arising during the course of execution of the project were duly and promptly reported to the authorized representatives of the Respondent from time to time.
 - ii. Moreover, the Applicant's role in the billing process was limited to collecting the bills and handing them over to the Respondent appointed representative post certification. All bills were submitted to the Respondent's appointed Billing Engineer within due time. The delay in processing of bills occurred as a result of the negligence and callous attitude of the Respondent's appointed Billing Engineer and partly due to non-approval of Goods Receipt Note (GRN) owing to a software issue. CBRE was only made aware of the huge backlog of outstanding bills subsequent to the resignation of the Billing Engineer appointed by the Respondent. Thereafter, CBRE, on its own, took charge of the situation and provided support in cleaning a significant number of the bills within a short period of 3 days.

- iii. The delay in execution and completion of the project is not attributable to the Applicant as the same occurred due to several contractual issues between the Respondent and other vendors. The issues, which primarily related to non-payment of dues to the Respondent's other vendors, non-availability of adequate material and manpower etc, were brought to the Respondent's attention promptly for resolution.
- iv. The Applicant was appointed as the project management consultant mid-way during the project and all project documents, etc. requested by you were duly and promptly provided.
- v. The following documents were submitted to the Respondent at various stages of the project:
 - a. The BOQ was attached to the Work Order and was duly shared with the working team at site as well as contracts team upon request.
 - b. A detailed Cost to Complete Statement was submitted by the Applicant in August 2018 at the time of entering upon the project as the project management consultant.
 - c. No Project Procurement Strategy documents were required to be submitted as the Applicant had entered the project mid-way when all contractors had already been appointed and had also commenced work on the project.
 - d. In regard to point nos. 2 to 7 of the scope of works, construction work on the project was already underway at the time of the Applicant's appointment as the PMC and no fresh requirements were communicated to the Applicant for Tendering.
 - e. With regard to Mobilization of Work and Material On Site, at no time was the Applicant requested to furnish any documents, drawings, manuals or other documents as the construction work was already underway.

- f. The documents required to be submitted during the construction stage including Construction Quality Plan, Tracking Schedule, Monthly Cash Flow Projection were duly submitted to you, highlighting the concerns and delays in project completion.
- g. Throughout the course of performance of its services, the Applicant has continually highlighted the delays, unsafe working conditions, non-payment of vendors and other issues to the Respondent.
- h. The documents and reports for the Post Construction and Post move in stage were in progress at the time of this reply and were to be shared with the Respondent post completion of each stage.
- vi. The Respondent has failed to give payment of the Applicant's dues under the contract despite repeated requests and reminders. The Respondent had assured payment of the Applicant's outstanding dues towards the invoices for January, February & March 2019 by RTGS and Post dated cheques on 06th or 07th May 2019. It was clearly communicated to the Respondent by the Applicant's Management that if they failed to honour the Respondent's commitment yet again, the Applicant would be forced to remove its resources from the project site. The same did not happen hence the Applicant was forced to withdraw its resources from the project site w.e.f. 08th May 19.
- vii. In response to the allegation regarding non-deployment of Store manager by the Applicant, it was clearly communicated to the Respondent that the Applicant does not undertake store management activities for its clients. However, upon the Respondent's repeated requests, the Applicant agreed to provide a resource, if the Applicant was able to find a suitable resource. However, the Applicant was not able to identify a suitable resource for the job.

Findings

25. We have heard the submissions of the learned Counsel for the Applicant and Respondent and perused the records.
26. We find that vide email dated 12.06.2019 the Corporate Debtor had informed the Operational Creditor that *“due to your incompetent, incapable, ineffective, careless, incoherent, fuggy and entirely idle team, we have incurred huge financial losses and that there has been enormous delay in key deliverables assigned to you, we feel certain that these losses can’t be simply compensated in terms of money as the enormous delay has considerably impacted our brand image also which is invariably an intangible asset.”* Prior to it, the Corporate Debtor vide email dated 29.05.2019 had communicated that, *“you are very well acquainted with the facts that more than 550 nos. of bills were pending with your Billing team which eventually compelled us to make adhoc payment to our respective vendors in order to keep the pace of ongoing works. In fairness to yourself, this poor, fuggy, incoherent, inefficient, incapable, idle and careless team resulted in huge and irreparable loses to us which can’t be really compensated in terms of money only.”*
27. The Corporate Debtor has also stated that it was expected from the Applicant to complete the assigned task in a timely and satisfactory manner. The billing process at site from receipt of bill to certification and its onward handover to MGL was in the scope of CBRE as contemplated in the work order. However, due to inefficacy and laxity of the Applicant’s Billing team, more than 500 Bills are pending with CBRE without any scrutiny, processing and finally information to MGL. There was a piffle of Bill Process which led to the mutilation of Project Billing System which in turn adversely affected the Applicant’s vendors scheduled completion date of assigned task and timely handover

of the project. All this led and resulted into huge financial irreparable losses to the Respondent in terms of time and cost and more importantly our Brand image of the Respondent. The timeline was also not followed by the Applicant. Considering the above facts, the Respondent terminated the said work order.

28. Further, we find that the Corporate Debtor in its mail dated 14.05.2019 had set out the deficiencies and lapses in the services of the Operational Creditor while terminating the contract. The Operational Creditor has termed the lapses as an excuse for delaying the payment. Also, we note that there is disagreement between the parties as to who is responsible for the alleged deficiencies notified by the Corporate Debtor. As these differences call for adjudication, this bench have no hesitation to hold that the present application is not maintainable on account of prior dispute being in existence and this bench cannot entertain an Application based on the debt which is in dispute.
29. As far as the contents of Part V of the petition are concerned, the Applicant has failed to produce any relevant documents to prove the alleged claim due and payable by the Respondent. The Bank Certificate appended at Annexure I clearly states that, the certificate was issued by the bank on the request of the Applicant's letter dated 05.07.2019 and the bank has not gone into the question as to whether any particular debt is payable or not by the Respondent.
30. From the record, it is seen that there is existence of dispute between the Applicant and the Respondent and the same was notified to the Applicant vide reply letter dated 26.06.2019 sent by the Respondent. The existence of dispute has been clearly established vide the emails placed on record by the Respondent sent by the Respondent to the Applicant. Hence, the respondent has complied with the provisions laid down in Section 8(2)(a).

31. Considering the above facts and circumstances, since there is dispute between the parties on the subject matter of the present Application, the present Application is dismissed under Section 9(5)(ii)(d) of the Code.
32. The Petition bearing **CP (IB) 3418/MB/2019** filed by **CBRE South Asia Pvt. Ltd.** [CIN:U74140DL1999PTC100244], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Man Global Ltd.** [CIN: U65990MH1986PLC039845], the Corporate Debtor, is **dismissed**.
33. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
34. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)



Sd/-
Justice V. G. Bisht (Retd.)
Member (Judicial)