



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

CP (IB) No. 206/Chd/Hry/2024

(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:

SEARCH PHARMA PRIVATE LIMITED

(CIN U74899DL1994PTC062809)

Registered Address: B-28, Street No. 11,
Gurudwara Road Behind Mother Diary,
East Delhi, New Delhi-110092

....Petitioner/Operational Creditor

vs

VISHAL MEGA MART PRIVATE LIMITED

(CIN: U51909HR2010PTC052389)

Registered Address: Plot No. 184, Fifth Floor,
Platinum Tower Udyog Vihar Phase-1,
Gurgaon, Haryana-122016

...Respondent/Corporate Debtor

Order delivered on: 07.11.2025

**CORAM: KHETRABASI BISWAL, MEMBER (JUDICIAL)
: KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

Present: -

For the Petitioner : Mr. Vishav Bharti Gupta, Advocate
For the Respondent : Mr. Ashim Aggarwal, Advocate



JUDGEMENT

The instant application was filed by **Search Pharma Private Limited** (Operational Creditor/Applicant), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code” or “IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as ‘CIRP’) against **Vishal Mega Mart Private Limited** (Corporate Debtor/Respondent) for the default amount of Rs. 64,67,067/- including interest. The date of default is 13.01.2014.

2. The averments made by the Operational Creditor/Applicant in its Application and as argued by the learned counsel are summarised as under:

- i. This application is in furtherance of the order dated 27.05.2022 in CP-205-2015(O&M) titled M/S Search Pharma Private Limited Versus M/S Vishal Mega Mart Private Limited, passed by the Hon'ble High Court of Punjab And Haryana in which the Court has given directions as to reference of the above stated matter to NCLT, Chandigarh Bench in pursuance of the judgment passed in CA No. 4041/2020, titled as Action Ispat And Power Pvt. Ltd. Vs. Shyam Metalics And Energy Ltd.
- ii. The Operational Creditor entered a Memorandum of Understanding dated 26.06.2009 for lease with Corporate Debtor for three years up to



29.06.2012 at a consolidated monthly rent of ₹9,00,000. Operational Creditor executed Lease Deed dated 01.09.2011 and total Lease amount thus calculated and agreed is Rs. 10,53,548/-.

iii. The Petitioner obtained Service Tax registration under “Renting of Immovable Property” on 07.09.2009 and started charging service tax on invoices.

iv. Corporate debtor sent a letter dated 28.11.2009 for non-applicability of Service Tax on renting of immovable property and Refund of already paid Service Tax. Vide letter dated 20.10.2010 Corporate Debtor admitted the liability of Service Tax.

v. Clauses 5 & 6 of the lease agreements (Annexures P-2 & P-3) bind the Respondent to pay all charges including electricity, water, maintenance, and service tax, and absolve the Petitioner of any liability thereon.

vi. Corporate Debtor sent Notice dated 21.02.2012 for termination of lease. A Summon dated 05.09.2012 regarding proper payment of Service Tax was sent to the Petitioner by the Office of Commissioner of Service Tax.

vii. Operational Creditor on its own, to avoid payment of interest and penalty upon the service tax liability and to avail the benefits of Service Tax Voluntary Compliance Encouragement Scheme, 2013 paid an amount of Rs. 23,09,667/- to the Tax Authorities.



- viii. Operational Creditor issued legal notice dated 13.01.2014 to the Corporate Debtor to clear the dues of Service Tax for the period commencing 2008-09 till 2012-13. Corporate Debtor sent a reply to legal notice.
- ix. The Operational Creditor had also issued notice of demand to the Corporate Debtor under the provisions of the Companies Act, 1956 asking it to make the payment but the Corporate Debtor had not made the payment, deliberately avoiding and neglecting to pay the said amount. Corporate Debtor sent a reply to Notice of demand.
- x. The rent receipts issued by the Operational Creditor to the Corporate Debtor are inclusive of Service Tax liability which is compounded @ 10% of the total rent.
- xi. In view of the judgement of the Delhi High Court titled as Home Solutions Retails (India) ltd. Vs. Union of India (UOI) and Ors decided on 23.09.2011, citation at 182(2011) DLT548, it was held that there is value addition when the premises is let out for use in the course of or furtherance of business or commercial.
- xii. As per part IV of the petition, the Total amount of Debt Rs. 64,67,067/- (Principal amount Rs. 23,09,667/- plus delayed payment interest @ 18% amounting to Rs. 41,57,400/-). The date of default is 13.01.2014.



3. In this context, defense placed by the corporate debtor in its affidavit in reply and submissions made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

i. The Respondent is in the business of wholesale trading of various goods and owns the trade mark "Vishal Mega Mart". The Respondent is a profit-making company and had revenue of over Rs. 5000 crores and net profit of over Rs 200 crores in the financial year 2022-2023 (as audited) and has nearly 500 employees across India. The Respondent is completely capable of honoring all its valid and acknowledged debts and is an absolutely solvent company.

ii. The claim of the Petitioner is Rs.64,67,067/- consisting of principal amount of Rs.23,09,667/- and delayed payment interest calculated unilaterally at the rate 18% amounting to Rs.41,57,400/-. There is no contractual clause or invoice term providing for interest. Even including such interest, the alleged debt remains below ₹1 crore, the minimum threshold under Section 4 IBC. The petition is therefore not maintainable.

iii. The Petitioner is claiming that the service tax liability on the lease rental has not been discharged by the Respondent and is claiming the said outstanding tax amount as an operational debt. The alleged service tax amount was not payable by the respondent to the petitioner or the Government. Further, the said claim is not in respect of provision of goods or services and hence, the said claim cannot be said to be an operational debt



within the meaning of Section 5 (21) of IBC. Thus, in absence of any operational debt, the present petition is liable to be rejected.

iv. The claim is time-barred. The invoices relate to the period 05.08.2009 to 05.10.2011. Under Clause 1 of the lease deed dated 01.09.2011, rent was payable monthly in advance by the 10th of each month. The last invoice was dated 05.10.2011, making the limitation period expire on 10.10.2014. The winding-up petition was filed on 16.11.2015, after more than three years, rendering the claim barred by limitation.

v. The matter was at pre-admission stage in the Hon'ble High Court and was required to be transferred to the NCLT. The High Court directed the parties to appear before the NCLT on 17.08.2022 and dispensed with the filing of the statutory demand notice under Section 8 of IBC.

vi. The petitioner failed to appear before the NCLT on various dates and thereafter, despite various opportunities failed to file its claim as per IBC format. The present petition was finally e-filed on 04.07.2024 and copy supplied to the Petitioners vide email on 12.07.2024 i.e. more than 2 years after the matter was transferred to this Tribunal. As such, the period till filing of claim also ought to be added towards the delay and hence, the application/claim is time barred having been filed more than three years after the alleged last cause of action i.e. 05.10.2011. The claim for the initial demand dated 05.08.2009 is barred by over 5 years and hence, the present application ought to be dismissed/rejected being time barred.



vii. Majority of the claims/bills for the period 05.08.2009 to 04.02.2011 pertain to bills raised on M/s Vishal Retail Ltd. There is no privity of contract between the said M/s Vishal Retail Ltd. and the respondent and as such, claims for the said period are in any event not maintainable as respondent cannot be made liable towards the alleged claims raised on a different and unrelated entity.

viii. A pre-existing dispute existed well before the filing of the company petition. The respondent vide letter dated 21.02.2012 terminated the lease agreement dated 01.09.2011 and informed the petitioner that the lease would be treated as determined on midnight of 31.03.2012. The petitioner vide notice dated 13.01.2014 itself highlighted that there was a dispute regarding payment of service tax and that despite all efforts there was no amicable settlement and that a dispute had arisen between the Petitioner and the notices which included the respondent herein. The said notice also sought appointment of an independent Arbitrator within 30 days for adjudicating the dispute in accordance with the Arbitration and Conciliation Act, 1996. Hence, having itself admitted that there was existence of dispute and having invoked arbitration, there can be no manner of doubt that there is a pre-existing dispute between the parties including commencement of arbitration which as per Section 21 of the Arbitration and Conciliation Act, 1996 commences on the date on which request for dispute to be referred to arbitration is received by the respondent.



ix. The claim towards service tax dues from the respondent is unwarranted and not maintainable in view of the fact that firstly, the said claim is not an operational debt and secondly in terms of Clauses 6 & 14 of the lease deed dated 01.09.2011 it was made explicit that all taxes, duties including statutory levies, penalties and charges payable to the Government shall be exclusively borne and paid by the lessors alone. Hence, there is no basis for the petitioner to allege after more than three years of alleged cause of action, that the said service tax was to be paid by the respondent.

x. The Petitioner has also suppressed material facts. It failed to disclose the letter dated 31.03.2012 acknowledging vacant possession and stating that no dues were pending, and that ₹16,000/- was payable by the Petitioner to the Respondent. The Petitioner paid the said amount on 02.05.2012 as full and final settlement.

xi. Reliance is placed on judgment of Hon'ble Supreme Court in the case of S.J.S. Business Enterprises (P) Ltd. v. State of Bihar reported in 2004 (7) SCC 166, wherein it has been interalia held that:

"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it."

xii. It is also settled law that "It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making



to the Court. The petitioner is in breach of the settled law and as such the instant Application ought to be dismissed with costs.

xiii. The alleged debt towards invoices raised for period 05.08.2009 to 04.02.2011 are in the name of Vishal Retail Ltd. The lease deed signed with the Respondent Company is dated 01.09.2011 (effective 01.08.2011) and as such, any prior dues including alleged invoices dates 04.06.2011 and 05.07.2011 cannot be transferred/imposed onto the Respondent. The Respondent Company did not purchase Vishal Retail Ltd. or assume its liabilities of service tax of lease deed in question, but due to Corporate Debt Restructuring proceedings of Vishal Retail Ltd, only its wholesale undertaking was transferred to TPG Wholesale Pvt. Ltd. vide slump sale agreement dated 6.11.2011 and to the best of knowledge of the respondent the said company (Vishal Retail Ltd.) itself continues to be in existence. Had the respondent taken over the liability of service tax of Vishal Retail Ltd., the same would have definitely found mention in the lease deed dated 01.09.2011 but the same is silent regarding any such previous transactions. On the contrary even the lease deed dated 01.09.2011 makes it clear that all taxes, duties etc. are payable by the lessor alone and hence, the attempt of the Petitioner to impose the previous liabilities of an unrelated company i.e. Vishal Retail Ltd. upon the respondent is nothing but an abuse of process of law and a malafide attempt to put the Respondent company into insolvency process. Moreover, the alleged Petition before the Hon'ble High Court as also



this Tribunal is time barred and not maintainable on various grounds including the fact that the Petitioner itself acknowledged on 31.03.2012 that there was no amount outstanding against the Respondent Company. Hence, by concealing these facts and documents, the Petitioner has approached this Tribunal with unclean hands and the present application not only ought to be rejected but punishment and cost ought to be imposed upon the Petitioner under the provisions of Sections 65, 75 and 76 of the IBC.

4. In this context, rejoinder was placed by the applicant, the submissions made thereon, apart from reiterating facts already placed in the petition, are summarized as under:

- i. The applicants have denied the averments made by the Corporate debtor which are contrary to the submissions made by the applicant.
- ii. The objection regarding the threshold of ₹1 crore is untenable, as the application was filed in 2015 when the threshold was ₹1 lakh. The High Court's transfer order, passed after the 2020 notification, is consistent with the law laid down in *Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd AIR 2021 SC 309*.
- iii. The plea that Respondent is not liable for service tax is incorrect; judicial precedents establish that service recipient bears the liability and must reimburse the provider.



iv. The Respondent delayed payment citing pendency of litigation; thus, limitation is saved by repeated acknowledgments and the principle against benefiting from one's own wrong. The Respondent's letter dated 28.11.2009 directed refund transfer to its account, showing acknowledgment of liability. Letter dated 20.10.2010 further acknowledged responsibility for service tax, penalty. It was assured that the Respondent is going through a corporate debt restructuring process and is in the midst of transferring its business and liabilities to a prospective buyer/ strategic partner, i.e. Respondent and In the event that the judicial determination of the Service Tax matters is adverse, the Respondent unequivocally undertook to bear the full responsibility and liability for the payment of the said Service Tax.

v. No objection was ever raised by Respondent to invoices showing service tax separately, amounting to admission of liability. Clauses of the lease deed relied upon by Respondent relate only to property-related taxes (like property tax, water tax) and not to service tax, which is the Respondent's statutory liability.

vi. The respondent has asserted pursuant to the lease deed dated 01.09.2011, it was explicitly stipulated that all taxes, duties, including statutory levies, penalties, and charges payable to the Government, shall be borne and discharged exclusively by the lessors. This statement of the Respondent is factually incorrect, legally untenable, and misleading. The said clause 5 & 6, as has been referred to by the Respondent, pertain to the



Respondent's categorical commitment to bear the costs of various usages and charges, including but not limited to in-house electricity, water, in-house maintenance, security services, and any other charges or usages arising after the commencement of the lease in respect of the property in question. It is submitted that the said agreement explicitly provides that the Applicant (the Petitioner) shall not be liable or responsible to make any payments on behalf of the Respondent for amounts that the Respondent is otherwise legally obligated to discharge.

vii. The Clause 6, to which the Respondent is referring, pertains solely to expenses related to the demised premises i.e. property tax etc and the said clause, does not in any manner, address the Service Tax that was incumbent upon the respondent as the Service Recipient. The said clause is, therefore, inapplicable to the issue of Service Tax, which remains a separate and distinct obligation of the Respondent. the true interpretation of the aforementioned clause is that the taxes pertaining to the demised premises are to be borne by the lessor. The said taxes are only limited to those that are directly associated with the demised premises like property tax, water tax etc. i.e. the charges which are directly attributable to the property itself.

viii. The “no dues” letter referred to by Respondent pertained only to rent and not to service tax, which became payable only after Applicant deposited the tax with the Department.



ix. Invoices from 2009–2012 remain unpaid; Respondent had assured reimbursement if Applicant made payment. Liability flows even for invoices raised prior to 2011 lease, owing to corporate restructuring and transfer of obligations. By virtue of restructuring and letters dated 10.09.2010 and 20.10.2010, Respondent assumed service tax liabilities of Vishal Retail Ltd.

Analysis and Findings

5. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record carefully.

6. The issues arising for determination are: (i) whether the claim qualifies as an operational debt within the meaning of Section 5(21) of the IBC; (ii) whether the claim is within limitation; (iii) whether there exists a pre-existing dispute between the parties; and (iv) whether the application meets the threshold prescribed under Section 4 of the IBC.

7. The first issue is whether the claim qualifies as an operational debt. The Operational Creditor has asserted that the liability arises from service tax on lease rentals, which was paid by it on behalf of the Corporate Debtor under the Voluntary Compliance Encouragement Scheme, 2013. Prima facie, therefore, the liability claimed partakes the character of operational debt, as it arises out of statutory dues in connection with the provision of services. The Corporate Debtor,



however, has argued that such statutory dues do not fall within the ambit of “operational debt.”

8. In the matter of **Global Credit Capital Limited & Anr. vs. Sach Marketing Pvt. Ltd. & Anr.** [Civil Appeal No. 1143 of 2022], the Hon’ble Supreme Court analysed the applicability of Section 5(21), which defines ‘operational debt’ and explained that “operational debt means a claim in respect of the provision of goods or services including employment”, and for it to be applicable the claim must be regarding the provisions of goods or services, therefore, in the case of a contract of service, there must be a correlation between the ‘service’ agreed to be provided under the agreement and the ‘claim’. Applying this principle, in our view, the definition under Section 5(21) is wide enough to encompass dues payable under law which are intrinsically linked with provision of services.

9. The second issue is regarding the limitation period. The last invoice was raised on 05.10.2011 and payable by 10.10.2011. Limitation expired on 10.10.2014. The winding-up petition was filed on 16.11.2015, beyond three years. The Petitioner argues that acknowledgments of liability extended limitation under Section 18 of the Limitation Act. However there is no clear acknowledgment beyond 2011 is shown on record against this Respondent. Hence, we find that the petition is barred by limitation.



10. The crucial question is whether a dispute existed prior to issuance of the statutory notices. The Corporate Debtor has placed reliance on the notice dated 13.01.2014 invoking arbitration, which clearly records the Petitioner's admission that disputes existed regarding liability to pay service tax. Section 21 of the Arbitration and Conciliation Act, 1996 provides that arbitral proceedings commence upon receipt of such request. Thus, arbitration had commenced prior to filing of the company petition.

11. Hon'ble Supreme Court in the case of "Mobilox Innovative Private Limited vs. Kirusa Software Private Limited, Civil Appeal No. 9405 of 2017, has held that:

"Therefore, all the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the court does not need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exist in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

12. Applying the ratio in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., supra, the test is whether there exists a "plausible contention" requiring adjudication, and not a patently spurious or illusory defence. In the present case,



correspondence and invocation of arbitration demonstrate that a genuine dispute had arisen well before the petition was filed. Therefore, the requirement of Section 9(5)(ii)(d) of IBC is attracted.

13. With regard to the issue that whether the application meets the threshold prescribed under Section 4 of the IBC, we note that the amount claimed by the Operational Creditor is ₹64,67,067/-, comprising ₹23,09,667/- as principal and ₹41,57,400/- as interest calculated unilaterally at 18%. This is a case of transfer of winding up petition from High Court to the NCLT for converting it as an Insolvency Application (u/s 7 or 9 of the code) and as such the threshold limit applicable as on the date when creditor had filed the winding up petition will have to be taken. In the present case, the winding up Application was filed on 16.11.2015. Hence, the threshold limit of Rs. 1 lakh shall be applicable as regards the Section 9 petition of the applicant under the code.

14. In light of the above findings, while the claim may otherwise fall within the ambit of operational debt, the present petition is not maintainable as the claim is time-barred and also lacks merit as there was a pre-existing dispute between the parties.



15. As a result, the Company Petition CP (IB) No. 206/Chd/Hry/2024 **is dismissed and is disposed of accordingly.**

Sd/-

(Kaushalendra Kumar Singh)
Member (Technical)

Reet

Sd/-

(Khetrabasi Biswal)
Member (Judicial)