

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

**C.P. No. 4086/IBC/MB/2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016  
*In the matter of*

**SMS INTEGRATED FACILITY SERVICES  
PRIVATE LIMITED**

**CIN: U74999MH2000PTC125538**

Having registered office at:  
KPT House, 41/13, Sector 20, Vashi,  
Navi Mumbai MH 400 703.

.... Operational Creditor/Petitioner

Vs

**TALEDA SQUARE PRIVATE LIMITED**

(CIN: U70200PN2014PTC153567)

Registered office at: Survey No. 1226/2, Off. F.  
C. Road, Shivaji Nagar, Pune,  
Maharashtra 411 004.

..... Corporate Debtor/Respondent

**Order delivered on: 09.01.2024**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance :-**

For the Operational Creditor : Mr. Deep Dighe, Advocate a/w  
Mr. Amit Tungare, Advocate

For the Corporate Debtor : Mr. Taleda, Learned Counsel

**ORDER**

*[Per: Justice (Retd.) V. G. Bisht, Member (J)]*

1. This is an application filed by operational creditor/applicant under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IB Code" for short) against corporate

debtor/respondent, for initiating Corporate Insolvency Resolution Process (“CIRP” for short).

**Brief facts:-**

2. The Operational Creditor is engaged in the business of providing housekeeping services to various corporate across India. The Corporate Debtor is in the Real Estate Business.
3. The Corporate Debtor in the due course of business approached the Operational Creditor for providing housekeeping services at “Taleda Square”, Ajmer, which is managed by it. The Corporate Debtor through their letter of intent dated 23.11.2018 expressed willingness to appoint the services of the Operational Creditor for the period of one year from the effective/commencement date of the services. The Operational Creditor, on its part, accepted the letter of intent and provided housekeeping services accordingly. The Operational Creditor then raised an invoice dated 01.02.2019, which is a date on which the debt fell due, to the Corporate Debtor. However, the Corporate Debtor failed to pay the outstanding debt amount. The demand notice under Section 8 of the code demanding an amount of Rs. 2,30,577/- along with interest was also served but again the Corporate Debtor failed and neglected to comply the said demand notice. Hence, the present petition.
4. The Corporate Debtor by its affidavit-in-reply dated 26.10.2021 has resisted the petition on following major grounds:
  - i) First and foremost ground is that there is no proximity of the contract between the parties in as much as the letter of intent (LoI) was not signed by the Operational Creditor during the stipulated time of 30 days and thus there was no intention on

the part of the Operational Creditor to enter into the detailed contract/agreement at any given time.

- ii) The next ground is about the non-service of mandatory notice under Section 8 of the Code on its registered address.
  - iii) Thirdly, there has been number of communications between the parties, which has not been produced on record by the Operational Creditor and rather the same is produced on record by it (Annexure-C) showing the pre-existing dispute between the parties.
5. Therefore, the present petition is liable to be dismissed on the aforesaid ground, concluded Corporate Debtor.
  6. Heard Learned Counsel for the parties. Perused the Record.
  7. The first ground of resistant raised by the Corporate Debtor is that there is no proximity of the contract between the parties. In order to substantiate this ground the learned Counsel for the Corporate Debtor invited our attention to the letter of intent produced on record (at page no 6 of the petition). On perusal of the letter of intent dated 23.11.2018 it is seen more particularly from Clause no. 2 that the formal definitive agreement (“the Agreement”) shall be signed between parties within a period of 30 days from the effective/commencement date. It is a very specific case of the Corporate Debtor that on 23.11.2018 itself the Respondent had duly signed and sent to the Operational Creditor the said letter of intent containing all necessary terms and conditions. However, there was no response from the side of the Operational Creditor in as much as the said letter of intent filed by the none other than Operational Creditor on record nowhere shows that the same was accepted in letter and spirit by it as it doesn't contain the signature

of the Operational Creditor or its any authorised signatory. Therefore, for all material purpose it lost its significance after the expiry of period of 30 days as contemplated by Clause 2 of LOI and noted hereinabove. We find merit in the argument of learned Counsel for the Corporate Debtor that there was no concluded contract between the parties.

8. This brings us to the second ground of the non-service of the mandatory notice under Section 8 of the Code. It is settled principle of law that for initiating proceeding under Section 9 of the Code, the notice under Section 8 of the Code is mandatory and it is only after valid notice is so sent and if the Corporate Debtor fails to comply it or make the payment within 10 days, then only the Operational Creditor is clothed with a right to file petition under Section 9 of the Code.
9. The Operational Creditor has filed on record alleged demand notice dated 08.06.2019 along with the postal envelope (page 10 and 16) respectively and postal acknowledgement (at page 17) showing that the addressee had left the premises. The address given on the postal envelope is "To, Taleda Square Private Limited, 13, Wilson Garden Motilal Talera Marg, Pune 411 001". According to the Corporate Debtor the alleged demand notice was not served upon its registered office, in as much as as per the Master Data available on the MCAs' website it's registered office is "Survey No. 1226/2, Off. F. C. Road, Shivaji Nagar, Pune, Maharashtra 411 004. A copy of the master data of the Corporate Debtor is marked as "Annexure-B" of the affidavit in reply which clearly supports the contention of the Corporate Debtor. There is no challenge to this aspect by the Operational Creditor.

10. Thus, it is quite evident that the demand notice was not duly served on the registered address of the Corporate Debtor as a result of which it is beyond acceptance that there was due compliance of Section 8 of the Code. Essentially speaking no “demand notice” was served on the Corporate Debtor in accordance with law.
11. Last objection. This is all about the pre-existing dispute which from time to time was raised and taken up by the Corporate Debtor with the Operational Creditor. According to the Learned Counsel for the Corporate Debtor, before filing of the present petition there had been series of e-mails addressed to the Operational Creditor regarding the deployment of staff without approval of Corporate Debtor, ungroomed staff, shortage in services or non-service, theft, lack of discipline, etc. In support of this, those e-mails are marked as “Annexures-C” of the affidavit in reply of the Corporate Debtor.
12. Consolidated reading of those e-mails is cumulatively to the effect that indeed serious grievances from time to time were raised by the Corporate Debtor in respect of the deployment of service of the staff member regarding which the so-called LOC vis-a-vis agreement for facility management service was entered into between the parties. All these e-mails are pointedly point to the differences, grievances and acknowledgement on the part of the Operational Creditor significantly signifying about the dispute in respect of alleged LOI. Interestingly, these e-mails are not at all assailed or controverted by the Operational Creditor. Therefore, we are of the considered opinion that there was exiting dispute regarding quality and deficiency of the services.
13. The Hon’ble Apex Court regarding “existence of dispute” in the case of ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*** in ***Civil Application No. 9405 of 2017*** dated

**21.09.2017** has clearly held that in case the dispute existed between the parties prior to the initiation of the demand notice the petition under Section 9 of the Code is liable to be dismissed.

14. As already noted by us, there being a pre-existing dispute between the parties prior to the issuance of the so called/alleged demand notice, which we have held unequivocally to be invalid in law, the present petition under Section 9 is liable to be dismissed.
15. In view of above, we pass the following order.

**ORDER**

- i) Company Petition No. 4086/2019 filed under section 9 of I & B Code, 2016, filed by SMS Integrated Facility Services Pvt. Ltd., Operational Creditor/Applicant against Taleda Square Pvt. Ltd., Corporate Debtor for initiating Corporate Insolvency Resolution Process is **dismissed**.
- ii) We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.
- iii) Pending IAs'/MAs', if any, in the present Company Petition stand **disposed of**.
- iv) File be closed and consigned to record.

**Sd/-**

**PRABHAT KUMAR  
MEMBER (TECHNICAL)**

**Sd/-**

**JUSTICE VIRENDRASINGH BISHT  
MEMBER (JUDICIAL)**

*Sapna*