

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-(Court-I)  
KOLKATA**

**CP (IB) No. 841/KB/2020**

*An application 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:

**Jones Lang LaSalle Property Consultants (India) Pvt. Ltd.**  
[CIN: U74140DL1997PTC091209]

*...Operational Creditor*

*Versus*

**M A Leasing and Construction Pvt. Ltd.**  
[CIN: U70101WB1992PTC056110]

*...Corporate Debtor*

**Date of pronouncing the order: 04/09/2023**

**Appearances (through hybrid mode):**

For the Operational Creditor : Ms. Manju Bhuteria, Advocate  
: Mr. Varun Kedia, Advocate  
: Ms. Avey Jaiswal, Advocate

For the Corporate Debtor : Mr. S. Manna, Advocate

**Coram:**

**Rohit Kapoor** : **Member (Judicial)**  
**Balraj Joshi** : **Member (Technical)**

**ORDER**

*Per Rohit Kapoor, Member (Judicial)*

1. This Court convened through hybrid mode.

2. This is a Company Petition filed 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 by Jones Lang LaSalle Property Consultants (India) Pvt. Ltd. ("**Operational Creditor**"), represented by **Shri Amandeep Singh (Assistant Manager-Legal)**, authorized *vide* a Board Resolution dated 27.09.2019<sup>1</sup> seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against M A Leasing and Construction Pvt. Ltd. ("**Corporate Debtor**").
3. It is submitted in Part-II of the Petition that the authorized share capital of the Corporate Debtor is Rs.10,00,000 (Rupees Ten Lakh Only) with paid up capital as Rs.9,72,000 (Rupees Nine Lakh Seventy Two Thousand Only).
4. Part-IV of the Petition the details of operational debt for an amount of Rs.1,18,00,000/- (Rupees One Crore Eighteen Lakh only) as on 30.12.2018.
5. The Corporate Debtor was incorporated on 31 July 1992, having CIN: U70101WB1992PTC056110, under the Companies Act, 1956. Its registered office is at 113 Park Street, Kolkata-700016, West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 29 July 2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.1,18,00,000/- (Rupees One Crore Eighteen Lakh only) as on 30.12.2018. The date on which the debt fell due is on 30.12.2018.

**Brief facts of the case:**

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<sup>1</sup> Annexure A-3 at Page 18 of the Petition

7. The Operational Creditor is a Private Limited Company engaged in the business of real estate consulting, marketing and advisory services. The Corporate Debtor had engaged the Operational Creditor for leasing of a commercial property known as Elite Cinema located at 136, S.N. Banerjee Road, Dharamtala, Kolkata-700013.
8. The Operational Creditor states that it was agreed between the Operational Creditor and the Corporate Debtor that upon signing of the Agreement to Lease between the Corporate Debtor with Future Lifestyle Fashions Ltd. and SVF Entertainment Private Limited, the Operational Creditor will raise an invoice and the same will be payable upon receipt and will be non-refundable under all circumstances.
9. The Operational Creditor took necessary steps and as a result an Agreement to Lease was executed between the Corporate Debtor and SVF Entertainment Private Limited on 12.11.2017<sup>2</sup> whereby they agreed to take the 4<sup>th</sup> floor of the premises on lease for a minimum period of 10 years. Subsequently, on 23.11.2018<sup>3</sup> Memorandum of Understanding was entered into between the Corporate Debtor and Future Lifestyle Fashions Ltd. whereby they agreed to take the ground floor and first floor of the said premises for an initial term of 30 years. At the time of signing in both the cases, the Corporate Debtor had received an advance amount.
10. After successful completion of the above transactions, the Operational Creditor raised a Fee Confirmation and Revenue Recognition Confirmation Letter to the Corporate Debtor on 28.11.2018<sup>4</sup> stating that the Operational Creditor is entitled to an amount of Rs.1,00,00,000/- (Rs. One Crore Only) plus taxes and the same is payable by the Corporate Debtor upon receipt of the invoice. The said confirmation letter and terms contained therein was duly accepted by one Mr. Md. Anwar on behalf of

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<sup>2</sup> Annexure A-5 of the Petition

<sup>3</sup> Annexure A-6 of the Petition

<sup>4</sup> Annexure A-7 of the Petition

the Corporate Debtor. Again on 30.11.2018<sup>5</sup>, the Operational Creditor issued an invoice to the Corporate Debtor amounting to a sum of Rs. 1,18,00,000/- (inclusive of GST). The said payment was due on 30.12.2018 and the Corporate Debtor accepted the invoice without any objection.

11. After issuance of the invoice, the Operational Creditor made several calls, sent various letters and reminder mails to the Corporate Debtor to clear the outstanding amount, but the Corporate Debtor did not bother to respond to such communications and also failed to pay the dues.
12. On 21.01.2019, when the Operational Creditor had successfully concluded the work assigned to it, the Corporate Debtor sought to call off its deal with SVF Entertainment Private Limited and Future Lifestyle Fashions Ltd. alleging lack of proper service by the Operational Creditor and despite such allegations, the Corporate Debtor went on with the deal of SVF Entertainment Private Limited and Future Lifestyle Fashions Ltd. which can be evidenced from a few emails<sup>6</sup> exchanged between the Operational Creditor and the Corporate Debtor.
13. The Operational Creditor issued a demand notice dated 28.11.2019<sup>7</sup> under Section 8 of the IBC, 2016 to the Corporate Debtor and asked to repay the principal outstanding amount of Rs. 1,18,00,000/- within a period of 10 days from the receipt of the same. The said notice was delivered to the Corporate Debtor on 02.12.2019. The Corporate Debtor replied to the said notice by a letter dated 12.12.2019<sup>8</sup> raising false and frivolous contentions and refused to pay the outstanding dues. The Corporate Debtor had never raised any dispute regarding the outstanding dues before the issuance of the demand notice.

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<sup>5</sup> Annexure-A-8 of the Petition

<sup>6</sup> Annexure-A-10 of the Petition

<sup>7</sup> Annexure A-11 of the Petition

<sup>8</sup> Annexure A-12 of the Petition

**Contents of Reply Affidavit filed by the Corporate Debtor:**

14. The Corporate Debtor has filed its Reply Affidavit through Mr. Md. Anwar who is a Director of the Corporate Debtor and is authorized *vide* a Board Resolution dated 20.11.2020.
15. It has been stated in the Reply Affidavit that one Elite Theatres and Investments Company Private Limited is the owner of Elite Cinema situated at 136, S.N. Banerjee Road, Dharamtala, Kolkata-700013 and the principal shareholders of which are one Burge S Cooper and Mrs. Manek B Cooper.
16. The Corporate Debtor contends that it is neither the owner of the above mentioned premises nor does it have any right, title or interest in the property. It further contends that neither the Corporate Debtor nor its directors and shareholders are shareholders of the said Elite Theatres and Investments Company Private Limited.
17. The Corporate Debtor states that in the year 2018, it entered into negotiations to acquire the shares of Elite Theatres and Investments Company Private Limited but the same did not fructify and eventually failed.
18. Upon dealing with the contentions of the Operational Creditor as mentioned in the main company petition, the Corporate Debtor states as follows:
  - a. That all real estate dealers were fully aware of the fact that the Corporate Debtor had not yet purchased or acquired the said property or shares of Elite Theatres and Investments Company Private Limited.

- b. That all all real estate dealers were aware that any prospective lease/tenancy/license of the said property was completely tentative and subject to the purchase and acquisition of the said property.
  - c. That no amount on account of any commission or fee was payable by the Corporate Debtor to any such property and real estate dealer(s) till such time that the said property was purchased and acquired by the Corporate Debtor and a mall had been constructed thereon by the Corporate Debtor and prospective lessees/tenants/licensees actually started using and occupying the said property.
  - d. That no commission or fees or brokerage of any nature was payable by the Corporate Debtor till the finalization and registration of leases/tenants/licensees and till such time final and binding contracts and agreements were made with such prospective lessees/tenants/licensees.
19. The Corporate Debtor contends that in July 2018, one Ms. Barnali Sengupta representing herself as a local Director of the Operational Creditor had visited the office of the Corporate Debtor and offered to identify and source prospectives for the said property on the understanding that:
- a. That the Corporate Debtor had not yet purchased or acquired the said property or shares of Elite Theatres and Investments Company Private Limited.
  - b. That any prospective lease/tenancy/license of the said property was completely tentative and subject to the purchase and acquisition of the said property by the Corporate Debtor.
  - c. That no amount on account of any commission or fee was payable by the Corporate Debtor to any such property and real estate

dealer(s) till such time that the said property was purchased and acquired by the Corporate Debtor and a mall had been constructed thereon by the Corporate Debtor and prospective lessees/tenants/licensees actually started using and occupying the said property.

- d. That no commission or fees or brokerage of any nature was payable by the Corporate Debtor till the finalization and registration of leases/tenants/licensees and till such time final and binding contracts and agreements were made with such prospective lessees/tenants/licensees.

20. While dealing with the contention of the Operational Creditor's claim regarding the services rendered on account of Fee Confirmation and Revenue Recognition in respect of leases of property with respect to SVF Entertainment Private Limited and Future Lifestyle Fashions Ltd. and that a lumpsum amount of Rs. 1,00,00,000/- became due by the Corporate Debtor, it is stated as follows:

- a. There was no agreement or contract between the Operational Creditor and the Corporate Debtor
- b. There was no letter of appointment or engagement by the Corporate Debtor to the Operational Creditor.
- c. There was no rate or fee or remuneration of any nature agreed upon between the Corporate Debtor and the Operational Creditor.
- d. No document has been disclosed by the Operational Creditor with regard to the above facts.

21. The Corporate Debtor states that the Operational Creditor's claim is based on a letter dated 28.11.2018 at page 71 of the petition approved by Md. Anwar on behalf of the Corporate Debtor. The Corporate Debtor contends

that the purported signature is forged and fabricated and that the said Md. Anwar was never authorised or empowered by the Board of Directors of the Corporate Debtor to approve the said letter. The Corporate Debtor also contends that the Operational Creditor has not disclosed any Board Resolution wherein it was agreed that the Corporate Debtor ever agreed to make payment for a sum of Rs.1 Crore for the services rendered with regard to the tentative agreement to lease dated 12.11.2018 and the MoU dated 23.11.2018.

22. The Corporate Debtor contends that the Agreement to Lease dated 12.11.2018 was made between the Corporate Debtor and SVF Entertainment Private Limited. The said agreement is unregistered and also the Operational Creditor is not a party to the same. It is also contended that the said agreement has no nexus with the Operational Creditor neither it recorded any money or compensation or fee or charge has being payable to the Operational Creditor. Clause 15 of the said agreement provides that the said agreement would be registered but the same was in fact never registered. Also, SVF Entertainment Private Limited never took possession of the said premises as mentioned in the agreement or paid any consideration or any lease rent to the Corporate Debtor.
23. The Corporate Debtor also contended that the MoU dated 23.11.2018 made between the Corporate Debtor and Future Lifestyle Fashions Limited was not a concluded agreement or contract and was unregistered. The Operational Creditor was neither a party to the same nor does it has any connection with the said agreement. Also, the agreement does not record any fee, money, charge or compensation as being payable by the Corporate Debtor to the Operational Creditor.
24. The Corporate Debtor states that the Table at Serial No.3 at para 5 of the MoU provides-“ The final agreement as mentioned in Clause 1 shall not be executed unless FLFL is satisfied with the title of the demised premises.

In the event of the title being defective FLFL shall have the option to terminate this MoU and the owner/developer shall refund the earnest deposit paid by FLFL". This makes it abundantly clear that the document was a tentative one. The said Future Lifestyle Fashions Limited never took possession of the said premises as mentioned in the MoU nor did it pay any consideration or any lease rent for the same.

25. The Corporate Debtor contends that even if it is assumed that the Operational Creditor was entitled to any charge or fee, the fact that the Agreement to Lease dated 12.11.2018 or the MoU dated 23.11.2018 never matured or fructified or culminated in the creation of any valid and binding lease/license/tenancy.
26. It is stated that the Corporate Debtor by emails dated 21.01.2019 and 20.02.2019<sup>9</sup> had informed and confirmed to the Operational Creditor that its purported services have been terminated. It is also significant to note that the said emails were written long before the issuance of Section 8 Notice under IBC, 2016 dated 28.11.2019, therefore it is apparent that there were pre-existing disputes between the parties and the petition is therefore liable to be dismissed.
27. The Corporate Debtor contends that the purported invoices at pages 72 and 73 of the petition were never raised upon the Corporate Debtor nor was it ever received. It is denied that any amount as mentioned in such invoices became payable by the Corporate Debtor. The alleged transactions were not concluded or deemed to be concluded, therefore the question of paying any sum of money to the Applicant does not and cannot arise.

**Contents of Rejoinder Affidavit filed by the Operational Creditor**

28. The Operational Creditor states that the claim of the Corporate Debtor that it does not have any right, title or interest over the property being Elite

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<sup>9</sup> Annexure R-1 at Pages 17-18 of the Reply Affidavit

Cinema is contrary to its earlier representations. Also, the allegation of the Corporate Debtor that there was no agreement or contract between the Corporate Debtor and the Operational Creditor are contrary to their statements made in the Advocate's letter dated 12.12.2019.<sup>10</sup> The Fee Confirmation and Revenue Recognition letter dated 28.11.2018 was provided by the Corporate Debtor pursuant to agreement between the parties.

29. The Operational Creditor denies that the signature of one Md.Anwar on the letter dated 28.11.2018 is forged and fabricated. It also denies that any specific authority or board resolution was required for issue of the letter dated 28.11.2018.
30. It is stated that it was beyond the role of the Operational Creditor to advise what document ought to have been executed or whether the document ought to have been registered or not. The Operational Creditor was not a party to the Agreement to Lease dated 12.11.2018 and it was not under any obligation to register the same. The Corporate Debtor also received an advance of Rs.1,00,000/- vide cheque no. 270556 dated 03.10.2018<sup>11</sup> at the time of execution and the same is reflected in the said agreement. Similarly, the Corporate Debtor received an advance amount of Rs. 24,60,000/- vide cheque no. 52931 dated 04.12.2018<sup>12</sup> at the time of execution of the MoU dated 23.11.2018.
31. The Operational Creditor states that the Corporate Debtor has now raised false and frivolous grounds to avoid payment of dues but the Operational Creditor has no nexus to the scope of services rendered by it which had been completed to the satisfaction of the Corporate Debtor on 28.11.2018. The Corporate Debtor has failed to show any document wherein it is

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<sup>10</sup> Annexure A-12 at page 95 to 98 of the Petition

<sup>11</sup> Page 35 of the Petition

<sup>12</sup> Annexure A at Page 11 of the Rejoinder

recorded that the Operational Creditor was entitled to its charges or fees only after the Agreement to Lease and the MoU fructified.

32. It is stated that the Corporate Debtor after entering into agreements and receiving money for the same has now sought to wriggle out of its obligations to pay the dues by issuing the emails dated 21.01.2019 and 20.02.2019.
33. Further, the Operational Creditor denies that the emails dated 21.01.2019 and 20.02.2019 were suppressed as the same had been annexed as Annexure A-10 to the Petition and it is also denied that the same can be termed as pre-existing disputes between the parties.
34. The Operational Creditor denies that the services rendered by it can be terminated after it was completed to the satisfaction of the Corporate Debtor.

#### ***Analysis and Findings***

35. Heard the Learned Counsel appearing for both the parties and perused the record.
36. The matter was heard on various dates and finally reserved for orders. On 14.10.2022, the parties sought time to explore the possibility to settle the matter and on 28.11.2022 it was stated by the parties that there is no possibility of any settlement.
37. While deciding a petition under Section 9 of the IBC, 2016, one significant aspect to be examined is whether there was a pre-existing dispute between the parties. While considering this aspect we seek to rely on the judgment in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.**, wherein the Supreme Court held as follows:

*“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the*

*occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8 (1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2) (a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. [...]* It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). [ . . . ] It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].

51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating Authority must reject the application under Section 9(5)(2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that

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*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 exists in fact and is not spurious, hypothetical or illusory, the adjudicating Authority has to reject the application.”*

**(emphasis supplied)**

38. We find that the dispute raised by the Corporate Debtor is not merely a feeble legal argument or an assertion of fact unsupported by evidence. In this connection we seek to refer to the emails annexed to Pages 17-18 of the Reply Affidavit which are reproduced as hereunder:-



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39. The above referred communication shows the existence of a pre-existing dispute and this pre-existing dispute existed even before the notice dated 28.11.2019 under Section 8 of the IBC, 2016 was issued to the Corporate Debtor. Therefore keeping in view the position of law as enumerated by the Hon'ble Supreme Court in the above judgment, we have no option except to reject this petition

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40. In view of the above facts and circumstances, we find, that there was a pre-existing dispute between the parties, and hence the present petition shall be rejected on this ground alone.
41. Consequently, **C.P.(I.B.) No. 841/KB/2020** shall stand **rejected**. Needless to to say, the Operational Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.
42. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

This order is pronounced on the 4<sup>th</sup> day of September, 2023

*(FA, LRA)*