IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH - I

KOLKATA

C.P (IB) No. 279/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:

CBRE South Asia Private Limited [CIN - U74140DL1999PTC100244]

...Operational Creditor

Versus

MKHS Realty LLP [LLPIN - AAB-8951]

...Corporate Debtor

Date of Hearing: 09.05.2022
Date of pronouncing the order: 24.05.2022

Appearances (through Video Conferencing/physical hearing)

For the Operational Creditor	:	Mr. Rishad Medora, Advocate
	:	Mr. Soumava Mukherjee, Advocate
For the Corporate Debtor	:	Mr. Abhishek Sikdar, Advocate
	:	Ms. Pallavi Ray, Advocate

Coram:

Rajasekhar V.K.	***:***	***Member (Judicial)***
Balraj Joshi	***:***	***Member (Technical)***

ORDER

Per Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by CBRE South Asia Private Limited***('Operational Creditor')***, a company incorporated under the Companies Act, 1956, having its office at Ground Floor,PTI Building, 4 Parliament Street, New Delhi - 110001, by Mr. Anindya Ray, General manager - Operations, duly authorised *vide* Board Resolution dated 15 January, 2019[1] for initiation of Corporate Insolvency Resolution Process ***('CIRP')*** against MKHS Realty LLP***('Corporate Debtor')***, a Limited Liability Partnership firm, having its registered office at Narayanpur, P.O Rajarhat, Gopalpur Kolkata, Parganas North - 700136.

3. The present Petition was filed on ***06 January, 2020*** before this Adjudicating Authority. The total amount claimed in default is Rs.29,92,800/- (Rupees Twenty Nine Lakh Ninety-two Thousand Eight Hundred only) *[Principal - Rs.17,40,000/- and Interest – Rs.12,52,800/-]*, inclusive of interest calculated @ 2% per month from December, 2016 till December, 2019. The first default occurred in ***December, 2016.***

4. Submissions by the Ld. Advocate appearing on behalf of the Operational Creditor.

4.1 The Operational Creditor is engaged in the business of providing real estate advisory, facility management, project management and consultancy services all over India and Asia as well. Whereas, the Corporate Debtor is in the field of construction.

4.2 The parties were carrying commercial transaction with each other on the basis of work and purchase orders, raised and issued between them. The services provided by the Operational Creditor to the Corporate Debtor were in terms of the rates and conditions as set forth by the Corporate Debtor. On the basis of the said

[1]Annexure – B, page 18 of the Petition.

services the Operational Creditor raised invoices from time to time, however, the Corporate Debtor failed to make payments against the following invoices;

SI. No	***Invoice Number***	***Month***	***Amount (in Rs.)***
(i)	R185150710	December, 2016	8,62,500/-
(ii)	R185161767	May, 2017	1,43,750/-
(iii)	R185164103	June, 2017	1,43,750/-
(iv)	R186WB00025	July, 2017	1,47,500/-
(v)	R186WB00125	August, 2017	1,47,500/-
(vi)	R186WB00199	September, 2017	1,47,500/-
(vii)	R186WB00333	October, 2017	1,47,500/-
Total			***Rs.17,40,000/-***

4.3 Various e-mails were sent to the Corporate debtor for the payment of the outstanding dues *i.e., Rs.17,40,000/-,*but no positive response was received from the Corporate Debtor. With payment not forth coming from the Corporate Debtor, the Operational Creditor sent a statutory notice dated 24 October, 2019[2] under section 8 of the Code. The notice was delivered to the Corporate Debtor on 31 October, 2019.

5. Submissions by the Ld. Counsel on behalf of the Corporate Debtor

5.1 The services provided by the Operational Creditor were absolutely of poor quality and the same was intimated to them repeatedly. There has been pre-existing dispute with regard to the quality of services.The Operational Creditor had suddenly stoppedproviding services and even after repeated reminder no proper response was received by the Corporate Debtor.

5.2 Further the work order *vide* clause 25 issued by us clearly states that if any sort of dispute arises then it will be referred to arbitration and the same was accepted by the Operational Creditor. So any dispute between the parties has to be sorted by way of arbitration and the Operational Creditor has violated the provisions of the contract despite the fact it was accepted by them without any protest.[3]

5.3 The Operational Creditor has failed to honor the terms and conditions of the contract between the parties, wherein clause 5 clearly states that payment is to be done on actual work done.

[2]Pages 67 – 114A of the Petition.
[3]Annexure – A of the Reply.

6. Issue

6.1 Is there any pre-existing dispute between the parties?

6.2 Is the application barred by limitation?

Analysis and Findings

7. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the concerned documents annexed to the Petition.

8. In a section 9 application, the preliminary point that needs to be taken into consideration is the existence of the dispute and/or a suit or arbitration prior to the receipt of the demand notice under section 8 of the Code.[4] However, in this instant case neither any dispute was raised by the Corporate Debtor nor there is any pendency of any suit/arbitration proceedings. Hence, the so called pre-existing dispute raised by the Corporate Debtorin its reply does not hold water. Further, As envisaged under section 9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor.

9. It is a well settled law that the provisions of section 18 of the Limitation Act are applicable to the proceeding under the Insolvency and Bankruptcy Code, 2016. In this instant matter, the Operational Creditor has stated the date of default to be in December, 2016, and if that be the case the limitation would end in December, 2019. However, it is pertinent to mention the email dated 25 June, 2018 (*at page 111 of the Petition)* by the Corporate Debtor, where they have categorically stated that since the market had gone bad in terms of collections from the customers they are equally helpless to clear the dues of the vendors but they would start the payment of the Operational Creditor from July, 2018. This statement by the Corporate Debtor not only reflects their inability to clear the outstanding but would also tantamount to acknowledgement. Hence, this instant petition is not barred by limitation.

10. In view of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated

[4]Mobilox Innovations (P) Limited v. Kirusa Software (P) Limited, (2018) 1 SCC 353

under section 4 (1) of the Code, stipulated at the relevant point of time. Further, no disputes were ever raised by the Corporate Debtor.

11. It is, accordingly, hereby ordered as follows:-

a) The application bearing ***CP (IB) No. 279/KB/2020*** filed by CBRE South Asia Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against MKHS Realty LLP, is ***admitted***.

b) There shall be a moratorium under section 14 of the IBC.

c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e) ***Ms. Manisha Biyani***, registration number ***IBBI/IPA-001/IP-P-02414/2021-2022/13773***, email: ***mkvrch@gmail.com***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h) The Operational Creditor shall deposit a sum of ***Rs.4,00,000/- (Rupees Four Lakh only)*** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

12. ***CP (IB) No. 279/KB/2020*** to come up on ***25 July, 2022*** for filing the periodical report.

13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI Digitally signed by BALRAJ JOSHI Date: 2022.05.24 15:45:47 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V K Digitally signed by Rajasekhar V K Date: 2022.05.24 14:47:44 +05'30'

Rajasekhar V.K.
Member (Judicial)

The order is pronounced on 24th day of May, 2022

Safura A., [LRA]