

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.74/BB/ 2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Accorn Interiors
Rep. by its Proprietor Shri M. Arun
#103/1-3, 29th Cross, Kaggadaspura,
CV Raman Nagar,
Bangalore – 560 093.

- Applicant/Operational Creditor

Versus

M/s. H.M. Infratech Private Limited
HM Geneva House,
#14, Cunningham Road,
Bangalore – 560 052.

- Respondent/Corporate Debtor

Date of Order: 20th December, 2018

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Pradeep Jayaraman

For the Respondent : Shri Sharath Kumar K.S.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.74/BB/2018 is filed by M/s. Accorn Interiors U/s 9 of the IBC, 2016 R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of M/s.H.M. Infratech Private Limited, on the ground that the Corporate Debtor failed to pay the outstanding amount of Rs.12,17,973/- (Rupees Twelve Lakhs Seventeen Thousand Nine Hundred and Seventy-Three Only) excluding interest.



2. Heard Shri Pradeep Jayaraman, Learned Counsel for the Petitioner, and Shri Sharath Kumar K.S., Learned Counsel for the Respondent.

3. The Learned Counsel for the Petitioner submits that this instant Company Petition is filed in order to recover the above amount and in fact the Respondent agreed to pay the amount and also filed a Memo dated 11.12.2018 (which is taken on record), by inter alia stating that the total amount is Rs.8,52,765/- and the Respondent undertake to pay the amount subject to scrutiny. On scrutiny, final bill under the tax invoice, payable is Rs.7,17,446/-. The retention amount is Rs.1,35,319/-, and in all an amount of Rs.8,52,765/- is to be paid.

4. Therefore, the Learned Counsel seeks to direct the party to pay this amount. It is a settled position of law that in order to initiate proceeding U/s 9 of the IBC, 2016, undisputed debt is sine qua non for initiating proceeding under the IBC, 2016. The Hon'ble Supreme Court of India has, inter alia, in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*¹, clarified that Insolvency and Bankruptcy Code is not intended to be substitute to a recovery forum. And the same was referred by the Hon'ble Supreme Court in recent case namely *Transmission Corporation of A.P. Ltd. Vs. Equipment Conductors & Cables Ltd.*²

5. Therefore, the facts as narrated above clearly shows that the Petition is filed in order to recover the outstanding amount, and thus C.P. is not maintainable, and is liable to be rejected.

6. Hence, C.P.(IB) No.74/BB/2018 is hereby rejected. However, this order will not come in the way of settling the issue between the parties as stated supra. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna

¹ (2018) 1 SCC 353

² (2018) 147 CLA 112 (SC)