



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.333/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Hm Constuction

...Financial Creditor/Applicant

V/s

Ulltra Lifespace Private Limited

[CIN: U45400MH2007PTC175172]

...Corporate Debtor/Respondent

Order Dated: 27.01.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Minil Shah, Advocate.

For the Respondent(s) : Mr. Pulkit Sharma a/w Mr. Nishit Dhruva, Mr. Prakash Shinde
Ms. Ruchita Jain, Ms. Astha Ojha,
Ms. Meghna Arvind, Ms. Aalisha Sharma i/b MDP & Partners,
Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 333/MB/C-IV/2021 filed by Hm construction, the Financial Creditor/Applicant, under section 9

of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Ultra Lifespace Private Limited, Corporate Debtor.

2. The Operational Creditor is a Partnership Firm. The Application is filed by Mr. Hiren Sondagar, Partner of Operational Creditor, duly Authorised vide Authority Letter dated 28.01.2021 signed by the other Partner, claiming total default¹ of Rs.3,16,37,481/- (Rupees four crore forty-four lakh thirty-seven thousand four hundred only), of which Rs.1,71,57,864/- is the Principal amount.
3. The Date of Default is stated to be 05.01.2018 in the Petition. The Petition is filed on 03.03.2021.
4. The Operational Creditor is the partnership firm and submits as under:
 - a) The Corporate Debtor (formerly known as “Satra Buildcon Private Limited) has availed services of Operational Creditor at its project known as “81 Aureate” in Bandra West, for installation of Aluminium Windows, railing and glazing and subsequently after revised work order, the Operational Creditor carried out installation of WPVC Ceiling, Louvers, Coppers Cladding, SS Staircase Railing by Work.
 - b) Pursuant to the said services various invoices had been raised by the Operational Creditor and following Work Orders had been placed by the Corporate Debtor:

¹ P.88 of the Petition



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- i. Work Order² dated 02.03.2017 bearing no Bandra/16-17/Glazing & Cladding Work; and
 - ii. Supplementary Work Order³ dated 07.08.2017 bearing reference no. Bandra/16-17/Glazing & Cladding work.
- c) As per the Work Order, the payment was to be made within 10 days from the bill received at site. Vide E-mail dated 05.08.2020 and 07.08.2020 the Operational Creditor requested the Corporate Debtor to clear outstanding dues.
- d) The original arrangement between the Operational Creditor and Corporate Debtor that the Operational Creditor would supply the materials and carry out the installation at its project site. Subsequently, Corporate Debtor to circumvent the cumbersome process of import processes, the Corporate Debtor and the Operational Creditor mutually agreed that the Corporate Debtor will import the raw material from international vendors through this Operational Creditor and the Corporate Debtor would then assemble and customize the raw material and install at the project of the Corporate Debtor.
- e) Vide E-mail dated 11.08.2020, the Corporate Debtor sought quotation from Operational Creditor for cladding and aluminium profile sections and also requested the sample be arranged for approvals. Accordingly, the Corporate Debtor placed another Work Order dated 28.08.2020 with the Operational Creditor.

² Pp 24-27 of the Petition

³ P.27 of the Petition

- f) Pursuant to the said Work Order, the Operational Creditor provided services and raised proforma invoices on the Corporate Debtor. As per the Work Order dated 28.08.2020, the payment was to be made within 15 days from the bill received at site.
5. The Corporate Debtor has issued Demand Notice⁴ dated 11.02.2021 to the Corporate Debtor in Form 3 under section 8 of the Code claiming the total outstanding of Rs.3,16,37,481/- (Rupees three crore fifty-eight lakh fifty-five thousand two hundred seventy only). The Corporate Debtor had replied to the said Demand Notice vide its E-mail⁵ dated 24.02.2021 denying all the liabilities and Invoices raised upon by the Operational Creditor. The Corporate Debtor also stated the Pre-existing dispute in its reply.
6. The Operational Creditor has filed an Affidavit⁶ dated 01.03.2021 under section 9 (3) (b) of the Code. The Operational Creditor also filed Bank Statement⁷ of ICICI Bank.
7. The Corporate Debtor has filed Affidavit in Reply dated 20.02.2020 and submitted that there existed a prior dispute as the Corporate Debtor vide its letter⁸ dated 28.07.2020 had highlighted the deficiency of services for the work carried out by the Operational Creditor with respect to the Work Order dated 02.03.2017.
8. The Corporate Debtor also raised issue with respect to exorbitant high rate of the goods supplied. Further, the Corporate Debtor addressed a

⁴ Pp 131-138 A of the Petition

⁵ P.141 of the Petition

⁶ Pp 175-176 of the Petition

⁷ Pp 145-172 of the Petition

⁸ Pp 14-21 of the Reply



letter dated 27.01.2021, wherein the Corporate Debtor informed the Operational Creditor that the Work Orders dated 02.03.2017 and 07.08.2017 were issued by the erstwhile Directors of the Corporate Debtor.

9. The Corporate Debtor in its Affidavit-in-reply challenged the maintainability of present Petition on the ground of limitation stating that the Date of Default mentioned by the Operational Creditor in Form 5 of the Petition is 05.01.2018 and the Demand Notice issued on 11.02.2021. Further, the Operational Creditor submitted that the Proforma Invoice dated 01.10.2017 relied upon by the Corporate Debtor is also barred by limitation. The Corporate Debtor has challenged the Authority of the Operational Creditor.
10. The Corporate Debtor disputed the total outstanding stating that the outstanding amount does match with the books of accounts of the Corporate Debtor

Findings:

11. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
12. After perusal of the material on record, this Bench is of considered view that the Present Application is not barred by the Limitation in view of decision of Hon'ble Supreme Court vide its order dated 10th January 2022 directed exclusion of period specified therein. In the Miscellaneous Application No. 21 of 2022, Hon'ble Supreme Court by passing directions as mentioned below:



The order dated 23rd March 2020 is restored and in continuation of orders dated 8th March 2021, 27th April 2021 and 23rd September 2021, it was directed that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-03-2020 till 28-02-2022 shall stand excluded and the balance period of limitation remaining as on 03-10-2021 if any, shall become available with effect from 01-03-2022 and in cases where period of limitation expired between 15-03-2020 till 28-02-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01-03-2022, also if the actual balance period is greater than 90 days then longer period shall apply. Further, the period from 15-03-2020 till 28-02-2022 shall stand excluded for computing limitation period prescribed under various laws for institution of proceedings, termination of proceedings, condonation of delay.

13. The Operation Creditor have filed the letter of Authority executed by the other partner in favour of signing partner with Re-joinder. Since it is a curable defect, we do not find any merit in this ground after filing of such authority letter.
14. The Corporate Debtor raised issue of Pre-existing dispute in its reply dated 23.02.2021 to the Demand Notice issued by the Operational Creditor stating the levy of exhibited prices; connivance with one of the employees; poor performance and meeting dated 28.07.2020. The Corporate Debtor has relied on the Letter dated 28.07.2020 and 27.01.2021 stated to have been sent through courier to the Operational

Creditor, but no proof of delivery has been filed by the Corporate Debtor.

15. The Operational Creditor has filed Engineer Certificate and Architect Completion Certificate stating that there was no deficiency in its work as alleged by the Corporate Debtor. Further, it was submitted by the Operational Creditor that the Real Estate Project was successfully sold by the Corporate Debtor.
16. It is seen that the Corporate Debtor has not filed any evidence to refute the Engineer Certificate and Architect Completion Certificate. Further, the service of Letter dated 28.07.2020 and 27.01.2021, issued prior to issuance of Demand Notice, upon Operational Creditor remains unsubstantiated.

The Supreme Court in *Mobilox Innovation Pvt. Ltd. V Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353 held that once an Operational Creditor has filed an Application, which is otherwise procedurally complete, the Adjudicating Authority has to consider the following;

“1. Whether there is an “operational debt”, as defined under the Code, which exceeds INR 100,000?

2. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

3. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”

17. While determining the third point above, the Supreme Court stated that all that the Adjudicating Authority must see is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble argument or an assertion of fact unsupported by evidence. Interestingly, while the Court was of the view that it is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster, it held that the Adjudicating Authority need not go into the merits and satisfy itself that the defense is likely to succeed at this stage of the proceeding. Basis the above, the Supreme Court allowed the appeal and set aside the order of the NCLAT.
18. The Corporate Debtor has failed to prove the existence of the Dispute prior to issuance of the Demand Notice. Hence, the plea of the Corporate Debtor is rejected.
19. After perusal of the material on record, this Bench is of considered view that there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.
20. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.

21. The application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.
22. The Operational Creditor has proposed the name of Mr. Mahesh Sureka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00413/2017-2018/10736] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.
23. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) 333/MB-IV/2021 filed by Hm construction, the Financial Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Ultra Lifespace Private Limited, Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) Mr. Mahesh Sureka, registration No. [IBBI/IPA-001/IP-P00413/2017-2018/10736]; Email: mahesh@gmrsureka.com; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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) The Registry is 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) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

Prabhat Kumar
Member (Technical)

27.01.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)