IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) / 4288 (MB) 2019

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

M. M. Enterprises

[GSTIN: 27AAEPP7816P1ZZ]

… Operational Creditor/Applicant

Versus

White Rose Properties Pvt. Ltd.

[CIN: U70101MH1994PTC081759]

… Corporate Debtor/Respondent

Order Pronounced on 04.03.2025

Coram:

Hon'ble Member (Judicial)	:	Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Sh. Prabhat Kumar

Appearances:

For the Operational Creditor	:	Mr. Smit Shah, Ld. Counsel
For the Corporate Debtor	:	Mr. Asadullah Shaikh, Ld. Counsel

ORDER

Brief Facts:

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC/Code") by **M. M. Enterprises** ("hereinafter referred to as Operational Creditor/OC/Applicant/MME"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **White Rose Properties Pvt. Ltd.** ("hereinafter referred to as Corporate Debtor /CD/Respondent/WRPPL").
2. The Operational Creditor is a sole proprietary firm bearing GSTIN 27AAEPP7816P1ZZ having its registered address at B2 UP Nagar Bldg, Near Gulshan Dairy, Dr. Babasaheb Ambedkar Road, Khar West, Mumbai 400052. The Operational Creditor is engaged in the business of cosmetic and beauty products.
3. The Respondent is a Private Limited Company under the Companies Act, 1956 incorporated on 05.10.1994 bearing CIN U70101MH1994PTC081759. Its registered office is at Shop No.20/20 – A Dubash Market, 377, Saikh Memon Street, Opp. Mangaldas Market, Mumbai - 400002. Therefore, this Bench has jurisdiction to entertain and decide the Petition. The Respondent is in the business of Real Estate, Property development – construction and is also into the retail business of various cosmetic and beauty products.
4. The total amount of debt claimed is Rs.17,63,481/- (Rupees Seventeen Lakh Sixty Three Thousand Four Hundred and Eighty One Only) and the date of default is stated to be 21.10.2017, as provided under Part IV of the Petition.

5. The Applicant has filed Affidavit under Section 9(3)(b) along with the Application.

Submissions of the Applicant:

6. The Corporate Debtor had ordered a huge range of cosmetic and beauty products from the Operational Creditor for their retail outlet i.e. "Beauty & More" and the Operational Creditor accordingly supplied the ordered goods to the Corporate Debtor during July to August 2017. The Corporate Debtor accepted the delivery of goods ordered by them without any dispute and demur.
7. The Operational Creditor supplied goods worth Rs. 22,81,746.00/- (Rupees Twenty-Two Lakhs Eighty-One Thousand Seven Hundred & Forty-Six Only) to the Corporate Debtor.
8. The Corporate Debtor issued various post-dated cheques towards the payment Rs. 22,81,746.00/- out of which cheques amounting to Rs. 5,18,265/- got cleared and rest of all cheques amounting to Rs. 17,63,481/- got bounced and returned back with the remark "*payment stop by the drawer.*"
9. On 26.04.2019 the Operational Creditor through their Attorney sent a notice u/s 8 of I B Code upon the Corporate Debtor directing them to pay the sum of Rs. 17,63,481/- within ten days from the receipt of the said notice. The Corporate Debtor did not pay any amount neither raised any dispute through a reply within the stipulated time. However, the Advocate of the Corporate Debtor addressed a letter dated 30.05.2019 to the Attorney of the Operational Creditor denying that the amount

claimed by the Operational Creditor is not due and payable by the Corporate Debtor.

10. On 01.07.2019 the Operational Creditor through their Attorney sent another notice in form 4 u/s 8 of I B Code upon the Corporate Debtor directing them to pay the sum of Rs. 17,63,481/- within ten days of time from the receipt of the notice.
11. Since the Corporate Debtor failed to make the due payment despite serving notice, the present petition is being filed.
12. The defence of the Respondent that there is a pre-existing dispute, however this is merely a moonshine defence since it was taken only after the present petition was filed.
13. The Operational Creditor has relied upon the judgment passed by Hon'ble NCLAT in *Deepak Modi vs. Shalfeyo Industries Pvt. Ltd.,* and Hon'ble Supreme Courts decision in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.*

<u>Submissions of the Respondent:</u>

14. The Respondent has contested the present application on the following grounds:
    i. There were deficiencies in services provided by the Operational Creditor. The Operational Creditor used to provide services to the Respondent since the year 2013-14.
    ii. The Respondent has been regularly making payments to the Operational Creditor as can be observed from the Financial Statements of the Respondent placed on record. Some advance payments were made as well by the Respondent.

iii. During the course of business/dealing with the Operational Creditor, it was revealed that the Operational Creditor was playing fraud upon the Corporate Debtor by way of collecting VAT with all their invoices, however, the said tax despite being fully paid by the Corporate Debtor was not paid to the Government and retained by the Operational creditor.

iv. The Corporate Debtor received a Notice from Maharashtra GST Department that the Operational Creditor had not paid tax of Rs.2,66,156/- (Rupees Two Lakhs Sixty Six thousand One Hundred and Fifty Six Only) and the Corporate Debtor was bound to pay the amount defaulted along with interest accrued upon the same. The said tax was due for the financial year 2014-15 and upon accumulation of interest and penalty upon the save the amount outstanding had reached a figure of Rs.3,93,729/-(Rupees Three Lakhs Ninety Three Thousand Seven Hundred and Twenty Nine Only). The Respondent paid the said tax and cleared off the said dues.

v. In the year 2014-15, the Operational creditor supplied goods worth Rs. 22,95,455/- and the corporate debtor initiated a payment of Rs.18,93,292/- and thus in the said year the credit due to the Operational creditor was to the tune of Rs.4,02,163/-. In the year 2015-16, Operational creditor supplied goods worth Rs.40,14,307/- and the corporate debtor made a payment of Rs.68,86,622/ on request of the Operational creditor and thus an advance payment of Rs.28,72,315/- was made by the corporate debtor to the operational creditor. Subsequently in the year 2016-17 Operational creditor supplied goods worth Rs 23,10,724/- and the corporate debtor after making certain payments brought down their advance payment to Rs. 13,03,021/- for the said year.

vi. In the year 2017-18, the Operational creditor supplied goods worth Rs. 28,31,471/- and the corporate debtor made payment of Rs.23,20,900/- in the said year and during the course of business in the said year the corporate debtor had serious apprehensions that the Operational creditor had wrongly issued some of invoices to defraud the Corporate Debtor herein. The Corporate Debtor raised their concerns before the Operational creditor who blatantly dismissed the apprehensions by giving vague and evasive replies but could not refute the allegations levelled upon them with any concrete responses.

vii. There was no timely supply of products ordered, wrong or inferior quality products were handed over or dumped at the retail outlet of the corporate debtor.

viii. In the year 2016-17 the Respondent issued various post-dated cheques to the Operational creditor towards advance payment of future transactions with an understanding that the same shall be deposited only upon approval from the Corporate debtor subsequent to goods being duly delivered as per specifications, however, the Operational creditor went ahead to deposit the said Cheques for encashment without approval from the Corporate debtor and without delivering any goods.

Some of the aforementioned Cheques were cleared and an amount of Rs.5,18,265/- was realised by the Operational creditor. Upon receiving information about the clearance of this Cheque, the Corporate debtor immediately contacted their Bank and requested them to not clear any Cheques deposited by the Operational creditor, since the said Cheques were handed over to the Petitioner for security/advance purposes and not towards any existing liability/dues.

ix. The Operational Creditor could have taken appropriate recourse before the competent court under Negotiable Instrument Act, 1888 against the Respondent, however, in an attempt to recover money from the Respondent, the present petition has been filed.

x. The invoices which were mentioned in the Demand Notice dated 23.04.2019 were never issued upon the Corporate debtor and the amounts claimed were not due and payable to the Operational creditor.

xi. Neither any invoices duly signed and stamped by the Corporate Debtor company, nor any delivery challans, transportation receipts, etc. were annexed to the Demand Notice, thereby failing to prove any acceptance or acknowledgment of the alleged goods by the corporate debtor and consequently being unable to establish any operational debt due from the Corporate Debtor herein.

xii. Vide its additional affidavit dated 01.07.2024, the Corporate Debtor submitted that it had to pay tax amounting to Rs.3,18,914/- which was to be actually paid by the Operational Creditor.

xiii. The respondent has relied upon the decision given in *Satish Kumar Surendra Shetty v. the District Collector and Ors.*; Hon'ble NCLAT's decision in *Neeraj Jain, Director of Flipkart India Pvt. Ltd. v. Cloudwalker Streaming and Anr*. NCLT Delhi's decision in *Ultratech Cement v. Universal Journeys India Pvt. Ltd.;* Hon'ble Supreme Courts decision in *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.*

Findings:

15. We have heard the submissions of the learned Counsel for the Applicant and Respondent. Perused the record.
16. Upon perusal of the documents produced on record, the existence of debt is clearly established. The Respondent has not placed on record any document proving the fact that it had any complaints with respect to the quality of the goods or there was a delay in the delivery of goods. Hence, the Respondent has clearly acknowledged the fact the Operational Creditor has indeed provided the goods.
17. The Respondents plea is that there is a pre-existing dispute between the parties. In ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd***., Hon'ble Supreme Court has held that:

    "40. 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 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."

18. However, in the present case, the Respondent has failed to provide any substantive documentary evidence proving pre-existence of dispute, except the fact that it had to pay the taxes which were to be paid by the Operational Creditor. Pre-existence of dispute is the only substantive ground of the Respondent for non-maintainability of the petition. Even if the contention of Respondent in relation to payment of VAT upon failure of Petitioner to pay the same is also considered, the balance of debt claimed in the Petition after reducing such tax amount of Rs. Rs.3,18,914/-, the debt claimed in default still exceeds the threshold limit of Rupees One Lakh as applicable in terms of Section 4 at the time of filing of present petition. Accordingly, we do not find any substance in this contention.

19. Further, the Respondent has contested that the Operational Creditor ought to have sought remedy under the Negotiable Instruments Act, 1881. However, though the Operational Creditor has a right to seek remedy under the Negotiable Instruments Act,1881 it cannot be barred from seeking relief under IBC, 2016.

20. Upon perusal of the documents produced on record, viz. the ledger accounts of the Operational Creditor in the books of the Respondent, it is clear that a sum of Rs. 510571.98/- is acknowledged as payable as on 31.03.2018, which evidences that the debt is still due and payable. Hence, we are of the considered view that the petition deserves to be admitted.

21. The Petition is complete in all respects; accordingly, we are of considered view that the present petition deserves to be allowed thus admitting the Corporate Debtor into the Corporate Insolvency Resolution Process.

ORDER

1. In view of above, this Adjudicating Authority admits this Petition and passes the following order:

2. The Petition bearing CP (IB) 4288/MB/2019 filed by **M. M. Enterprises** [GSTIN: 27AAEPP7816P1ZZ], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **White Rose Properties Pvt. Ltd.** [CIN: U70101MH1994PTC081759], the Corporate Debtor, is admitted.

3. 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 Securitization 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.

4. 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;

5. 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.

6. 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.

7. The Applicant has proposed name of Mr. Paresh C. Mehta and hence, we hereby appoint Mr. Paresh C. Mehta having registration no. IBBI/IPA-003/IP-N00099/2017- 2018/11008, address at 13B, Nirmal Society, Pandurang Wadi, Dombivli(East) ,Mumbai City, Maharashtra ,421201, Mobile no. - 7021008921 and email ID pareshmehta5959@gmail.com as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
8. 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.
9. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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).
10. 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.

11. 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.
12. Ordered accordingly.

Sd/-	Sd/-
Prabhat Kumar	**Justice V. G. Bisht (Retd.)**
Member (Technical)	Member (Judicial)

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