

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. IV)**

**Company Petition No. IB-611/ND/2019**

*[Under Section 9 read with Section 13, 14 & 33 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**IN THE MATTER OF:**

**M/s Value Line Interiors Private Limited**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**M/s Mayur Buildcon Private Limited**

**...RESPONDENT/ CORPORATE DEBTOR**

**ORDER PRONOUNCED ON: 20.07.2021**

**CORAM:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA  
HON'BLE MEMBER (TECHNICAL)**

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M/s Value Line Interiors Private Limited  
Vs.  
M/s Mayur Buildcon Private Limited*

**MEMO OF PARTIES**

**IN THE MATTER OF:**

**M/s Value Line Interiors Private Limited**

Having its registered office at:

KhNo.1834, A-Block,  
Vasant Kunj Enclave,  
Near Modern Public School,  
New Delhi -110070.

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**M/s Mayur Buildcon Private Limited**

Having its registered office at:

Shiv Sushil Bhawan D-219,  
Vivek Vihar-I, New Delhi-110095.

**...RESPONDENT/ CORPORATE DEBTOR**

**FOR THE APPLICANT** : Mr. Nupoor Maharaj, Adv.

**FOR THE RESPONDENT** : Mr. Karan Gandhi, Adv.  
Ms. Sudiksha Saini, Adv.

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**ORDER**  
**Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under Section 9 with Section 13, 14 & 33 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') through and by Sh. Sarish Saxena, being the Director of M/s Value Line Interiors Pvt. Ltd. (for brevity 'Applicant') authorized vide board resolution dated 07.01.2019, which has been annexed with the application, with a prayer to initiate the Corporate Insolvency process against M/s Mayur Buildcon Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is company limited by shares incorporated on 19/10/1987 bearing CIN No. U74899DL1987PTC029548 under the provision of Companies Act 1956 and having its registered office at Kh. No. 1834, A-Block, Vasant Kunj Enclave, New Modern Public School, New Delhi-110070 and email id: ndr\_associates@hotmail.com. The applicant is involved in the business of Interior Design and Decor.
3. The Corporate Debtor is company limited by shares incorporated on 01/06/2007 bearing CIN No. U45400DL2007PTC164257 under the provision of Companies Act 1956 and having its registered office at Siv Sushil Bhawan, D-219, Vivek Vihar-I, New Delhi, East Delhi DL-110095 IN and email id: [accounts@rianainvests.com](mailto:accounts@rianainvests.com). The corporate debtor is involved in the activities to facilitate the completion of the construction project.
4. The applicant submits that in the year 2015, the corporate debtor approached the applicant company to carry out interior work in the lift lobby of stilt & GF, Basement and Main Stair Case in the Building at Plot No.111&112, Sector-

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136, Noida. After several discussions, the corporate debtor issued work order MBCPL/111-112/2015/27 dated 30.06.2015 to the applicant company for Rs. 77,00,000/- along with service tax and WCT payable extra subsume into GST after its implementation. The copy of work order dated 30.06.2015 is annexed.

5. The applicant submits that after the issuance of work order, regular work had started and a total 8 running account bills of Rs. 93,79,692/- were raised by the applicant, the corporate debtor made a payment of Rs.79,63,360/-. However, a payment of Rs.31,43,56,154/- is still due and payable by the applicant. The copies of the bills have been annexed and a summary of all such bills showing the total amount received and total outstanding has also been annexed.
6. The applicant submits through telephonic calls and emails to the higher management requested of the corporate debtor, requested to make payments. However, inspite of repeated requests and efforts of the applicant went unheard. The copies of emails sent by the applicant are annexed. The applicant further states that the corporate debtor has been continuously changing the management teams, which were looking after the completion of interior works by the applicant and also pointed delay tactics deployed by the corporate debtor in their email communication dated 23.04.2018.
7. The applicant states that interior had been duly completed and handed over to the corporate debtor on 31.10.2015, which has also been communicated to the corporate debt by email dated 21.04.2018, but the corporate debtor neither made payment nor raised any dispute.
8. The applicant sent demand notice under Section 8 of the code on 02.11.2018 calling upon the corporate debtor to pay the total amount of 14,16,332/- .The

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applicant submits that the notice had been duly served on the corporate debtor via speed post. The Copy of demand notice along with postal receipts and its tracking reports has been annexed.

9. The applicant submits that the corporate debtor filed reply to the said notice and raised disputes as follows:
- a) That the work done is incomplete and hence completion certificate cannot be awarded, the services provided are also of poor quality.
  - b) That no amount is due and payable to the applicant.
  - c) That the applicant is wrongly trying to depict the non-payment of debt, the emails of the applicant are incomplete and have not been substantiated.

The copy of reply dated 23.11.2018 has been annexed.

10. After receiving the reply from the corporate debtor of notice u/s 8 of the code, the applicant filed application under Section 9 of the I & B code to initiate the CIRP. As per Form V, the total debt outstanding is Rs.14,16,332/-, (Rupees Fourteen Lakhs Sixteen Thousand Three Hundred and Thirty-Two only) an amount due in respect of the work order dated 30.06.2015.

11. The applicant filed reply and denying the contentions of the applicant stated the following:
- a) That the application is not maintainable on account of pre-existing dispute pending between the parties much prior to issuance of Section 8 of the code on grounds of deficiency in services and poor quality of work. That the corporate debtor has made a payment approximately of 85% of total amount believing promises of the applicant that the pending work will be completed.

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b) That the work order dated 30.06.2015 details the terms and conditions between the applicant and the corporate debtor. As per the Clause 1 of the scope of work, provided:

*“The scope of work shall be as per schedule of quantities....complete to the entire satisfaction of the client and his authorized representative within the time frame.”*

The corporate debtor states that the payment terms were provided in the work order and specifically stated that the final invoice shall be released after completion of all works including rectification of defaults as per ‘Defect Liability period’, clause namely:

*“Defect liability period shall be 6 calendar months after the satisfactory completion of all the works covered under the work order. Any defects in material or workmanship observed in the entire work during the execution of work or within defects liability period shall be rectified at your own costs within the time frame specified by employer.”*

The applicant had not rectified the defaults and not been completed work to the satisfaction of corporate debtor.

c) That the corporate have already paid the applicant more than the actual amount due. Further the applicant without completing the work raised the final invoice and kept on representing that the pending work shall be completed after the invoices are cleared. Also, stated that the last invoice of Rs.9,97,208/- is malafidely raised, hence not payable.

d) That for invoking the provision of Section 9, there has to be an existence of debt within the meaning of Section 3(11) of the code. As there is no amount due and payable, therefore there exists no debt. Moreover, the claim of the applicant also stands rejected under the provisions of Section 5(21) of the code, which deals with the definition of operational debt and provides that the claim must be in respect of provisions of goods and services, relying on *“Mobilox Innovations Limited Vs. Kirusa Software Private Limited*. In the present case the services were not provided, and

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whatever work was done, it was incomplete and on this ground the application must be rejected.

- e) Applicant has failed to appreciate that even prior to the last invoice dated 07.06.2018 raised, the corporate debtor in response to email dated 23.04.2018, had already informed the applicant that the work was not completed in terms of work order dated 31.10.2015 and the applicant vide email dated 24.09.2018 admitted the fact that they are yet to hand over the site to the corporate debtor. The email reads as:

*“1. I have clear mentioned in the mail that site is not officially handed over, but is in use currently by your management from last many months after start of office at top floors.”*

Therefore the invoice should have been raised by the applicant only after the completion of work and handing over of the site to corporate debtor.

- f) That the applicant has admitted to the pendency of work vide email dated 10.05.2018, wherein the applicant has requested the corporate debtor to provide a list of pending works, the contents of the email reads as:

*“it is requested to you kindly acknowledge and process the same for making the payment accordingly, also send the pending list of works so the we can arrange the man power for your pending work as scope of BBQ.”*

clearly indicating that work is pending at the site of corporate debtor. On 07.06.2018, the representative of the corporate debtor through email requested the applicant to complete the balance work at site, which was replied through email on 24.09.2018, wherein applicant again admitted to pendency of work about the admission of applicant about pending works lead to the conclusion that there is pre-existing dispute towards non-completion of work by applicant and certificate of completion was also not obtained by the corporate debtor, which is mandatory as per the terms of agreement. Copies of email abovementioned are annexed.

- g) The corporate debtor stated that work was done through third party at an additional cost was incurred by them. Further also stated that due to the default of the applicant, they had to pay fees to New Okhla Industrial

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Development Authority. The copy of fee challan dated 14.12.2017, paid by the corporate debtor is annexed. All these dispute with regards the defective and incomplete services are already raised by corporate debtor in the reply to demand notice under Section 8 of code.

12. The applicant filed written submissions and stated that following:

a) That the work was complete and had been intimated to the corporate debtor through email dated 21.04.2018. The site had also been taken over by the corporate debtor, which was highlighted by the applicant in email dated 23.04.2018 which states as :

*“...but is in use currently by your management from last many months after start of office at top floors.”*

*“.....we have completed works from our end which was inform from time to time to al project team by mail.”*

However, no disputes had been raised by the corporate debtor.

b) That the corporate debtor in its reply to the demand notice has raised false and frivolous disputes with regards the delay in service and incomplete work and has failed to prove the existence of any pre-existing dispute against the applicant, relying on judgment of Hon’ble Supreme Court of India in *“Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited.”* Further emphasized that work was completed within the stipulated time and as per clause 7 of the Work Order, the applicant was entitled to 95% of the total outstanding amount, the corporate debtor had the right to withhold only 5% of the total outstanding amount, if any.

13. The date of default is 22.01.2018 and the present application is filed on 24.01.2019. Hence the application is not time barred and filed within the period of limitation.

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14. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
15. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.
16. Considering the documents on records and submissions made, we are of view that there is a pre-existing dispute among the parties and the same is validated as per emails dated 23.04.2018, wherein the corporate debtor had raised dispute with regards the incomplete and delayed service, further as per email dated 07.06.2018, wherein the corporate debtor had also requested the applicant to complete the work at site. Emails dated 10.05.2018 and 24.09.2018 of the applicant, wherein the pendency of work had been admitted by the applicant. The corporate debtor had also raised dispute in its reply to the demand notice of the applicant. The applicant in its written submissions has accepted that in case the corporate debtor is entitled to withhold any amount it be 5% of total claim which raises a valid point that the claim is disputed. This leaves no doubt that the so called dispute raised by the corporate debtor is not merely a moonshine dispute. The Hon'ble Supreme Court in the case of "*Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*" in civil appeal mo. 9405 of 2017 held 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*

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*illusory, the adjudicating authority has to reject the application. In the present case the respondent has raised dispute with sufficient particulars. Besides the case records reveal that there was existence of dispute much prior to the issuance of notice under section 8 of the code. The claim of the corporate debtor suggests the need of elaborate investigation. The moment there is existence of such a pre-existence dispute, the corporate debtor gets out of the clutches of the code”.*

In view of the aforesaid facts, a conclusion can be drawn that there is 'Pre-existence dispute' which was raised by the corporate debtor time and again much prior to the notice served under section 8 of I & B Code. It is a fit case to reject the application under section 9 of the I & B Code. In terms of above order the application is rejected.

17. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. In addition, a copy of said order shall also be forwarded to IBBI for its records.

**Sd/-**  
**SUMITA PURKAYASTHA**  
**MEMBER (T)**

**Sd/-**  
**DR. DEEPTI MUKESH**  
**MEMBER (J)**

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