

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**CP (IB) 3417/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*

**CBRE South Asia Pvt. Ltd.**  
[CIN:U74140DL1999PTC100244]  
...Operational Creditor/Applicant

Versus

**Man Reality Ltd.**  
[CIN:U45400MH2010PLC205802]  
...Corporate Debtor/Respondent

**Order Pronounced on 17.01.2024**

*Coram:*

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

*Appearances:*

For the Operational Creditor : Mr. Lakshyaved Odhekar,  
Advocate.  
For the Corporate Debtor : Mr. Gauraj Shah, Advocate.

**ORDER**

*Per:* Justice V. G. Bisht (Retd.)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **CBRE South Asia Pvt. Ltd.** ("the **Operational Creditor hereinafter referred to as Applicant**"), seeking to initiate Corporate Insolvency Resolution

Process (CIRP) against **Man Reality Ltd. ("the Corporate Debtor hereafter referred to as Respondent")**.

2. The Respondent was incorporated on 22.07.2010 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U45400MH2010PLC205802. Its registered office is at 101, Man House, opp. Pawan Hans, S.V. Road, Vile Parle (West), Mumbai-400056. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

### **Brief Facts**

3. The Applicant is engaged in the business of providing real estate advisory services, facility management and project management consultancy services all over the country and Asia as well.
4. The Respondent is in the field of construction and housing realty.
5. The Respondent undertook the construction and development of a project called "One park avenue-1" and "One park avenue-6" (hereinafter referred to as the said project). The Applicant was appointed as the Project Management Consultant ("PMC") for supervising and coordinating the activities of third party vendor / contractors for the 3 Nos of Residential Towers, namely, 1 & 6 and additional tower alongwith the related Non Tower Area at One Park Avenue, Thane West.
6. The Applicant and Respondent were working on the basis of Work Order No. WOJMRL/00246/17-18 DA dated 06.10.2017. The letter of Intent no. LOI no. MRL/OPA-WO/09/17-18 dated 06.10.2017 and work order no. WOJMRL/00246/17-18 dated 06.10.2017.
7. The services provided by the Applicant to the respondent are as per the said rates and conditions set forth by the Respondent to the Applicant only after due deliberations and discussions with

the officials of respondent, which were as per the Purchase order issued by the Respondent to the Applicant.

8. For the services provided by the Applicant to the Respondent, following invoices were raised:

a) Invoice no. TMH1819003075 dated 26.02.2019 of Rs.15,07,956.22/-.

b) Invoice no. TMH1819003567 dated 26.03.2019 of Rs.14,81,841.64 /-.

c) Invoice no. TMH1920000275 dated 26.04.2019 of Rs.14,32,281.64 /-.

d) Invoice no. TMH1920000593 dated 24.05.2019 of Rs.1,91,975.38 /-.

Total amount due is hence Rs. 56,11,436.15/- (Rupees Fifty Six Lakh Eleven Thousand Four Hundred and Thirty Six and fifteen paise only), including retention amount of Rs.10,00,000/-

9. The Applicant then sent various emails to the Respondent demanding the payment of the due amount raised vide the invoices. However, the Respondent failed to give any positive response to the Applicant. Even after numerous emails from the Applicant, the Respondent has failed to pay the outstanding amount to the Applicant.

10. The Applicant then sent a demand notice dated 12.06.2019 under Section 8 of the IBC Code, 2016 demanding payment of the unpaid operational debt due from the Respondent to which the Respondent sent a reply dated 21.06.2019.

11. Hence, the present Application has been filed to initiate Corporate Insolvency Resolution Process in respect of the Respondent under Insolvency & Bankruptcy Code in terms of the work orders issued to the Operational Creditor and the demand notice dated 12.06.2019. The Corporate Debtor failed to make

the payment to the Operational Creditor and hence the present application has been filed.

12. The total amount of debt payable by the Respondent to the Applicant is Rs. 56,11,436/- (Rupees Fifty Six Lakh Eleven Thousand Four Hundred & Thirty Six only) being the principal amount due in terms of the invoices raised and retention money along with interest @24%.
13. The Corporate Debtor issued a letter of intent and Work Order in favour of the Operational Creditor for the work to be done by them vide Work Order no. WOJMRL-/00246/17-18 dated 06.10.2017 and Letter of Intent no. LOI no. MRL/OPA-WO/09/17-18 dated 06.10.2017.
14. Upon completion of their work, the Operational Creditor performed their work and raised invoices from 26.02.2019 to 24.05.2019.
15. After raising the invoices, the Applicant asked on 12.06.2019 for the payment due to them from the Respondent. However, the Corporate Debtor failed to respond and make payment of the due amount.
16. The Applicant ultimately issued a statutory Demand Notice dated 12.06.2019, upon the Respondent which was received by the Respondent on 15.06.2019, under Rule 5 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules 2016. The demand notice was replied by the Corporate Debtor raising disputes vide reply dated 21.06.2019.

### **Contentions of the Respondent**

17. The Respondent had filed IA 661/2022 for placing on record Affidavit in Reply. Vide order of this bench dated 04.01.2022, the Respondent's right to file Affidavit in reply was forfeited.

However, having considered the submissions and on perusal of averments made in this Interlocutory Application, this bench allowed the said Interlocutory Application vide order dated 20.07.2023 thereby taking on record Affidavit in reply.

18. The Respondent has contended that the Applicant has no "claim" as defined u/s 3 (6) of the IBC, since the Applicant has no "right to payment" as defined under the said definition. The dues claimed in the Application do not get covered under the term "Debt" u/s. 3 (11) of the Code, since there is no liability or obligation in respect of the so called claim. Further, the term default relates to non-payment of debt and since there is no claim or debt, there is no question of there being any default.
19. Further, there is a dispute with the very existence of the debt. There is no operational debt whatsoever. The Respondent has in-fact vide their reply letter dated 21<sup>st</sup> June, 2019 notified the Applicant the existence of the said dispute. Hence, the Applicant was put to notice of the existence of dispute U /s. 8 (2) (a) of the Code read with section 5 (6) of the Code vide reply to the demand notice dated.
20. That, the Applicant has breached the terms of the Work Order which led to the termination of the same. The Applicant has failed to object the said termination thereby accepting the breach of Work Order by the Applicant.
21. The Applicant has further submitted that there is no concluded Work Order between the parties as the Work Order No.WOJMRL/00246/17-18 is not signed by the Applicant. There is no meeting of minds and no concluded Work Order between the Parties.
22. That, the Applicant has also abandoned the site and has not complied with the terms of the work order. Due to abandonment of the site, the Respondent experienced delays in completion of

the project as a result of which there were number of RERA Complaints filed alleging delay.

23. That, some of the invoices included in the Petition were never submitted for certification and some were submitted post termination. There was a pre-existing dispute at the time of raising invoices.
24. The Respondent has submitted that due to various shortfalls on the part of the Applicant with respect to the completion of the said project, the Work Order was terminated by the Applicant, thereby creating a dispute over the subject matter of the present Application. These shortfalls were notified by the Respondent to the Applicant on various occasions vide emails. Also, the Applicant has not taken any steps to resolve the dispute.

### **Findings**

25. We have heard the submissions of the learned Counsel of the Applicant and Respondent and perused the records.
26. From the record, it is seen that there is existence of dispute between the Applicant and the Respondent and the same was notified to the Applicant vide reply letter dated 21<sup>st</sup> June, 2019 sent by the Respondent in response to the demand notice under Section 8. It is evident from the email communications placed along with the reply dated 21.06.2019 that the Applicant was notified about the idleness and carelessness of the Applicant's incapable, inefficient team and the Respondent incurring huge losses on all fronts predominantly deficiency in design verification and validation of Kumkang type Formwork False Work system compounded with bad workmanship and finish etc.
27. Vide email dated 15<sup>th</sup> May, 2019 the Respondent had informed the Applicant that the Applicant has not discharged its

contractual obligations towards the assigned work as has been duly agreed vide the Work Order within the stipulated period which interalia put the Respondent's company into heavy and irreparable losses which cannot be compensated in terms of money. The Respondent has also brought to the notice of the Applicant non-performances of services as mentioned below and its ignorance and negligence compounded with absence of expertise, capability of the Applicant's team had cascading effect on the quality, quantity and economy:

- i. Preconstruction:
  - Cost Consultancy and QS Services
  - Civil and Structural BOQ
  - Cost Estimation and Budgeting
  - Baseline Budget
- ii. Tendering:
  - Detailed Strategy and Management of Work Package
  - Assist Client in Evaluation of Design, Specs
  - Final Budget
  - Prepare Contract Documents
- iii. Mobilization of Work and Material on site
  - Review the Mobilization Strategy

28. It is contended by the Corporate Debtor that the Applicant never took steps to comply with the requisitions as mentioned in the Work Order. Further, the Applicant has failed to achieve the desired result, control the process and performance, speed and economy. Due to lack of planning by the Applicant, Kumkang Formwork System was not handled correctly leading into modifications work and incurring loss to the Respondent. Certification of Vendor bill and Base rate have also been enormously delayed and follow-up for the same was extremely

poor. Correctness and completeness were checked by the Applicant at a very low speed. After duly mapping the competency level, technical competence and academic credentials of majority of the Applicant's engineers, the Respondent arrived at a conclusion that they lack basic competency level, technical competence and academic credentials for which they are paid. Considering the above facts, the Respondent terminated the Work Order on the grounds of gross negligence, ignorance of process, and performance.

29. We find that the Work order was issued for the rendering of services in relation to certain functions and the deliverables are clearly spelt out in the Work Order. This clearly suggests that the contract was for rendition of services and not for supply of manpower. The email communications placed on record further demonstrate the communication of deficiency in the work carried out by the Operational Creditor prior to issuance of the demand notice. Since there exists prior dispute in relation to quality of work, which was brought of the notice of Operational Creditor prior to issuance of demand notice, the existence of dispute is clearly established. It is trite law that this Tribunal does not have adjudicatory power and can proceed in the Application filed under Section 9 of the code only in relation to undisputed debt.
30. Considering the above facts and circumstances, since there is dispute between the parties on the subject matter of the present Application, the present Application is disposed as dismissed under Section 9(5)(ii)(d) of the Code.
31. The Petition bearing **CP (IB) 3417/MB/2019** filed by **CBRE South Asia Pvt. Ltd.** [CIN:U74140DL1999PTC100244], 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 **Man Reality Ltd.** [CIN:U45400MH2010PLC205802], the Corporate Debtor, is **disposed as dismissed.**

32. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
33. Ordered accordingly.

Sd/-  
**Prabhat Kumar**  
Member (Technical)



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