



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

**IA No. 1694/2021 in CP (IB) 2980
(MB) 2019,**

Under Rule 11 of the NCLT Rules

**Manish Fashionworld Private
Limited**

... Operational Creditor

V/s

MnM Marketing Private Limited

... Corporate Debtor

In the matter of:

Manish Fashionworld Private Limited

...Operational Creditor/Applicant

V/s

MnM Marketing Private Limited

...Corporate Debtor/Respondent

Order Dated: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor (s) : Mr. Subodh Kumar Agrawal,
Authorized Representative

For the Corporate Debtor : Exparte

ORDER

Per: Kishore Vemulapalli (Member Judicial)

1. The Interlocutory Application is filed by M/s Manish Fashionworld Private Limited i.e. the Operational Creditor, under Rule 11 of the NCLT Rules seeking revival of CP. (IB) No. 2980/MB/2019 filed under section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor which was dismissed as withdrawn in accordance with the consent terms vide order dated 18.12.2019 passed by this bench.
2. The Operational Creditor has submitted that as per consent terms the Corporate Debtor paid the debt due along with interest by handing over three post-dated cheques dated 23.01.2020 for Rs. 10,00,000/-; 23.02.2020 for Rs. 11,25,110/- and 28.04.2020 for Rs. 13,09,790/-, out of which cheque dated 23.01.2020 for Rs. 10,00,000/- was honoured and the Applicant delayed the encashment of other two payments in good faith on request of Corporate Debtor. However, after considerable time amount represented by these two cheques have not been paid by the Corporate Debtor. The Applicant submits that it issued letter dated 11.03.2021 asking the Corporate Debtor to make full and final payment of the balance due within 10 days from the date of letter.
3. On 02.06.2022, last opportunity was given to the Operational Creditor to appear and argue the matter. On 26.07.2022 the counsel for the Operational Creditor was directed to take out substituted service through paper publication in two local newspapers. On 13.10.2022 the

Counsel for the Operational Creditor was directed to issue Personal notice to the Respondent/Corporate Debtor intimating the next date of hearing and file proof of service. The Ld. Counsel for the Operational Creditor submitted that despite substituted service in two daily leading newspapers and personal notice, the Corporate Debtor did not appear nor filed any reply, therefore the Corporate Debtor was set as *ex parte*

4. On perusal of the order dated 18.12.2019 dismissing the Application as withdrawn, this bench has stated in the order that “*However, liberty is granted to the Operational Creditor to approach this Tribunal again in case of default.*” It is seen that this bench has not given any direction to revive the Application CP. (IB) No. 2980/MB/2019 in case of default in consent terms. It has only allowed the Operational Creditor to approach again for fresh cause of action arising from default in consent terms if otherwise permissible
5. In view of this, we hold that this Interlocutory Application seeking revival of Application No. CP. (IB) No. 2980/MB/2019 is not maintainable.

ORDER

1. This Application being IA No. 1694/2021 in CP (IB) 2980/MB/2019, filed by Manish Fashionworld Private Limited, the Operational Creditor, under Rule 11 of the NCLT Rules seeking revival of CP. (IB) No. 2980/MB/2019 filed under section 9 of the Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor



i.e. MnM Marketing Private Limited is **dismissed** on the ground that the Application is not maintainable.

2. We make it clear that any observations made in this order should not be construed as expressing opinion on merits.

Sd/-

Prabhat Kumar
Member (Technical)
17/03/2023

Sd/-

Kishore Vemulapalli
Member (Judicial)