

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

CP (IB) No. 899/KB/2019

In the matter of:

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Megatherm Electronics Private Limited
[CIN: U32109WB1989PTC047097]

...Operational Creditor

Versus

Mansa BPO Services Private Limited
[CIN: U64203WB2003PTC095862]

...Corporate Debtor

Order reserved on: 11 July 2022

Order pronounced on: 26 July 2022

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through hybrid mode):

For the Operational Creditor	: Mr. Shaunak Mitra, Advocate
	Mr. Patita Paban Bishwal, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Megatherm Electronics Private Limited (“Operational Creditor”), a company incorporated under the provisions of the Companies Act, 1956 and represented by its Director, Mr. Satadri Chanda, authorised by a Board Resolution dated 08 March

2019, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Mansa BPO Services Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a company limited by shares incorporated on 28 February 2003, having CIN: U64203WB2003PTC095862, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at Megatherm Building, 3rd Floor, Block GP, Sector V, Salt Lake, Kolkata- 700091, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 30 April 2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 33,27,139/- (Rupees Thirty Three Lakh Twenty Seven Thousand One Hundred and Thirty-Nine only) being Rs.32,20,413/- (Rupees Thirty Two Lakh Twenty Thousand Four Hundred and Thirteen only) along with interest @ 15% per annum being totaling to Rs. 1,06,726/- (Rupees One Lakh Six Thousand Seven Hundred Twenty Six only) till 01 April 2019.
5. The learned Counsel for the Operational Creditor states as follows: -
 - a. On 04 October 2017, a deed of sub-lease was executed between the Operational Creditor and the Corporate Debtor in respect of an office space located on the 4th Floor, Block Gp, Plot No. L-1, Electronic Complex, Salt Lake, Sector V, Kolkata- 700091.
 - b. According to the lease deed, the rent of the said office space was Rs.3,20,000/- (Rupees Three Lakh Twenty Thousand only) per month and under a supplementary agreement, the Corporate Debtor had agreed to pay Rs.3,04,000/- (Rupees Three Lakh Four Thousand only) per month towards the facility and common area

maintenance charges in respect of electricity charges in respect of the said office space.

- c. The Corporate Debtor started making irregular payments of the rent from the month of November 2018 to March 2019 amounting to Rs.43,09,495/- (Rupees Forty Three Lakh Nine Thousand Four Hundred and Ninety-Five only) .
- d. The Operational Creditor *vide* email dated 01 February 2019 requested the Corporate Debtor to make payment of the outstanding dues. The Corporate Debtor replied to said email on 14 February 2019, wherein the Corporate Debtor categorically admitted its liability towards the outstanding dues.
- e. On 17 February 2019, the Operational Creditor sent another email to the Corporate Debtor for payment of Rs.40,03,778/- (Rupees Forty Lakh Three Thousand Seven Hundred and Seventy Eight only), the Corporate Debtor acknowledged its liability *vide* email dated 18 February 2019 but defaulted in payment of the outstanding dues.
- f. The Operational Creditor issued notice for termination of the sub-lease on 14 March 2019 and called upon the Corporate Debtor to make payment of the outstanding dues.
- g. On 29 March 2019, the Corporate Debtor *vide* its letter requested for further time to make payment of the outstanding dues.
- h. Under the said Lease Agreement, on failure to make payment of the rent, electricity charges etc., the Corporate Debtor is liable to pay interest @15% per annum on the outstanding payment as per clause 8.4. of the Sub-Lease Deed dated 04 October 2017.
- i. A demand notice under section 8 of the Code was issued on 02 April 2019 and was received by the Corporate Debtor.

- j. No reply was sent by the Corporate Debtor but instead the Corporate Debtor made payment of Rs.1,33,045/- (Rupees One Lakh Thirty-Three Thousand and Forty five only) on 09 April 2019 and Rs.2,82,117/- (Rupees Two Lakh Eighty Two Thousand One Hundred and Seventeen only) and Rs.6,73,920/- (Rupees Six Lakh Seventy Three Thousand Nine Hundred and twenty only) on 117 April 2019.
 - k. The learned Counsel submitted that the demand notice was served at the address of the Corporate Debtor provided in the sub-lease agreement and at the address wherefrom the Corporate Debtor is carrying out its business at present as the Corporate Debtor has already quit and vacated its registered office as mentioned in the website of the Ministry of Corporate Affairs but the Corporate Debtor has not changed the address of the registered office in the records of the Ministry of Corporate Affairs.
6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:
- a. Copies of sub lease deed dated 04 October 2017 and supplementary agreement dated 04 October 2019; annexed to the petition and marked as Annexure D at pages 14-31.
 - b. Copies of bank statements; annexed to the petition and marked as Annexure N at pages 90-124.
 - c. Copies of invoices; annexed to the petition and marked as Annexure O at pages 125-140.
7. The Corporate Debtor filed its reply affidavit affirmed on 28 August 2019 wherein it states as follows:

- a. The Company Petition is not maintainable as no demand notice under section 8 of the Code was received by the Corporate Debtor.
- b. The Corporate Debtor has not defaulted in payment of the sub-lease rental and amount due on account of sub-lease rentals cannot be construed to be operational debt within the meaning of section 5(21) of the Code.
- c. Further, there is no contractual basis for the claim in so far as the Operational Creditor has sought to terminate the purported sub-lease by service of a notice under section 106 of the Transfer of Property Act, 1882.
- d. The sub-lease deed and the Supplementary Agreement are neither stamper nor registered and hence cannot be relied upon in the present proceedings.

Analysis and Findings

8. We have heard the learned Counsel for the Operational Creditor, there has been no representation on behalf of the Corporate Debtor on 22 February 2022, 29 March 2022, 21 April 2022, 13 May 2022, 15 June 2022 and on 11 July 2022 hence the matter was heard *ex-parte*.
9. Before going into the merits of the case, the main defense raised by the Corporate Debtor in its reply is that the Demand notice was not served on the Corporate Debtor.
10. On perusal of the postal track report filed by the Operational Creditor after page 43, it is pertinent to note that remark on the first postal track report dated 03 April 2022 i.e. "Not Delivered INSUFFICIENT ADDRESS" and it was returned to Kolkata GPO, the second postal track report has a remark on 10 April 2019 as "Item Returned VALIDITY

PERIOD EXCEEDED". Hence, the demand notice was returned to the sender and was clearly not delivered to the Corporate Debtor.

11. It is clear from the language of the statute under section 8 of the Code that the demand notice of demand has to be delivered upon the Corporate Debtor. The Hon'ble Supreme Court has also held in Mobilox Innovations (P.) Ltd. v. Kirusa Software (P.) Ltd. MANU/SC/1196/2017, as under:

"It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form."

12. Hence, without proper service of a demand notice under section 8 of the Code, an insolvency proceeding cannot be initiated. It is mandatory that a notice under section 8 of the Code has to be delivered to the Corporate Debtor. In the instant case, the demand notice has not been delivered to the Corporate Debtor, thus, this Company Petition cannot be considered.

13. In view of the above observations, **CP (IB) No. 899/KB/2019** is dismissed.

14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 26th day of July 2022

GGRB(LRA)