

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**ALLAHABAD BENCH**

CP (IB) 25/ALD/2018  
(Under Section 9 of the  
Insolvency and Bankruptcy Code, 2016)

**IN THE MATTER OF**

M/s Value Line Interiors Pvt. Ltd.

.....Applicant/Operational Creditor

**Versus**

M/s Shipra Hotels Ltd. ....Respondent/ Corporate Debtor

**Judgement/ Order delivered on 01.06.2018**

**CORAM : Sh. V.P. Singh, Hon'ble Member (Judicial)**

**Ms. Saroj Rajware, Hon'ble Member (Technical)**

**For the Operational Creditor:** Shri Chetan Chatterjee, Advocate

**For the Corporate Debtor:** Shri Himanshu Tyagi, Advocate



**As per Shri V.P. Singh, Member Judicial**

**ORDER**

1. Petitioner has filed this insolvency petition under section 9 read with section 13, 14 and 33 of the Insolvency and Bankruptcy Code 2016 for initiating Corporate Insolvency Resolution Process (from now on referred as CIRP) against the Corporate Debtor/Respondent Company.

2. Brief facts as stated in the petitioner are that:

I. The operational creditor (from now on referred as Applicant/Petitioner) is a company incorporated under the Companies Act 1956. Sri Ashok Kumar is the authorised

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representative of the petitioner company by Board of Directors resolution dated 10 October 2017, which is annexed as Annexure P-1.

**II.** The Corporate Debtor is a company with authorised share capital of 30 crores and paid-up share capital of 2,69,17,000. In November 2013, the respondent company approached the petitioner company **to get the interiors fit out and finishing work** at their office situated at Picture Palace, the Mall, Kulri, Mussoorie, District -Dehradun.

**III.** The Respondent Company issued two work contracts in favour of the petitioner company, 1<sup>st</sup> work contract dated 5 December 2013 confirming and awarding the POP, fixed wood work and stone work at the above stated project for the cost of Rs. 2,49,63,512 and 2<sup>nd</sup> work contract dated 14 August 2014 confirming and awarding the finishing work, stone work, painting work, floor, wall and ceiling at the said office for a cost of Rs 119,72,058.20 in favour of the petitioner company. Copies of the two work contracts dated 5 December 2013 and 14 August 2014 issued by the corporate debtor are annexed as Annexure P-3. In furtherance of the 2 work contracts, the respondent company has also issued one purchase order dated 24 December 2013 and several work orders from the month of February 2015 to April 2016 in favour of the petitioner company in view of the interior fit out and finishing work to be executed by the petitioner company in the above said project.

IV. The petitioner contends that the purchase order dated 24 December 2013 for a total value of ₹ 3,831,470/- has been executed by the corporate debtor in favour of the operational creditor. Moreover, the corporate debtor has also issued several work orders



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in favour of the operational creditor. First work order dated 2 February 2015 for the value of ₹ 30 lakh, 2<sup>nd</sup> work order dated 23<sup>rd</sup> April 2015 for the value of ₹ 35,97,968, 3<sup>rd</sup> work dated 29 April 2015 for ₹ 3,542,658, 4<sup>th</sup> order dated 28 August 2015 for the value of ₹ 2,64,283, 5<sup>th</sup> work order dated 20 February 2016 value of ₹ 2,50,000, 6<sup>th</sup> work order dated. 5<sup>th</sup> April 2016 for the value of ₹ 1,75,000 and work order dated 18<sup>th</sup> April 2016 for the value of ₹ 10,71,127 which were issued to the petitioner company by the respondent company. Copies of the purchase order are annexed with the petition as Annexure P-4. Further more, it was decided and documented in the work orders that all the running bills will be verified and approved within ten days after submission by the petitioner and the payment shall be submitted there after.

V. In connection with the finishing ,interior fit out work at office of respondent company office situated at Picture Palace, the petitioner company had submitted nine Running Bills ,bearing R A numbers 1, 2, 3, 4, 5, 6, 7 & 8 from 9 June 2014 to 28<sup>th</sup> of March 2017 respectively amounting to a ₹ 4,85,67,159 . The operational creditor had also raised 10 different invoices in respect of the purchase order dated 24 December 2013 being invoice number 001 dated 21 January 2014, 616 dated 12 February 2014, 617 dated 22 February 2014, 619 dated 24<sup>th</sup> April 2014, 620 dated 21 May 2014, 621 dated 29 May 2014, 623 dated 24 June 2014, 627 dated 18 July 2014, 631 dated 23 December 2014 and 639 dated 2 May 20015 respectively and for glass supply, affixed on material amounting to ₹ 51,00,155.

The above stated bills/invoices were raised by the operational creditor in respect of the above mentioned work orders and purchase



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orders, thereby totalling Rs 53,667,324/- along with all the necessary documents.

VI. The petitioner has stated that the corporate debtor with malafide intention did not clear the running bills and invoices which were raised by the petitioner company from time to time despite completion of the entire work as per the contract.

VII. The petitioner company had even written reminder email to the respondent company and had requested to clear the outstanding Bill amount. However, repeated request and efforts of the petitioner company went unheard. That the respondent company had miserably failed to clear the outstanding dues in respect of the above bills & invoices which were raised by the petitioner company during execution of the POP Work.



VIII. The petitioner contended till date the operational creditor has only received an amount of ₹ 45,343,885 from the respondent, in instalments. The total amount deducted given TDS, WCT and accommodation charges ₹ 4,064,595. Therefore the total amount paid by the respondent company to the petitioner company is ₹ 49,408,480. The corporate debtor had only made part payment out of the total bills raised by the petitioner company. Petitioner has also filed the copy of the bank account statement of the operational creditor for December 2013 to September 2015, showing the part payment of ₹ 45,343,885 received from the corporate debtor, which is annexed with the petition as annexure P-8.

IX. The petitioner has also filed a copy of the ledger account

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statement in table form in respect of the computation of unpaid

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operational debt with the date of default which is annexed as Annexure P-9 with the petition.

X. The petitioner sent a statutory legal demand notice dated 30 August 2017 under section 8 of the Insolvency and Bankruptcy 2016 via speed post bearing postal receipt number ED 347737785IN dated 8 September 2017 thereby demanding the pending dues in respect of the work orders and purchase orders. The demand notice has also been served through email dated 8 September 2017 at the registered email addresses of the respondent company. The said demand notice was duly received and served upon the respondent on 11 September 2017.

XI. The operational creditor has filed affidavit under 9(3)(b) and bank statement of the corporate debtor along with the bank certificate.



XII. The corporate debtor vide 19 September 2017 has acknowledged the receipt of the demand notice dated 30 August 2017 which has been sent to the corporate debtor by the operational creditor by speed post and email dated 8 September 2017. The corporate debtor had miserably failed to bring to the notice of the operational creditor existence of any such **existing dispute** within the statutory period of 10 days as envisaged under section 8 (2) of the Insolvency and Bankruptcy Code 2016.

XIII. The corporate debtor sent email dated 19 September 2017 to the operational creditor acknowledging the receipt of the demand notice dated 30 August 2017 which has been sent to the corporate debtor by the operational director via speed post and email dated 8 September 2017. Therefore, the corporate debtor has miserably

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failed to bring to the notice of the operational creditor existence of any dispute within the statutory period of 10 days as envisaged under section 8 (2) of the Insolvency and Bankruptcy 2016. The copy of the email dt. 19 September 2017 sent my the corporate debtor to the operational creditor is annexed as Annexure P-11.

**XIV.** In the facts and circumstances stated above, a sum of ₹ 4,258,844 remains due and outstanding from the corporate debtor, i.e. the respondent company, which is payable to the petitioner company/operational creditor.

3. The corporate debtor has filed its reply seeking dismissal of the petition on the following grounds:

I. That the petitioner/operational creditor as such has substantially failed to provide the details of the alleged unpaid amount of ₹ 2,982,784 against the corporate debtor and have simply reiterated the amounts mentioned under the terms of the contract entered into with the respondent for the project at picture palace, on various dates such as:

- a) The amount of rupees 246,53,512 for a work order dated 5 December 2013.
- b) The amount of rupees 119,72,058.20 via work order dated 14 August 2014.
- c) The amount of ₹ 3,000,005 work order dated 2 February 2015.
- d) The amount of ₹ 3,597,968 via work order dated 23<sup>rd</sup> April 2015.
- e) The amount of ₹ 3,542,658 via work order six dated 29<sup>th</sup> to April 2015.
- f) The work order dated 28 August 2015 amount of ₹ 264,283.
- g) The work order dated 20 February 2016 for an amount of ₹ 250,000.
- h) The work order dated 5<sup>th</sup> April 2016 for an amount of ₹ 175,000.
- i) The work order dated 18<sup>th</sup> April 2016 for an amount of ₹ 1,071,127.

II. It is further stated by the corporate debtor that the operational creditor has mentioned without any basis that the amount due towards RA Bill number 1,1 Diff,2,2 Diff, 3, 4, 5, 6, 7 and 8 as raised

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by the corporate debtor with between 9 June 2014 till 28 March 2017 for glasswork done, amounting to ₹ 48,567,169. The corporate debtor further contends that the total bills raised by him against the respondent were 5,36,67,324, and the total amount paid by the respondent is ₹ 4,94,080,480. Therefore the alleged total debt due against the respondent is ₹ 42,58,844/-.

III. The corporate debtor contends that the operational creditor have been continuously, persistently breaching the terms and conditions of the work agreements entered into between the petitioner and the respondent and the completion dates for the respective assigned work as per the terms of the agreements were not honoured, and the undue delays were caused by the petitioner, as a result of which the respondent/corporate debtor had suffered huge financial losses as well as the loss of the goodwill which respondents have built over a substantial period of time in the hospitality industry.

The corporate debtor has emphasised on the mail correspondence dated 27 June 2016 wherein it is stated that:

"Dear Mr Sharma,

With continuous delays and slippages in the completion dates, you are advised to honour your commitments as per trail mail, failing which we shall be constrained to levy the liquidated damages.

Looking forward to your sincere effort in completing the works on time, please.

Regards

Faisal"

IV. The corporate debtor has reminded that as per email dated 1 July 2016 it was reminded that :

"Dear Mr Manik,

There are lots of quality issues faced at the site at present. The picture of meeting room flooring was sent to you which need to be rectified. Presently the fasteners through which the base angle has been put a reception grass is proving to be a source of leakage room



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below. Besides, there is an immediate general need for rectification and snag correction which is immediately required.

During such critical time of monsoons, your site person Mr Shiv Murti is missing. Kindly ask him to attend the site ASAP get the snags, and another issue rectified immediately. Please recall your commitment to attend the snags by a separate team which is not happening. You are again requested to get the same attended along with the closure of balance measure works.

Regards

Faisal".

v. Further through email dated 4 July 2016 the respondent requested the petitioner through email correspondence to rectify the several issues pertaining to the work assigned under the agreements and reiterated an unequivocal manner to send it to task team for attending the snags, which were largely going unattended by the petitioner, to complete the balance spending works as per the commitments made by the petitioner which includes the reception internal wooden cladding works, to get Leakage in areas like reception and others attended by the duly authorised and competent workers of the petitioner and to post the person in charge of the petitioner namely Sheo Murty, immediately at the site, as the above mentioned defaults were causing unnecessary delay in the completion of the assigned work under the terms of the agreement. True copy of the email correspondence dated 4 July 2016 is annexed as annexure R-4. The corporate debtor has also pointed out several deficiencies in the work completed by the operational creditor, and on this basis, he requested making payment.

vi. That on 18.07.2016, the respondent further reminded the Petitioner about the completion of balance work by 20.07.2016 for both Attic floors, seepage through the glass reception and glass railing at reception floor. Moreover, the details of the rooms which required attention concerning the wall paper works were also delivered to the Petitioner.



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VII. On 28.07.2016 the respondent again raised its objection regarding the delay in completion of assigned works by Petitioners, also requested petitioner to expedite and complete delayed work and also mentioned that sufficient cure time has already been provided for defaults/ delays.

It was also stated that the balance work at rooms 701 to 716 needed attention urgent basis, to clear the snag in another area, to attend the leakage in room no, 302. Moreover, Attic floor rooms were running highly delayed for guest booking and. As a result, the result respondents were incurring losses.

4. Having heard the argument of the learned counsel for both the parties and perusing record, we find that Petitioner meets the requirements of section 5 (20), there is the existence of operational debt, and petitioner is Operational Creditor as per Section 5(21). Demand Notice of unpaid operational debt, copy of an invoice demanding payment of the amount involved in the default to the corporate debtor has been delivered as specified under section 8(1) of the IBC 2016, in form-3 (under rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016). The Corporate Debtor has failed to bring to the notice of the operational creditor existence of alleged dispute within the statutory period of 10 days as per section 8(2) of the Code, in reply to the present application main objections were raised during course of arguments regarding the existence of dispute relying upon email sent by Corporate Debtor to operational Creditor. By mail dated 27.06.2017 respondents have brought the fact about delay in completion of the assigned work and by mail 01.07.2016 made some complaints regarding that petitioner failed to honor commitment of attending the snag by a separate team. During the time of monsoons, site person Mr Shiv Murti is missing. Through the various emails, no dispute can be made out. All the



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emails are about delay in completion of assigned work only, and the request has been made to expedite and complete the delayed work . There is no substantial and genuine dispute between the Petitioner and respondent, dispute is of superficial nature and despite the petty complaints Respondent Company has continuously given the Work Orders to petitioner indicates of broad satisfaction. So in the present case, there is no real existence of dispute.

Hence by following the Principle laid down by *Hon'ble Supreme Court in the Civil Appeal No.9405 of 2017 in Matter of "MobiloX Innovation Private Limited v/s Kirusa Software Private Limited."* It is clear that under provision of section 9(5)(II)(d) notice of dispute has been received by the operational creditor but "dispute" raised by Corporate Debtor is mere a patently feeble legal argument and assertion of fact unsupported by valid evidence, which could establish dispute between the Operational Creditor and Corporate Debtor.



5. The operational creditor has filed supplementary affidavit stating no notice had been given by the Corporate Debtor relating to a dispute of the unpaid operation debt of Rs. 42, 58,844/- to the Operational Creditor. The operational creditor has complied with the provision of section 9(3)(b) and in compliance of (c) of the Insolvency in Bankruptcy code annexed the Bank Certificates dated 04.10.2017, 06.10.2017 and 16.11.2017.

6. There is nothing on record which proves that there was pre-existing dispute relating to the alleged debt amount. Given above said facts and principle laid down in above cited case the contention of the respondent that there was a pre-existing dispute regarding goods/services given by the Operational Creditor to the Corporate Debtor is found devoid of merit.

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7. The Operational Creditor had not received the outstanding dues from the Corporate Debtor, and the requirements as prescribed under I & B Code have been completed by the Petitioner. The operational creditor has not proposed the name of any insolvency professional, but under section 9 of the insolvency in the bankruptcy code, it is not mandatory to propose the name of insolvency professional.

8. The application is in form- 5 duly filled all five parts of the form (under rule 6 (1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) and accompanied with the fee prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. On the basis, we find the Application is complete and deserves 'Admission.' Hence Admitted.



9. Accordingly, under Section 9 of the Code we declare a moratorium for the purpose referred to in section 14 of the Code with the following direction:

- i. As, no proposal for IRP is made in the present Application, therefore as per section 16 of the code, we hereby appoints **Mr. Arun Gupta**, from the Panel of Insolvency Professionals recommended by IBBI vide its letter dated 28 March 2018, as Interim Resolution Professional to carry the functions as mentioned under the Code .The list also contains the Email.id arungupta2211@gmail.com RegistrationNo. IBBI/IPA-002/IP-N00051/2016-17/10095 of the proposed IRP. The Registrar (Designated) is directed to communicate the order to the IRP and obtain his consent and declaration in Form 2 within 3 days.

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- ii. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of a claim under Section 15 of the Code.
- iii. The interim Resolution professional shall after collation of all claim received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.
- iv. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17 18, 20,21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under a legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the I& B Code, 2016.
- v. That the order of moratorium u/s 14 shall have effect from the date of this order, till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.
- vi. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest



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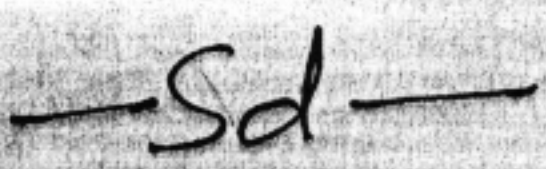
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created by the Corporate Debtor in respect of its property including any action under the SARFESI Act, 2002; the recovery of any property by an owner or less or where such property is occupied by or in possession of the corporate debtor.

- vii. That 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.
- viii. That the provisions of Section 14 sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- ix. The Registry is directed to communicate this order to the Operational Creditor and the Corporate Debtor after the completion of necessary formalities.

The IRP shall inform the progress of insolvency proceedings and submit the report of the compliance of the directions of this order. List the matter on 13.6.2018 for filing progress report.



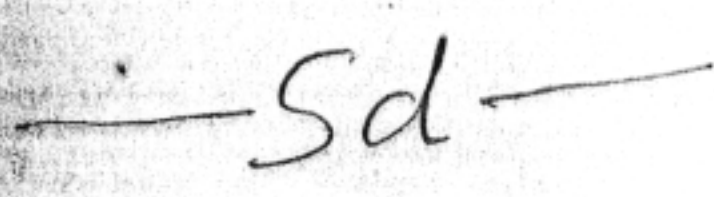
  
**SAROJ RAJWARE,**  
**MEMBER (T)**

Dated: 01.06.2018

*compared by me*  
*Bharat Mishra*  
*01/06/2018*

**FREE OF COST COPY**

*Ravinder Kumar*  
*01/06/2018*  
**Ravinder Kumar**  
Bench Officer  
National Company Law Tribunal  
Allahabad-U.P.

  
**V.P. SINGH,**  
**MEMBER (J)**