

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 1466/IBC/MB/2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy (Application to  
Adjudication Authority) Rule 2016)

*In the matter of*

**Interocean Fincap Services Pvt.  
Ltd.**

(CIN: U51109MH2012PTC225832)  
Having registered office at: 412,  
Vakratunda Corporate Park,  
Vishweshwar Nagar, Off Aaray  
Road, Goregaon (E), Mumbai-  
400063

**.....Operational Creditor  
Vs**

**Max Alart Systems Limited**

(CIN: L74999MH2004PLC144034)  
Ind. Unit No.108 B Wing 1<sup>st</sup> Floor,  
Classique Centre, 26 Mahal Ind.  
Estate, Off Mahakali Caves Road,  
Andheri East, Mumbai,  
Maharashtra, PIN 400093.

**.....Corporate Debtor**

**Order delivered on: 24.08.2021**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Manoj Mishra, Advocate

**For the Respondent:** Mr. Ishaan Patkar, Advocate

**Per: Shri H.V. Subba Rao, Member (Judicial)**

**ORDER**

1. This Company petition is filed by *Interocean Fincap Services Pvt. Ltd.* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Max Alert Systems Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 49,99,972/- to the Operational Creditor.
3. The Submissions of the Operational Creditor are as follows:-
  - a. On 14.05.2015, Operational Creditor (Interocean Fincap Serices Pvt. Ltd.) entered into an agreement with Corporate Debtor (M/s Max Alert Systems Limited) for engagement of Operational Creditor as a consulting for One Time Settlement of the dues to Punjab National Bank.
  - b. As per agreement of the scope of work of Operational Creditor was (a) understanding of the need of the company in details; (b) preparing comprehensive proposal for OTS in respect of outstanding dues to PNB; (c) Discussion of proposal with branch and zonal offices at Gujrat; (d) follow up and co-ordination for negotiations with the bank based on understanding; (e) assisting in all legal formalities

arising on the course of processing of proposal; & (f) getting approval for one time settlement.

- c. A timetable was given for approximately 4 days for preparation of proposal from the date of receipt of complete information and documents. An approximate date was given for 10-12 weeks thereafter for sanction and disbursement of funds.
- d. One of the stipulations on the work of operational creditor was listed as services of Operational Creditor would depend on timely production of facts/information from Corporate Debtor. This also included an independent verification, vouching and accuracy of documentation and information provided to Operational Creditor.
- e. Fee to be charged was as (a) if settlement to happen in the range of Rs. 4.75 Crores to Rs. 5.25 Crores- Rs. 50 Lacs and (b) if settlement to happen in the range of Rs. 5.26 Crores to Rs. 6 Crores to Rs. 40 Lacs.
- f. Fee was to be payable (a) at the time of signing engagement letter- 10% and (b) on obtaining approval for one-time settlement from Bank-remaining 90%.
- g. In follow, up with the mandate and efforts being made by the Operational Creditor, Punjab National Bank has agreed and issued an One Time Settlement Letter dated 25.02.2016.
- h. With this One Time Settlement Letter the consultancy fee of Operational Creditor stood to be Rs. 40 Lakhs in accordance with the agreement dated 14.05.2015.
- i. In accordance with the mandate, Operational Creditor had raised a Proforma Invoice for Rs. 50 Lakhs as on the date of Agreement, assuming that offer will be at the best price.

- j. Making final invoice would mean Service Tax at the rate of 12.36% at that time, therefore in accordance with that proforma Invoice was raised, which Operational Creditor was supposed to pay, after which invoice was to be raised.
  - k. Accordingly, on the basis of payment received, Operational Creditor raised two invoices for Rs. 4,00,000/- (Rs. Four Lakhs and Rs. 5,00,000/- (Rs. Five Lakhs).
  - l. First payment (as 10% of the minimum fee of Rs. 40 Lacs) was received on 29<sup>th</sup> May 2015 for Rs. 4 Lakhs and invoice was raised on 30<sup>th</sup> May, 2015.
  - m. Another payment after adjusting of TDS on both the Occasions were received to the extent of Rs. 5 Lakhs on 18<sup>th</sup> May, 2016. As soon as payment was received a formal invoice with Service Tax was issued to the Corporate Debtor.
  - n. Out of the total dues of Rs. 40,00,000/- basic amounts of Rs. 3,55,999/- (Rupees Three Lakhs Fifty-Five Thousand Nine Hundred Ninety-Nine only) and Rs. 4,36,681/- (Rs. Four Lakhs Thirty-Six Thousand Six Hundred Eighty-one only) were settled. In this way remaining basic amount is calculated as 49,99,972/-. Hence this petition.
4. The Corporate Debtor filed reply on 15.10.2019 along with copy of reply dated 14.01.2018 issued by them to the director of the Operational Creditor in response to their demand notice/invoice dated 05.01.2018. The Corporate Debtor opposed the above Company Petition mainly contending as follows:
- a. The present Application is barred by limitation. The Operational Creditor itself alleges that the services provided by it ended on 25.02.2016 and the amounts demanded in the Application allegedly became due

on that date. The application has however been filed after 3 years and must be therefore be dismissed with costs as being barred by limitation.

- b. The Operational Creditor was supposed to provide a range of services under the provisions of the Mandate Letter. The Mandate Letter states that the settlement and disbursement will take place within a timeframe of 10-12 weeks. However, the Operational Creditor itself admits that the settlement happened on 25.02.2016 which was after a delay of more than 9 months. Due to this delay, Corporate Debtor has suffered huge losses in business. The interest liability which accrued during this period, added to the debt amount and led to a higher payment at the time of settlement than what would have been due had the terms of the Mandate Letter been respected and the settlement taken place within the timeframe of 10-12 weeks.
- c. Furthermore, the Operational Creditor has not performed the services properly. Apart from the gross delay caused, most of the work was done by Corporate Debtor itself. The Operational Creditor has not carried out work properly under the Mandate Letter and tardiness on behalf of Operational Creditor led to huge delay. The Corporate Debtor had to itself do all the ground work and put in considerable time and energy to get the settlement done. This is evidence by the fact that the Operational Creditor raised only one invoice at the time of signing of the Mandate Letter and one invoice

after the settlement of the debts with Punjab National Bank.

- d. Thus, an invoice of Rs. 4,00,000/- was raised by the Operational Creditor (including service tax) as “Advance” and there is no dispute that this amount has been paid. Thereafter an invoice for Rs. 5,00,000/- (including service tax) was raised by Applicant on 18.05.2016 and the same was admittedly paid.
- e. It is pertinent to note that no other invoice has ever been raised by Applicant. The settlement itself had happened on 25.02.2016 and the second invoice was issued on 18.05.2016. A reasonable person would have issued the invoice for the entire amount if he believed that the services were in fact fully provided. In this case, the Operational Creditor knowingly and willingly issued invoices for only Rs. 9,00,000/- because the applicant knew that it had not provided the services properly. It is submitted that no rational person can issue an invoice for only 25% of the amount allegedly due even after the entire amount has allegedly become due. The only inference which can be drawn is that the Operational Creditor was aware that it had not provided the services and hence never issued any invoices for the rest of the amount allegedly becoming due.
- f. The Corporate Debtor states that in view of all that has been stated above, the present Company Petition dismissed with costs.

**FINDINGS**

1. Heard both sides and perused the record. After hearing the arguments and upon perusing the material available on record, the following questions that falls for consideration:
  - i. Whether the above Company Petition is barred by limitation?
  - ii. Whether there are pre-existing disputes between the parties?
2. Let us examine the first issue with regard to limitation. It is the contention of the Corporate Debtor that the OTS settlement was sanctioned by Punjab National Bank on 25.03.2016 and the cause of action for filing the above Company Petition has arisen on that day itself and the above Company Petition filed on 10.04.2019 is barred by limitation.
3. In this connection, it is important to mention here that the Corporate Debtor in para 7 of their reply admitted 2 payments of Rs. 4,00,000/- and 5,00,000/- on 30.05.2015 and 18.05.2016 respectively which amounts to part payment and the above Company Petition being filed on 10.04.2019 within 3 years from the date of part payment dated 18.05.2016 is well within limitation and the above ground of limitation raised by the Corporate Debtor is not legally sustainable and is liable to be rejected.
4. The next ground with regard to pre-existing disputes. It is the contention of the Corporate Debtor that the Operational Creditor has performed only 25% of the job and orally agreed to accept total payment of Rs. 9,00,000/- in lieu of Rs. 40,00,000/- which was already paid by the Corporate Debtor and therefore the Operational Creditor is not entitled for any other amounts. In order to substantiate

the oral understanding for 9 lacs, the Corporate Debtor is pointing at the delay on the part of the Operational Creditor in raising the invoices more than 2 years after the entire amount became due and payable to the Operational Creditor which no rational person would do under the normal circumstances. In this connection, it is important to mention here that the Operational Creditor has every choice to demand payment for the entire amount or in part and mere submission of invoice only for part of the amount and raising final invoices at a later time before the debt became time barred is absolutely legal and in order and the Corporate Debtor will not be absolved from its liability on that score.

5. It is also important to mention here that the Operational Creditor has annexed certain emails dated 09.03.2016 (annexed at page no. 36), 19.12.2018 (annexed at page no. 37), 20.09.2018 (annexed at page no. 38), 04.10.2018 (annexed at page no. 39) demanding their balance payment again and again for which there was no response from the Corporate Debtor. Therefore, the contention of the Corporate Debtor that the Operational Creditor has orally agreed for total settlement at 9 lacs and therefore did not demand payment from the Corporate Debtor is liable to be rejected.
6. It is appropriate to mention here that the Corporate Debtor did not raise any dispute before issuing demand notice dated 02.01.2019 by the Operational Creditor and it is for the first time in their reply dated 01.02.2019, they have come up with the theory of incompleteness of entire job by the Operational Creditor and oral understanding of settlement for 9 lacs etc. Therefore, it is not safe to hold that there is

a pre-existing dispute between the parties in the above circumstances.

7. The last but not the least issue is with regard to avoidance of service tax by the Operational Creditor. The Corporate Debtor in his reply devoted so much space in alleging that the Operational Creditor has indulged in avoiding service tax etc. to the statutory authorities and is liable for penal consequence. This Tribunal is not inclined to make any observations on the above issue with regard to avoidance of the service tax by the Operational Creditor as it is beyond the scope of the present Company Petition. The Corporate Debtor has every right to take up the issue with the appropriate Statutory Authority.
8. As per the settled proposition of law, this Tribunal while dealing with a petition filed under Section 9 of the Code has to merely see whether there is any claim and default and whether the default is within limitation and whether there are any existing disputes between the parties. When once the above legal requirements are fulfilled by the Operational Creditor, the Adjudicating Authority has no option except to admit the above Company Petition. As stated above, the defence raised by the Corporate Debtor in the present case on hand is not only hypothetical but also illusory and will not stand to the test of legal scrutiny. The Operational Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2.
9. In view of the above findings and observations, this Tribunal is of the considered opinion that the above Company Petition satisfies all the legal requirements for

admission and accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) -1466(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Max Alert Systems Ltd.*
- b. This Bench hereby appoints **Mr. Rakesh Kumar Tulsyan** Insolvency Professional, Registration No: IBBI/IPA-001/IPA-001/IP-P01144/2018-19/11970 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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 created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or

lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**