

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II**

CP (IB) No.216/9/HDB/2023

*[Section 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

Between:

M/s.Isthara Parks Private Limited,
Represented by its Authorised Officer
Mr.E-Vairamuthu Karthik, General Manager,
Having its Registered Office at 1987-B,
Trichy Road, Coimbatore – 641 005,
Tamil Nadu and Regional Office at
3rd Floor, Ayyappa Arcade, Janardana Hills,
Lumbini Avenue, Gachibowli,
Hyderabad – 500 032, Telangana State.

... Petitioner/Operational Creditor

And

1. M/s.Valmar Projects LLP,
Having its Registered Office at
Plot No.6, Road No.1, Film Nagar,
Hyderabad – 500 030
Telangana State,
Represented by its CEO.
2. Sri Vishnuvardhan Babu Manchu,
Director/Signatory,
M/s.Valmar Projects LLP,
Having its Registered Office at
Plot No.6, Road No.1, Film Nagar,
Hyderabad – 500 030
Telangana State.
3. Sri Pothugunta Gajendra,
Director/Signatory,
M/s.Valmar Projects LLP,
Having its Registered Office at
Plot No.6, Road No.1, Film Nagar,
Hyderabad – 500 030,
Telangana State.

... Respondents



Date of Order: 29.01.2025

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Dr P.Bhaskara Mohan and Mr.PSDS.Kaartheik,
Advocates
For the Respondents : Mr.Sai Sanjay Suraneni, Advocate

[Per: Shri Rajeev Bhardwaj, Member (Judicial)]

ORDER

1. This Petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s.Isthara Parks Private Limited, Operational Creditor (**OC/Petitioner**) against M/s.Valmar Projects LLP, Corporate Debtor (**CD/Respondent**) for the alleged default in payment of debt amounting to Rs.5,69,65,755/- (principal being Rs.5,35,15,084/- and interest Rs.34,50,671) as on 05.08.2023.

2. **Case of the Petitioner:**

a) The Petitioner is a Private Limited Company incorporated under the Companies Act, 2013, engaged in operating hostel facilities, providing catering and food services, and managing executive and student housing facilities.



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- b) The Respondent is also a Company registered under the Companies Act, 2013, engaged in managing and maintaining school, college, and university hostel facilities.
- c) The Petitioner entered into a Facilities Service Agreement (FSA) with the Respondent on 23rd February 2022 for operating hostel facilities, including housekeeping services.
- d) A Catering Service Agreement (CSA) was executed with the Respondent on 16th March 2022 for providing food and catering services to day scholars and hostel residents.
- e) The Petitioner raised invoices for services rendered from April 2022 to May 2023. The Respondent made part payments on some invoices. Details of these invoices are provided in paragraphs 5 and 9 of the Petition.
- f) It is alleged that the Respondent violated the agreement by failing to clear invoice amounts within the stipulated time. The Petitioner raised the issue via email on 12.10.2022. In reply, dated 13.01.2023, the Respondent admitted the dues and provided a ledger account statement (18.03.2022 to 06.06.2023) showing an admitted liability of Rs.3,34,09,564.88, excluding Rs.1.00 crore as a security deposit.
- g) Subsequent correspondence occurred on multiple occasions (16.02.2023, 31.03.2023, 04.04.2023, 05.04.2023, 09.04.2023, 22.04.2023, 24.04.2023, 18.05.2023, and 23.05.2023). In an email dated 24.04.2023, the Respondent stated that it would not continue with the agreements, citing reasons described as false and untenable. Nevertheless, the Respondent sent emails on 17.05.2023 and 18.05.2023 with further business proposals.
- h) The Respondent has also breached the contract by taking the entire supporting staff of the Petitioner, which is highly deprecated and uncalled for. Further, cooking equipment etc., were also forcibly retained by the Respondent.



- i) Despite being asked to make the payment of the remaining amount, the Respondent has not paid any heed, but has admitted its liability to pay the amount of Rs.4,80,64,953/- till June, 2023.

3. **Case of the Respondent:**

- i. There is no operational debt within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code (IBC), and the Petitioner has withheld and suppressed details of pre-existing disputes between the parties. Reliance is placed on the decisions in *Amrop India Private Limited vs. The Hi-Tech Gears Limited, Company Appeal (AT) (Insolvency) No.1251 of 2023*, *Anshul Vashistha vs. M/s. Jayhind Steel Traders and Others in Company Appeal (AT) (Insolvency) No.656 of 2020*, and *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353*.
- ii. The Petitioner's significant deficiencies in services were repeatedly highlighted via WhatsApp messages and emails dated 02.08.2022, 03.09.2022, 08.09.2022, 17.10.2022, 19.10.2022, 04.04.2023, and 21.04.2023.
- iii. The Petitioner failed to provide sufficient manpower, good-quality food, required technology, CCTV cameras, and other deliverables, as stipulated in the agreement.
- iv. These deficiencies were first brought to the Petitioner's attention within 2-3 months of the agreement's execution via emails dated 11.07.2022 and 02.08.2022.
- v. The Petitioner assured the Respondent that it would address the issues raised. Vide email dated 05.09.2022 proposed a meeting on 07.09.2022 to discuss these concerns. Following this meeting, the Respondent suggested certain changes via email dated 18.09.2022.



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- vi. Despite assurances made in an email dated 09.09.2022 to fulfil the agreed deliverables, the Petitioner failed to meet the promised timelines. Reminders were sent via emails dated 21.09.2022 and 26.09.2022. Another meeting on 28.12.2022 addressed ongoing issues, particularly basic hygiene and hostel facilities. The Respondent shared the meeting proceedings via emails dated 29.12.2022 and 30.12.2022. However, the Petitioner did not implement the necessary corrective actions, as highlighted in an email dated 23.01.2023.
- vii. Due to the deficiencies in services, many students discontinued using the facilities, and some unsubscribed from mess services.
- viii. The Petitioner did not generate invoices in accordance with the agreement's terms, as communicated via WhatsApp on 09.02.2023.
- ix. It is denied that the Respondent has unequivocally agreed to make payments, but it was subject to resolution of performance issues. Therefore, in e-mail dated 10.03.2023, the Respondent has requested for issuance of revised bills, but the Petitioner failed to comply with the same.
4. We have heard learned counsels for the parties and have also gone through the entire record including written submissions of the parties.
5. M/s. Isthara Parks Private Limited is engaged in the business of operating hostel facilities and providing catering and food services. M/s. Valmar Projects LLP operates in the business of maintaining, managing, supporting, and servicing educational services.
6. The Petitioner entered into two agreements with the Respondent:
 - a) Facilities Service Agreement dated 23.02.2022 (**Annexure D, Page No. 159 - 172 of the Petition**); and
 - b) Catering Service Agreement (**Annexure D, Page No. 173-187 of the Petition**).



Both of which came into effect in April 2022. The Respondent terminated these agreements via email on 23.05.2023 (**Annexure 12 @ pgs. 119-120 of the Counter**).

7. The Petitioner has claimed an aggregate amount of Rs.5,69,65,755/-, consisting of a principal amount of Rs.5,35,15,084/- and interest of Rs.34,50,671/- as of 05.08.2023. This claim includes a security of Rs.1.00 crore, deposited under the Catering Service Agreement. The Respondent has admitted an outstanding amount of Rs.3,34,09,564.88, excluding the security deposit, as of 06.06.2023. This liability is reflected in the ledger account (**Page No. 264 of the Petition**).
8. While the Respondent acknowledges the execution of the agreements, the core question is whether the Petitioner's claim qualifies under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), given the existence of a pre-existing dispute prior to the issuance of the Demand Notice under Section 8(1) of the Code. Section 9 (5)(ii)(d) of the Insolvency and Bankruptcy Code, 2016 mandates that the adjudicating authority should reject the application if there is a pre-existing dispute with regard to an operational debt.
9. However, the pre-existing dispute must be genuine, implying that it should have existed prior to the receipt of the demand notice under Section 8 (1) of the Code [*Deepak Modi v. Shalfeyo Industries Private Limited (2023) SCC Online NCLAT 169*]. The dispute should truly exist in fact and is not spurious, hypothetical or illusory as held by the Hon'ble NCLAT in *Soham Polymers Private Limited vs. Flocksur India Private Limited Company Appeal (AT) (Insolvency) No. 924/2021*. Thus, pre-existing disputes must be genuine and not mere legal tactics.
10. About the nature of dispute and evidence required to prove for successful raising of genuine dispute, the Hon'ble Supreme Court in the celebrated case



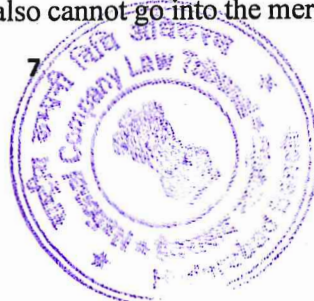
of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*
(2018)1 SCC 35 has held:

51....Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

(Own emphasis)

11.In *M/s.Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) Pvt. Ltd. (2021)10 SCC 483*, it was held that the Court emphasized that the adjudicating authority must identify whether the dispute warrants further investigation without delving into merits. It was observed:

It is thus clear that once the "Operational Creditor" has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of IBC, if a notice has been received by "Operational Creditor" or if there is a record of dispute in the information utility. What is required is that the notice by the "Corporate Debtor" must bring to the notice of "Operational Creditor" the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required to see at this stage is, whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except



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to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory the adjudicating authority has no other option but to reject the application.

12. These principles have been reiterated in *Rajratan Babulal Agarwal vs. Solartex India Pvt. Ltd. and Ors. (2023)1 SCC 115* by holding that pre-existing dispute employed under the IBC cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit. There is no need to find out that the case of defence of the Corporate Debtor is likely to succeed and the examination of the merits need not transcend the limited extent to find that the case of the Respondent is not to be brushed aside as spurious, hypothetical or illusory.

13. The Hon'ble NCLAT in *Sanjay Kumar, Designated Partner of Kapasi Infracon LLP vs. Gannon Dunkerley and Co. Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 1210 of 2023, decided on 30.05.2024*, after relying upon the decision of the Apex Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018)1 SCC 35* came to conclusion that pre-existing dispute qualifies a pre-existing dispute to be a defence which is not spurious, mere bluster, plainly frivolous or vexatious. For arriving at this conclusion, the adjudicating authority is not required to sift the evidence like in a civil case, but the yardstick would be:

5. ...Thus it enjoins an obligation upon the Adjudicating Authority to arrive at a prima facie satisfaction that a dispute indeed exists with regards to quality or price, which in common parlance and in matters of civil jurisdiction, would be regarded as a triable issue of fact. However, it does not call upon the Adjudicating Authority to venture into the appreciation of the merit of pre-existing dispute and embark upon the adjudication of rival contentions of parties. If the dispute is raised by the CD and if the CD shows the disputed issues of facts which require adjudication by a competent court of law, then Section 9



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of IBC would not empower the Adjudicating Authority to take upon itself the task of sifting through the rival contentions raised and to gave a judgement upon it. However, it has to determine whether there truly exist a dispute which may or may not ultimately succeed, but at the stage of consideration of an application under Section 9 IBC the jurisdiction is limited to consideration of existence of a dispute.

14.The Hon'ble NCLAT in *Aalborg CSP A/S versus Solar Atria Cleantech Private Limited [2020]* ibclaw.in 96 NCLAT after relying upon the decisions in *Mobilox Innovations Private Limited* supra has held:

It is clear from the Judgement of the Hon'ble Supreme Court that it is duty of the Adjudicating Authority to see whether there is plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. We are not required to be satisfied that the defence would succeed or examine the merits of the dispute. If the dispute truly exists and is not spurious, hypothetical or illusionary, the Application under Section 9 would require to be rejected. Thus, it is necessary to see if the dispute truly exists in fact. On this basis, it would be appropriate to now see if the Respondent is able to show that dispute truly exists.

15. Hence, we have to see that the disputes must be genuine and substantiated by evidence, not spurious or hypothetical or illusory.

16.The Respondent, from the commencement of the contracts until their termination on 23.05.2023, has repeatedly raised complaints alleging deficiencies in the Petitioner's services vide **Annexures R-3, R-4, R-6, R-8, R-9, R-10 and R-11** of the Counter. These complaints include:



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- Insufficient manpower,
- Inadequate stock,
- Substandard food quality,
- Failure to provide complete technological solutions,
- Non-installation of CCTV cameras,
- Poor housekeeping services, and
- Delayed invoice generation.

17.To determine the existence and genuineness of a pre-existing dispute, it is essential to evaluate the nature of these complaints in the context of the contractual obligations outlined in the agreements. An analysis of the terms and conditions of the agreements, which also define the scope of responsibilities for both parties and the process for raising invoices, is crucial.

18.The Facilities Service Agreement, executed between the Petitioner and the Respondent, defines specific obligations and responsibilities to be fulfilled by the Petitioner. These include:

- 3.1 *Deployment of experienced site operations manager exclusive for the site, until the expiry of this contract, who shall oversee the complete operations of the hostel blocks as mentioned in Annexure A.*
- 3.3 *Deployment of Care Takers for the boys and girls hostel blocks respectively, until the expiry of this contract.*
- 3.5 *Deployment of skilled technicians, who shall rectify minor issues related to plumbing, electrical and carpentry issues in the hostel blocks as mentioned in Annexure A, until the expiry of this contract.*
- 3.7 *Periodical cleaning of overhead water tanks which caters to the Hostel Infrastructure.*
- 3.14 *Deployment, training and supervision quality manpower required to fulfil its responsibilities. Salary liability of its staff and necessary statutory liability under the law, including ESI and PF coverage, comes under the scope of ISTHARA as per applicability. Complete background check of all staff*



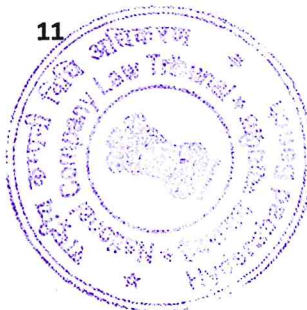
deployed on-site. A copy of the statutory payments by ISTHARA is to be submitted along with the subsequent monthly invoices.

- 3.15 *Surprise audit visits by ISHTHARA's quality control team on a regular basis as a checks and balance measure.*
- 3.18 *Housekeeping services for the Hostel infrastructure as per the schedule mentioned in Annexure A.*
- 3.21 *ISTHARA will provide basic internet services to off campus hostel students. (Isthara will be following the prevailing system, i.e., an amount of Rs.35,000/- per month is paid as internet charges for the off campus hostel blocks. In addition to this internet facility will be changed as and when required at the cost of Isthara).*

19. Similarly, in Catering Service Agreement, such conditions are:

- 3.1 *Deployment of the following trained and experienced kitchen staff : Head Chef, Cooks, Assistant Cooks, Helpers, Store Keeper, Service Supervisor, Service Staff and others.*
- 3.3 *The food handlers are subjected to medical check-ups pre-employment and also every 6 months during the employment following FSSAI regulations.*
- 3.4 *The raw materials sourcing, storage of raw materials, food production and food distribution shall be the scope of Isthara.*
- 3.5 *Adequate service staff shall be provided by Isthara in the allocated dining areas for all meals.*
- 3.6 *The house keeping services including the chemicals in the common dining hall are under the scope of Isthara.*
- 3.7 *The food testing reports by a 3rd party agency shall be conducted once every 2 months and the cost of such shall be borne by Isthara.*

20. It is thus crystal clear that the Respondent was pointing out various flaws in the services from the very beginning as per the terms and conditions of the contract. Both the parties have also held meetings on various occasions to sort out the issues, but the problems continued. In the e-mail **Annexure R-6**, the Respondent raised issues vigorously about the cleaning, food menu



etc., but nothing changed. The Respondent vide e-mail **Annexure R-8** dated 23.01.2023 conveyed their displeasure. It has been specifically pointed out that in view of the quality of services provided by the Petitioner, it was having impact on the entire system. It was explained that everything at micro level needs to be monitored and will need a senior resource stationed to avoid any such happenings in near future. The Respondent has also attached photographs (**Annexure 8**) of the unhygienic conditions prevalent in the hostels which is apparently deplorable. This Annexure also contains various complaints lodged by the students. The Petitioner can also not say that these complaints were never referred to them because the Respondent has pointed out complaints of the students from time to time. Even after the termination of the contract, the Respondent vide e-mail **Annexure 1** dated 26.05.2023 (**page No.279 of the Counter**) has specifically referred to the Petitioner about such complaints and consequently students quitting hostels. The Petitioner has nowhere denied that before filing the present Petition, the students never complained about the quality of food etc. One month prior to the termination of the contracts, the Respondent has summarised all the complaints by issuing notice, **Annexure 12 dated 24.04.2023**, which are reproduced below:

- a. *Reference to earlier emails, we have been writing to you on the lapses and not meeting the agreed deliverables, it was never actioned in spite of we are giving you ample time. We have already lost a lot of reputation among students on food and facilities.*
- b. *In spite of we giving time, the last few days has been extremely bad, Isthara team has stopped delivering the agreed menu.*
- c. *The facility services were not happening and multiple emails sent but in vain.*
- d. *In all our discussion in fact 6 months back and as well in the past discussion, we have clearly indicated that if you were unwilling to service us as per the agreement, you were always welcome to discontinue the agreement with a*



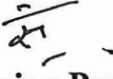
notice period and every time you agreed to improve on actions but has never happened.

- e. *Overall agreed services were not met which in turn created a heavy loss in terms of retention and reputation which we had built in the last 30 years.*

21. Considering the nature of the complaints and the obligations of the Petitioner, we conclude that the Respondent promptly brought various grievances to the Petitioner's attention immediately after entering into the contract. Despite this, the Petitioner failed to address these grievances and even did not deploy adequate supervisory staff to manage the work effectively. This lack of action resulted in an exodus of students from the hostel, as evidenced by the correspondence between the parties and the resultant reputational damage. The contracts were ultimately terminated on 23.05.2023 due to unresolved issues.
22. Although the ledger account reflects a liability of ₹3,34,09,564.88 and the Respondent has expressed readiness to settle accounts, this does not negate the existence of genuine disputes regarding service quality and other related issues. The evidence supports the Respondent's claims of reputational harm and student attrition attributed to the Petitioner's deficiencies.
23. In summary, the Respondent consistently raised complaints about the Petitioner's performance from the commencement of the contracts until their termination. These complaints, substantiated by documentary evidence, demonstrate the existence of a genuine pre-existing dispute. Therefore, under Section 9(5)(ii)(d) of the IBC, this Authority is precluded from admitting the Petitioner's application.
24. This analysis underscores the presence of triable issues that necessitate adjudication in an appropriate forum, rather than being addressed through insolvency proceedings under the IBC.



25. For the reasons as discussed above, we opine that the Petitioner has failed to prove the ingredients of Section 9 and accordingly CP(IB) No.216/9/HDB/2023 is dismissed.


Sanjay Puri
Member (Technical)


Rajeev Bhardwaj
Member (Judicial)

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30/1/25
Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस संख्या
CASE NUMBER... CP(IB) No. 216/9/HDB/23
निर्णय का तारीख
DATE OF JUDGEMENT... 29.1.25
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 30.1.25

