

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

CP (IB)-315/ND/2024

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

IN THE MATTER OF:

**BIG BARTER PRIVATE LIMITED
WZ-106/140, RAJOURI GARDEN EXTENSION,
NEW DELHI-110027**

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

**BORN UNICORN TECH PRISE PVT. LTD.
L-17A, 1ST FLOOR, MALVIYA NAGAR, SOUTH DELHI
NEW DELHI-110017**

...CORPORATE DEBTOR/RESPONDENT

Order Delivered on: 10.01.2025

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Adv. Akash Chatterjee.
For the Respondent : Adv. DaminiSrestha, Adv. Aparajita Singh,
Adv. Madhu

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This instant application was filed by **M/s Big Barter Pvt. Ltd.**, (hereinafter referred as 'Applicant'/'Operational Creditor'), having office at WZ-106/140, Rajouri Garden Extension, New Delhi-110027 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s Born Unicorn Tech Prise Pvt. Ltd., (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 1,05,49,200/- (Rupees One Crore Five Lakhs Forty-Nine Thousand Two Hundred Only).
2. The Respondent Company **M/s Born Unicorn Tech Prise Pvt. Ltd.**, having CIN: U51100DL2021PTC387337 was incorporated on 29.09.2021 under the provisions of the Companies Act, 2013 having its registered office situated at L-17A, 1st Floor, Malviya Nagar, South Delhi, New Delhi-110017. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.
3. The present petition was filed on 07.06.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make

a payment of a sum of Rs. 1,05,49,200/- (Rupees One Crore Five Lakhs Forty-Nine Thousand Two Hundred Only).

4. **Submissions of learned Counsel appearing for the Applicant**

- a. On 03.10.2024, the Operational Creditor and the Corporate Debtor entered into an agreement, under which the Corporate Debtor agreed to avail media services from the Operational Creditor. Pursuant to the agreement dated 03.10.2024, the Operational Creditor completed the work and subsequently raised the proforma invoices numbered 64, dated January 3, 2024, for Rs. 56,64,000/-, and 65, dated April 03, 2024, for Rs. 48,85,200/-, respectively.
- b. As per Clause 4(v) of the agreement, the Corporate Debtor was obligated to clear the payments, as specified in the proforma invoices, within 10 days of receiving the said invoices. Despite repeated follow-ups by phone, the Corporate Debtor failed to settle the outstanding dues of the Operational Creditor.
- c. Additionally, on 14.04.2024, the Operational Creditor notified the Corporate Debtor via email regarding the completion of the work, which the Corporate Debtor did not dispute. Furthermore, the Operational Creditor sent reminders for payment through emails dated 20.04.2024 and 12.05.2024, urging the Corporate Debtor to settle the outstanding amount.
- d. It is humbly submitted that, in accordance with the terms of the agreement dated 03.10.2023, the Operational Creditor, despite

continuous follow-ups for the clearance of payments related to the proforma invoices, did not receive payment from the Corporate Debtor. Consequently, as per Clause 4(vi) of the agreement, the Operational Creditor issued the final invoices numbered TI2024-25/005 for Rs. 48,85,200/- and TI2024-25/006 for Rs. 56,64,000/-, both dated 29.04.2024 (hereinafter referred to as the 'Final Invoices'). The said final invoices were physically served upon the Corporate Debtor at their office and were duly acknowledged as received on 29.04.2024. As per the terms of the Final Invoices, the Corporate Debtor was required to clear and pay the total amount due, Rs. 1,05,49,200/-, within 10 days from the date of issuance and service of the Final Invoices, i.e., by 09.05.2024.

- e. Despite sending several reminders, the Corporate Debtor failed to clear the outstanding payment to the Operational Creditor. Subsequently, the Operational Creditor issued a demand notice dated 14.05.2024 to the Corporate Debtor, requesting the payment of Rs. 1,05,49,200/- qua the final invoices. It is pertinent to note that no response was received from the Corporate Debtor regarding the demand notice. Furthermore, it is important to highlight that the debt has been duly acknowledged by the Corporate Debtor, and no pre-existing dispute has been raised by the Corporate Debtor in its reply to the Company Petition.

5. **Reply on behalf of the Corporate Debtor**

- a. It is submitted that the present case is not where the Corporate Debtor is unwilling to make payments for the dues recorded in its Book of Accounts. Rather, the present case involves Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor without exploring the possibility of an amicable settlement between the parties.
- b. It is pertinent to mention that the Corporate Debtor is actively engaged in the business of selling cosmetic products through a variety of sales channels, including e-commerce platforms, affiliate networks, and retail stores. Operating under the brand name COMBINATION, the Corporate Debtor has consistently conducted its business in compliance with Indian laws and regulations. Over time, the company has built a strong and reputable presence in the market, enjoying widespread popularity and significant goodwill within both the business community and society at large. This success is a testament to the Corporate Debtor's commitment to ethical business practices and its focus on maintaining high standards in all its operations.
- c. It is submitted that the Corporate Debtor was in the process of expanding its business through a franchising model, specifically by establishing retail outlets under the Franchise Owned and Company Operated (FOCO) model. This strategic initiative led to the successful operation of over 20 (twenty) such outlets. Furthermore, the expansion strategy significantly boosted the Corporate Debtor's market presence,

enhanced brand visibility, and contributed to substantial growth, positioning the company on a positive trajectory.

- d. The Corporate Debtor was compelled to downsize its business operations due to severe financial constraints. As a result, the majority of its retail stores have been closed, with only 2 (two) stores currently remaining operational. In an effort to revive the business, the Corporate Debtor is not only downsizing but also implementing new strategic measures to stabilize and improve its financial position. Despite these challenges, the Corporate Debtor remains fully committed to settling the outstanding amounts owed to the Operational Creditor and is taking all possible steps to fulfill these financial obligations. In light of these efforts, the Petition of the Operational Creditor is both unnecessary and not maintainable.
- e. It is submitted that the Petitioner has disregarded any possibility of an amicable settlement by filing the present Petition, which, in essence, represents a case of debt recovery rather than a genuine effort towards resolution. This action undermines the potential for collaborative problem-solving and demonstrates the Petitioner's intent to bypass mutually beneficial solutions.
- f. The Corporate Debtor has placed reliance on the judgments i.e., (i) *K Krishan v. Vijay Nirman Co. (P) Ltd.*, (2018) 17 SCC 662; (ii) *M/s S. S. Engineers & Ors. v. Hindustan Petroleum Corporation Ltd*; Civil Appeal No. 4583/2022.

6. The Operational Creditor filed its rejoinder and made the averments which are summarized as under: -

a. The Applicant submits that the said application was filed in accordance with Section 9 of the Code which stipulates that if the Operational Creditor does not receive payment or a notice of dispute from the Corporate Debtor within 10 (ten) days of receiving the Demand Notice, dated 14.05.2024, the Operational Creditor may file an application before the Adjudicating Authority to initiate a Corporate Insolvency Resolution Process. It is important to note that the Applicant/Operational Creditor in this case allowed a period of 23 days more than double the statutory requirement for the Respondent to respond. Despite this extended period, the Respondent failed to provide a reply. Consequently, the Applicant filed the present application before this Adjudicating Authority on 07.06.2024. This clearly demonstrates that the Applicant has approached this Hon'ble Tribunal with clean hands, having afforded the Respondent ample time to respond to the Demand Notice.

b. It is pertinent to mention that in the Reply filed on behalf of the Corporate Debtor, the Respondent/Corporate Debtor acknowledges the existence of a financial debt amounting to Rs. 1,05,49,200/- (Rupees One Crore Five Lakhs Forty-Nine Thousand Two Hundred Only) owed to the Applicant, and has not disputed the same. However, despite this

acknowledgment, the Corporate Debtor has failed to make any payment towards the outstanding amount.

- c. It is pertinent to mention herein that the Corporate Debtor, through its director Mr. Saurabh Nanda, approached the Operational Creditor via email dated 01.07.2024, proposing a settlement on the following terms:
 - i. A 3-month breather/cool-off period (July, August, September) from the date of acceptance.
 - ii. Monthly instalments of Rs 5 lakhs starting from October 2024 until the full amount is paid.
 - iii. Provision of post-dated cheques for the instalments, dated for the 1st of every month starting November 2024.
- d. However, the terms of this proposed settlement are unacceptable to the Operational Creditor for various reasons. Firstly, the Operational Creditor has information suggesting that the Corporate Debtor has shut down all of its stores. Secondly, it is noted that Mr. Saurabh Nanda is a director in 15 companies and is reportedly running his businesses smoothly, therefore the Operational Creditor is concerned about the potential diversion of funds by the Corporate Debtor into its other companies. Furthermore, there is an apprehension that the Corporate Debtor may pay only a portion of the total dues to reduce the outstanding amount below the threshold limit of Rs 1 crore as stipulated under the Insolvency and Bankruptcy Code (IBC). Therefore, the proposed settlement is unacceptable to the Operational Creditor. The Operational Creditor will only consider a settlement if the

Corporate Debtor is willing to pay the entire outstanding amount upfront.

- e. In light of the present facts and circumstances, it is unequivocally a clear case of debt and default. The Respondent has acknowledged the financial liability amounting to Rs. 1,05,49,200/- (Rupees One Crore Five Lakhs Forty-Nine Thousand Two Hundred Only) and has failed to discharge this debt despite ample opportunity and time provided by the Applicant. The Respondent's failure to pay or dispute the claim within the statutory period under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), substantiates the claim of the Operational Creditor. Therefore, the present application under Section 9 of the IBC is warranted and merits admission by this Tribunal. In the interest of justice, it is crucial that this petition be admitted to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor. Further, admitting this application will ensure the proper resolution of the debt and protect the interests of all stakeholders.

ANALYSIS AND FINDINGS

7. We have heard both the parties and perused the averments made in the application; reply filed by the Corporate Debtor, Rejoinder filed by the Operational Creditor and written submissions presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/Corporate Debtor is in Delhi, this Adjudicating Authority is

having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

8. From the perusal of the material available on record, it transpires that the 'Operational Creditor' had sent a demand notice dated 14.05.2024 to the 'Corporate Debtor' under Section 8 of the Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs.1,05,49,200/-. Therefore, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, in terms of Section 4 of the Code. The Applicant has tabulated a total of 2 invoices included in its claim as mentioned in Part-IV of the Application. We observe that this notice was served through vide email 15.05.2024 and through postal and duly received by the Corporate Debtor on 16.05.2024. From the records placed before this Adjudicating Authority, it transpires that the Corporate Debtor neither replied to the Demand Notice nor paid the outstanding amount to the Operational Creditor.
9. In order to determine the admissibility of petition for initiating CIRP under section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353**, is to be taken into consideration. The said judgment makes it clear

that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- A. Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (Rs. 1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
 - B. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
 - C. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
10. In the first instance, to determine whether the impugned amount claimed by the Operational Creditor would fall under the ambit of Operational Debt, it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of the Insolvency and Bankruptcy Code, 2016. Under the said section, 'Operational Debt' is defined as:
- “A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.*
11. While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the Operational Creditor

and the Corporate Debtor entered into an agreement whereby the Corporate Debtor had sought to avail the media services from the Operational Creditor. For the said purposes, the Operational Creditor had issued the proforma invoices numbered 64, dated 03.01.2024 for Rs. 56,64,000/- and numbered 65, dated 03.04.2024 for Rs. 48,85,200/- respectively.

12. Furthermore, it is pertinent to mention that as per clause 4(iv) of the agreement, duly obtained the receipt and approval of proforma invoices numbered 65 and 66 from the office of the Corporate Debtor. This approval was never disputed by any personnel of the Corporate Debtor, including the Director, Mr. Saurabh Nanda. Despite several follow-ups for the clearance of payments for the proforma invoices, the operational creditor did not receive payment from the corporate debtor. Consequently, as per clause 4(vi) of the agreement, the operational creditor issued final invoices which is reproduced hereunder: -

Invoice Date	Invoice No.	Amount Due
29.04.2024	TI-2024-25/006	56,64,000
29.04.2024	TI-2024-25/005	48,85,200
Principal Debt Amount		1,05,49,200/-

13. Therefore, the invoices raised by the Operational Creditor specifically reflect that there is an outstanding amount of Rs. 1,05,49,200/- payable

by the Corporate Debtor to the Operational Creditor. Therefore, the outstanding debt which is due and payable to the Operational Creditor would fall under the ambit of 'Operational Creditor' within the meaning of Section 5(20) of the Code.

14. Moreover, in the present case the Corporate Debtor has admitted in his reply that the Corporate Debtor has always expressed a willingness to work with the Operational Creditor and settle all legitimate outstanding amounts in its books. However, the Corporate Debtor is currently burdened by substantial business losses and the overall downturn in the market, which have significantly affected its financial capacity to meet these obligations. Further, the Respondent, Mr. Saurabh Nanda, has been engaged in business dealings with the Operational Creditor through other entities, where he holds the position of Proprietor. Numerous instances exist where payments were made promptly by the Corporate Debtor upon receipt of invoices from the Operational Creditor, without any defaults occurring. This ongoing relationship further underscores the Corporate Debtor's commitment to fulfilling its financial obligations and maintaining good faith in its business practices. The Corporate Debtor's admission constitutes as a clear acknowledgment of the debt as due and payable, thereby rendering any purported dispute void. Further, the Corporate Debtor has not taken the defense of any pre-existing dispute, nor there is any intimation of any suit or arbitration proceeding regarding the present matter, pending before any forum. Therefore, we are of the

view that there is a debt due and payable and there has been default committed on the part of the Corporate Debtor.

15. In ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, the Hon'ble Supreme Court had clarified that ***for the admission of a claim under Section 9 of the Insolvency and Bankruptcy Code (IBC), the Adjudicating Authority must determine whether there is an undisputed debt and evidence of default. If no genuine dispute is raised by the corporate debtor in response to a demand notice under Section 8, the debt is considered undisputed, and the petition must be admitted.*** The Court emphasized that only bona fide disputes, not those that are spurious or illusory, should prevent admission. If no such dispute exists, the operational creditor's claim must be admitted without requiring proof of the debtor's financial standing.
16. The Operational Creditor has also filed an affidavit under Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 which shows that there is no notice given by the corporate Debtor relating to a dispute of the unpaid operational debt.
17. In view of the above facts and circumstances, we are of the considered view that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petitioner has established that the Corporate Debtor is in default of a debt due arising out of professional services rendered by the operational creditor and the

same is payable. Further, that the default amount is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows:

- i. The application bearing CP (IB) No. 315/ND/2024 filed by M/s Big Barter Private Limited, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Born Unicorn Tech Prive Pvt Ltd., the Corporate Debtor, is hereby admitted.
- ii. The Applicant in Part-III of the application has proposed the name of Mr. Anil Kumar Sharma having Registration Number IBBI/IPA-003/IPA-ICAI-N-00218/2019-2020/12514, email: mikonict@gmail.com. Mr. Anil Kumar Sharma is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non- initiation of any disciplinary proceedings against him, within three (3) working days of pronouncement of this order.
- iii. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Anil Kumar Sharma, to meet out the expenses to perform the functions assigned to him

in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

iv. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) 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, Adjudicating Authority, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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;

(d) 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) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.
19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
20. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate

application to this Adjudicating Authority with a prayer for passing an appropriate order.

21. The Interim Resolution Professional shall be under 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 Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
22. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
23. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **IB/315(ND)/2024 stands admitted.**

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)