

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

C.P. No. 1291/IBC/MB/2021

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

CONNECT RESIDUARY PVT. LTD.

(CIN: U74120MH2011PTC220805)
Having registered office at: B/103,
Satellite Gazebo Andheri Ghatkopar
Link Road, Andheri (East), Mumbai-
400083

.....Operational Creditor

Vs

MT EDUCARE LIMITED

(CIN: L809093MH2006PLC163888)
220, 2nd floor, "Flyaing Colors"
Pandit Deen Dayal Upaddhyay Marg,
L.B.S. Cross Road, Mulund (West)
Mumbai 400080, Maharashtra

.....Corporate Debtor

Reserved for order on: 26.09.2022

Order delivered on: 16.12.2022.

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Adv. Jayprakash Sen i/b Mr. Nazish Alam,
Advocate,

For the Respondent: Adv. Nausher Kohli a/w Mr. Umang Mehta
i/b Taurus Lega

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

ORDER

1. This Company petition is filed by *Connect Residuary Private Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *MT Educare Limited*. (hereinafter called “Corporate Debtor”) 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 for resolution of an unresolved Operational Debt of Rs. 5,48,62,056/- (Rupees Five Crores Forty-Eight Lacs Sixty-Two Thousand and Fifty-Six Only).
2. The submissions of Operational Creditor are as follows:-
 - a. The Applicant is in business of renting of equipment or other assets. Respondent, is an education support and coaching services provider.
 - b. Parties had entered into a Master Rental Agreement (MRA). It was during Jul 2019 and Jan 2020 Respondent had obtained use of certain assets like Servers, Routers, Desktops, UPS, and other IT related (Collectively, Rented Assets) on rent basis from Applicant under 8 Rent Schedules No. MTEL-015(A)-022(A) in terms of MRA.
 - c. In the contract in consideration of payment of rent instalment to Applicant, Respondent was entitled to use Rented Assets for the agreed rent tenure as specified in each mentioned Rent Schedules.
 - d. Onward Jul/Aug 2019, Respondent starting to commit default in payment of rent instalment and other monies. As a result, by end of March 2020 payment up to Rs. 1,31,89,068.00 (incl. GST) towards quarterly rent instalment were in default under 20 invoices. Various

follow-up emails sent to Respondent on 05.03.2020, 11.03.2020, 13.03.2020, and 16.03.2020 were ignored as such remained unanswered. Pertinently, the mentioned outstanding as it then stands was pertaining to the period falling before COVID-19.

- e. Later, between Apr 2020 Aug 2021 Applicant had issued several demand notices/reminders to Respondent regarding payment default and called them to pay the outstanding rent instalment and other monies under the contract.
- f. In between Dec 2020-Jan 2021 Respondent returned certain Rented Assets to Applicant which resulted in some damage/loss to Rented Assets returned as such Applicant claimed a damage cost from Respondent by its email dt. 15.02.2021; Respondent vide email dt. 18.02.2021 in reply had concurred to the damage cost provided by Applicant. At the same time, while ignoring the issue of outstanding Respondent had proposed to Applicant to consider revised rent rate to be made effective from Jan 2021 taking into account valuation of Rented Assets retained, the valuation ascribed by Respondent thereof was Rs. 7,98,31,083.00; the revision was not accepted by Applicant.
- g. Thereafter, Respondent continued on payment default and Applicant was constrained to issue a termination notice inter-alia calling upon Respondent to pay Rs. 5,34,48,523.00 and other monies in terms of Clauses 12.3(c); there wasn't any reply by Respondent to Applicant thereof.
- h. In view of the above, Applicant was constrained to issue a demand notice dt. 26.08.2021 under S. 8 of the Code 2016

to Respondent for default in payment of operational debt up to Rs. 5,37,65,669.00, the same was delivered to Respondent at its registered office on 28.08.2021 at 16:23:33 Hrs; there hasn't been any response or payment from Respondent till date as such there is a complete neglect and callous attitude by the current management of Respondent to the said notice.

- i. The debt is an operational debt under S. 5 (21) of the Code, 2016, and Respondent continue defaulting the same, as such the instant Application.
3. The Corporate Debtor filed reply dated 14.03.2022 of Ms. Mansi Thakkar opposing the above Company Petition. The relevant paragraphs of the reply are extracted hereinunder:
 - a. It appears that since the year 2016 the erstwhile management of the Respondent rented IT equipment in the nature of electrical and computer appliances more particularly being Servers, routers, Desktops, UPS, Cable, Access points and other IT related accessories, etc ("Equipment") which were handed over and delivered to the Respondent on rental basis from time to time to run its coaching institute, situated at different parts of India.
 - b. The said equipment were lying idle at the Respondent's premises for a substantial period of time. In fact, the Rental Schedule in respect of such equipment also expired because of efflux of time. However, despite expiry of the Rental Schedule, the Petitioner was still claiming rent from the Respondent respect to equipment which were of no use to the Respondent. It was put to the attention of the Petitioner that, in such circumstances it shall be prudent for the Respondent to return such non-effective equipment to the Petitioner, which were lying with the

Respondent. Hence, the Respondent time and again sought necessary cooperation from the Petitioner to get the said equipment relocated from the Petitioner's premises and also requested the Respondent for not charging rent on such unused equipment. The Petitioner failed to pay any heed to the same and continued to levy a full amount of rent on such equipment, leading to Financial Loss to the Respondent. Hence, the question of levying rent on such non-effective and depreciated equipment does not arise.

- c. The Respondent time and again reiterated the aforesaid issues and put to the Petitioner's attention that the Respondents have been charging exorbitant amount of rent. However, the Petitioner failed to pay any heed to the same. To the shock and surprise of the Respondent, the Petitioners by taking an advantage of the situation addressed a Legal Notice dated 28th October, 2020 upon the Respondent under a subject of "Legal Notice for Recovery of Rs. 2,56,28,968/- towards the outstanding rental instalment payment and overdue interest (ODI) charges.....The Petitioner had blatantly misinterpreted the clauses of the Master Rental Agreement and called upon the Respondent to repay a sum to the tune of Rs.2,56,28,968/- without any proper justification and explanation. Merely in an attempt to extort sums from the Respondent.
- d. In response to the said Legal Notice for recovery, the Respondent vide emails dated 13th November, 2020 and 26 November, 2020 categorically denied the demands as raised by the Petitioner. Further, it was categorically put to the attention of the Respondent that the Petitioners

have been charging exorbitant rent and it was once again reiterated that, the satiable portions of the equipment have become redundant and are stored unused at various locations causing Financial Losses in form of Rentals. It was further put to the Petitioner's attention that the rent period in respect of such equipment also expired due to efflux of time. Hence, the Respondent once again. Requested the Petitioner to take such equipment in its custody.

- e. It is pertinent to note that, the Respondent has time and again paid rent in respect of the equipment actually utilized by the Respondent. The Respondent has been maintaining its tally data in respect of its various transactions containing the detailed particulars of payments made and the amounts due and payable. It is pertinent to note that, as per the Respondent's tally data in respect of the present transaction the only amount due and payable by the Respondent to the Petitioner amounts to Rs.12,78,385/-.
- f. In view of the aforesaid, the Respondent vide an email dated 18th February, 2021, put to the attention of the Petitioner that the Respondent had rented assets worth Rs.10,22,48,455/- out of which the Respondent had returned assets worth Rs.2,30,52,372/-. Despite no reasonable explanation with regard to the alleged damages claimed, the Respondent was kind enough to adjust the alleged damage cost of a sum of Rs.6,35,000/- by paying an extra sum towards the rent on equipment. Accordingly, the Respondent in the said email dated 18th February, 2021 called upon the Petitioner to consider and levy the rent on the basis of assets which are worth

Rs.7,98,31,083/- lying with the Respondent. The said sum also includes the amount of alleged damages. It was further put to the attention of the Petitioner that the Respondent shall return further assets in the due course and the amount of rent shall be deducted accordingly.

FINDING

1. Heard Mr. Jayprakash Sen a/w Mr. Nazish Alam, counsel appearing for the Operational Creditor and Mr. Nausher Kohli a/w Mr. Umang Mehta, counsel appearing for the Corporate Debtor and perused the material available on record.
2. After hearing the submissions on both sides, this Bench notes that there is no dispute between the parties with regard to hiring of IT equipment in the nature of electrical and computer appliances more particularly Servers, routers, Desktops, UPS, Cable, Access points and other IT related accessories since 2016 by Operational Creditor to the Corporate Debtor on rental basis from time to time to run its coaching institute situated at various parts of India. Similarly, the terms and conditions of the agreement are reduced into writing. Since there was a default committed by the Corporate Debtor in payment of the outstanding rental the Operational Creditor got issued a legal notice dated 20.10.2022 calling upon the Corporate Debtor to pay an amount of Rs. 2,56,28,968/- towards pending operational dues. The Corporate Debtor himself filed the following emails which are prior to issuing Demand Notice by operational creditor which are extracted hereunder for ready reference:

EXHIBIT - 'B'

14

Ref: Your notice dated 28th October 2020

: message

S Ayyappan <sayyappan@mteducare.com>
To: alamnazish2010@gmail.com

Fri, Nov 13, 2020 at 1:22 PM

13th November 2020

Through e-mail/Registered AD

To

Adv. Nazish Alam

D/12, Rameshwar CHS,

Near Surya Hospital,

S.V Road, Santacruz (West)

Mumbai 400 054

Ref: Your notice dated 28th October 2020

Sir,

We are in receipt of the notice above referred, issued by you on behalf of your client M/s Connect Residuary Pvt. Ltd.

Kindly be informed that, due to the ongoing Covid - 19 pandemic situation and based on the instructions/circulars from the respective state and central governments, our organization has not started functioning yet with our full strength of employees/staff. This situation causes us difficulties to retrieve the relevant accounts/finance statements and related transactions details.

We have noted the contents/averments/claims of your notice above referred and we are not in a position to assess the veracity of the same at this point of time. We are in the process of compiling the documents in connection with the transactions as contemplated in your notice. Requesting you to bear with us for some extended period so as to enable us to get back with a formal reply to your notice.

This is without prejudice to our rights and nothing in the said notice under reply may be deemed to be admitted for want of denial or otherwise.

TRUE COPY
Advocate

Yash Shah

EXHIBIT - 'c'

Subject:

FW: Reply to notice dated 28-10-20

From: Ayyappan Pillai [mailto:sayyappan@mteeducare.com]
Sent: Thursday, November 26, 2020 7:07 PM
To: 'alamnazish2010@gmail.com'
Subject: Reply to notice dated 28-10-20

By registered AD/Email26th November 2020

To

Adv. Nazish Alam

2, Rameshwar CHS,

Near Surya Hospital,

S.V Road, Santacruz (West)

Mumbai 400 054

Ref: i) Your notice dated 28-10-2020 ii) Our reply dated 13-11-2020.

Dear Sir,

This is further to our reply dated 13th November 2020 in connection with the notice issued by you on behalf of your client Connect Residuary Pvt. Ltd.

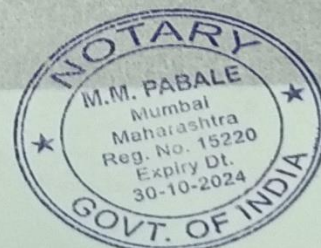
It is the matter on record that, vide Master Rental Agreement dated 16th February 2015, we engaged your client to supply us various IT related equipments on rental basis. As your client is aware, we have complied with all our contractual obligations conferred on us vide the agreement with your client.

However, the outbreak of Coronavirus (COVID-19) pandemic globally and in India has caused significant disruption of the supply chain and consequent slowdown of economic activity. Measures taken to contain spread of the virus, including travel bans, quarantines, social distancing, and closure of non-essential services have triggered significant disruptions to businesses worldwide, resulting in an economic slowdown. Businesses for most of the companies have had a severe negative impact all over the world including adverse impact on businesses in India resulting into a massive slowdown in the economy. In the present situation, it is difficult to ascertain the overall impact of the outbreak.

The sudden lockdown in March 2020 due to COVID -19 & the impact it caused into the schools/coaching centers operation and more particularly our collection significantly. This has completely disrupted & significantly affected our operation as well during this period, which almost got standstill during this lockdown & created new set of challenges for us. Uncertainty continues over the re-opening of schools/coaching centers amid the COVID 19 pandemic in the country and even the state government have taken a favorable stand towards it. COVID 19 has also impacted the financial position of the parents

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TRUE COPY
Advocate



3. It is very clear from the above emails that there is a continuous default in payment of rent committed by the Corporate Debtor from July/August, 2019 till the demand notice was issued on 26.08.2021.
4. This bench also observes from the above emails addressed by the Corporate Debtor that the Corporate Debtor except pleading mercy in reducing certain amount of rent and also expressing their financial difficulties due to Covid-19, did not raise any pre-existing disputes in the above emails. It is appropriate to mention here that the onus of proof lies on the Corporate Debtor to establish the pre-existing dispute by placing cogent and convincing evidence before this Tribunal which is totally lacking in this case. Whatever stand that was taken by the Corporate Debtor in response to the demand notice is only an afterthought and nothing but laying foundation to contest the company petition which does not stand to the test of legal scrutiny.
5. The contention of the Corporate Debtor in para 6 (b) of the reply to the effect that the erstwhile management of the Corporate Debtor has entered into transaction with Operational Creditor of completely with unreasonable and exorbitant terms and the current management realised the same and immediately proceeded to close the transaction by making an attempt to return the said equipment to the Operational Creditor clearly shows that there is no dispute with regard to the rent agreed between the parties. This Bench cannot decide the reasonableness of rent etc. in an application filed under Section 9 of the code and it is beyond the purview of this Bench and it is purely the look out of Corporate Debtor and its erstwhile management.

6. Mr. Kohli, counsel appearing for the Corporate Debtor made an unsuccessful attempt to convince and establish before this Bench as if the defaulted period falls within section 10 A period. As rightly submitted by the Operational Creditor the default is continuous from July/August 2019 till the date of issuing demand notice and therefore, there is no question of attracting the benefits of Section 10 A in this case. In fact, the respondent did not raise the above plea in their reply. In fact, the entire reply filed by the Corporate Debtor is a mere general denial and narration of the mistake of the earlier management in entering into the rental agreements with the petitioner for higher rent etc. which are beyond the scope of an enquiry in an application filed under Section 9 of the Code.
7. For the aforesaid reasons this bench after hearing the submissions of both sides and upon perusing the material available on record, is thoroughly convinced that the Operational Creditor has successfully demonstrated the existence of “debt” and “default” committed by the Corporate Debtor in this case and the above Company Petition being filed on 23.11.2021 is within three years from the date of default and is well within limitation and thus, the present Company Petition satisfies all the necessary legal requirements for admission. It is pertinent to mention here that the petitioner has included an amount of Rs. 6,35,000/- towards repair/damage costs and an amount of Rs. 15,27,116/- towards agreed liquidation damages which are beyond the purview of this application and therefore this Tribunal is disallowing the above two amounts along with the corresponding interest if any charged by the Petitioner in the above application. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -1291(MB)/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against MT Educate Limited.
- b. Since the Operational Creditor has not suggested the name of any Interim Resolution Professional (IRP) in the petition, this Bench is hereby appointing an IRP from the panel of RP's furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Ashwin Bhavanji Shah** (ashwin@caashwinshah.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02648/2021-2022/14054 (mobile No. 9769468909 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.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses only and not towards fee till his fees is decided by COC.
- 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.
- k. Accordingly, this Petition is admitted.

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

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)