

C.P. (IB) No.192/KB/2025

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH-II, KOLKATA

C.P. (IB) No.192/KB/2025

Date of Hearing: 20.04.2026

Date of Order: 21.04.2026

In the Matter of:

SHALBY LIMITED

Opp Karnavati Club,
Sarkhej Gandhinagar Highway,
Near Prahlad Nagar Garden
Ahmedabad, Gujarat, India 380015

APPLICANT/FINANCIAL CREDITOR

Versus

DIVINE SUPER SPECIALITY HOSPITAL PRIVATE LIMITED

Old H.B. Road
Near Veterinary Hospital
Sirom Toli, Ranchi,
Jharkhand, India-834001

And also at,

F NO. D 314 Block(A)
Lake View Masion,

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Tunki Tola Kokar Ranchi,
Jharkhand, India 834001

CORPORATE DEBTOR


Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha K Shah Hon'ble Member(Technical)

Present:

Mr. S. K Singhi Ld. Advocate for the applicant
Respondent Ex-Parte vide order dated 10.09.2025


O R D E R**Labh Singh Member(Judicial)**

1. This is an application filed by, the applicant/Operational Creditor, Shalby Limited, seeking initiation of CIRP against the Respondent, Divine Super Speciality Hospital Private Limited (hereinafter to be referred as "Corporate Debtor") under Section 9 of Code, 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 1,36,11,536.03/- (Rupees One Crore Thirty-Six Lakh Eleven Thousand Five Hundred Thirty- Six and Three Paise Only) as on 28.03.2025 for services rendered by the Operation

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Creditor at Hospital premises at Old H.B. Road Near Veterinary Hospital, Sirom Toll, Ranchi -834001 in pursuance of Franchise License Agreement dated 27th June 2023.

2. The Corporate Debtor, Divine Super Speciality Hospital Private Limited, is a Company incorporated on 19.07.2021 under the provision of the Companies Act 2013 with CIN No.U85100JH2021PTC016823 with its registered office at Old H.B. Road, Near Veterinary Hospital Sirom Toli, Ranchi, Jharkhand, India-834001. Therefore, the territorial jurisdiction lies with this Adjudicating Authority. A copy of master data of the Corporate Debtor has been attached with the present petition.
3. Brief facts as stated in the present Company Petition are that the applicant is a leading provider of comprehensive healthcare services in India, offering a diverse range of medical specialties and treatments. The corporate debtor is engaged in the hospital business and all kinds of health care services including the setting up of hospitals and facilities.
 - 3.1. The Corporate Debtor approached the applicant/Operational Creditor to operate, administer, manage the working of its Hospital situated at Old H.B. Road Near Veterinary Hospital, Sirom Toll, Ranchi -834001 on the basis of a license and to use the name and style of Shelby Divine

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Super speciality Hospital. The Corporate Debtor expressed its intention in collaborating with the Operational Creditor for its hospital business at the said hospital premises. The Operational Creditor agreed to offer its services on the basis of the representations made by the Corporate Debtor and entered into a Franchise License Agreement dated 27th June 2023.

3.2. It is further submitted that the Operational Creditor, in terms of clause 3 of Franchise Licence Agreement dated 27.06.2023, was entitled to monthly consideration, the amount determined as 6.9% on Gross revenue earned by the Hospital during each month. The Operational Creditor's revenue share was subject to applicable goods and service tax and other applicable taxes which were to be borne by the Corporate Debtor. The Corporate debtor had to pay to the Operational Creditor monthly Professional Fee in consideration of professional services rendered by the Operational Creditor through its deployed Doctors. The amounts were determined as 80% on Doctors Gross Professional Fee charged by the Hospital to patients during such months. The fee was subject to applicable goods and service tax and other applicable taxes which had to be borne by the Corporate Debtor. The corporate debtor had to pay an amount of 3 months Management Fee on 1st year projected Gross Revenue. The Corporate Debtor had

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to pay lump sum non-refundable Project Consultancy Fee of Rs. 45,00,000/- , plus applicable GST, as may be applicable.

3.3. The Operational Creditor performed all its contractual obligations under the said Franchise Licence Agreement and have issued invoices with respect to the monthly consideration amount, professional fee and the project consultancy fee to which it was entitled for the services rendered by it. The invoices were sent to the corporate debtor by way of emails. In addition to the monthly consideration amount, the Professional Fee and the Project Consultancy fee for which invoices were raised, the Operational Creditor was further entitled to additional three months Management Fee on 1st year projected Gross Revenue amounting to Rs. 21,40,725/- which the Corporate Debtor failed to pay.


3.4. The Operational Creditor after issue of such invoices followed up for payment through various calls, messages and emails. However, despite repeated reminders, the Corporate Debtor neglected and failed to pay the legitimate dues of the Operational Creditor. The Operational Creditor further sent a demand notice to the Corporate Debtor on 7th February 2025 seeking remittance of its legitimate dues which was not replied to by the Corporate Debtor. The Operational Creditor terminated the



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Franchise License Agreement dated 27th June 2023 by way of a termination notice dated 25th March 2025.


- 3.5. As per part-IV of the application, an amount of Rs. 1,36,11,536.03/- (Rupees One Crore Thirty-Six Lakh Eleven Thousand Five Hundred Thirty- Six and Three Paise Only) is still due and outstanding as on 28.03.2025 to be paid by the corporate debtor for the services rendered in term of Franchise Licence Agreement dated 27.06.2023.
- 3.6. The applicant issued Demand Notice under Section 8 of the IBC Code 2016 on 07th February 2025 which was duly served at the registered office of the Corporate Debtor and to other known addresses of the Corporate Debtor. The applicant has filed an affidavit under Section 9(3)(b) of IBC Code 2016 stating that no payment or notice of dispute has been received by the applicant after service of demand Notice dated 07.02.2025.
- 3.7. The Operational Creditor, in support of his application, has relied upon Master Data of the Corporate Debtor as extracted from the official website of the Ministry of Corporate Affairs Annexure-A, Board Resolution dated 21.10.2023 Annexure-B, Form 2 for IRP Consent Annexure-C, Copy of Agreement dated 27.06.2023 Annexure-D, Copy of Invoices remaining unpaid and part paid raised by Operational Creditor along with calculation sheet Annexure-E, Calculation Sheet with respect to

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professional fee and the Project Consultancy Fee
Annexure-F, Copy of Emails sent by Operational Creditor
Annexure-G, Copy of the letter of demand dated 7th
February 2025 issued on behalf of the Operational
Creditor Annexure-H, Copy of termination notice dated 25^h
March 2025 issued by the Operational Creditor Annexure-I,
Form 3 dated 2nd April 2025 along its proof of service
Annexure-J, Computation of the total claim amount in
tabular form Annexure-K, A copy of the Form C along with
the Record of Default Annexure-L, Excerpts of the Bank
statement for the period between May 2023 to August 2023
and November 2024 Annexure-M and A certificate by the
Operational Creditor's banker in FORM under section 9 (3)
(c) of the Code, evincing all payments received from the
Corporate Debtor Annexure-N.

4. The applicant/Operational Creditor has prayed to allow the present petition and to admit the Corporate Debtor into Corporate Insolvency Resolution Process.
5. The Operational Creditor issued notice upon the Corporate Debtor at the time of filing the present petition. This Tribunal also issued notice upon respondent/Corporate Debtor. The Corporate Debtor opted not to appear and contest the present matter despite due service of notice. This Tribunal vide order dated 10.09.2024 proceeded the matter ex-parte against the Corporate Debtor.

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6. We have heard the arguments advanced by Learned Counsel for Operational Creditor and thoroughly perused the pleadings and documentary evidence available on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.
 7. It is a settled proposition of law that an application under Section 9 of the IBC Code 2016 is acceptable so long as the operational debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1 crore. In view of the Section 4 of the Code, the moment default is of rupees one or more and there is no existence of a dispute in term of Section 8(2) of the Code, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
 8. There is total operational debt of Rs. 1,36,11,536.03/- (Rupees One Crore Thirty-Six Lakh Eleven Thousand Five Hundred Thirty- Six and Three Paise Only) more than threshold limit of rupees one crore as on 28.03.2025 which is still pending and amounts to default, when the corporate debtor avoided the payment despite repeated reminder and demand notice dated 07th February 2025 issued by the Operational Creditor.

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9. Hon'ble Apex Court in case of Mobilox Innovative Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353 observed:

“It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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,”

10. There is nothing on record which may prove that there is any dispute raised by the Corporate Debtor at any time


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despite notice of default issued by the Information Utility i.e NESL. The record of default filed in Form C and Form D (Annexure-L) with the present petition proves that the default is deemed to have been authenticated disputed by the Corporate Debtor.

11. In view of the above said discussion, all the requirements of Section 9 of Insolvency and Bankruptcy Code 2016 to file the present petition have been satisfied. The present petition is complete in all respects. The present petition deserves to be admitted and accordingly, the present petition is allowed and the Corporate Debtor is admitted in CIRP.
12. The applicant has proposed the name of Ashok Kumar Agarwal having registration no. IBBI/IPA-002/IP-N00626/2018-19/1189 Resident of Ashwini - D/4, Neelachal Abasan Co-operative Society Limited, 98 Rajdanga GoldPark, Kasha, E.K.T, Kolkata, WestBengal-700107 having email address ashokkragarwal@hotmail.com, Resolution Professional of the corporate debtor. Mr. Ashok Kumar Aggarwal has given its written consent in required Form-2 which is attached with the application. Therefore, this bench appoints Sh. Ashok Kumar Aggarwal, as the Insolvency Resolution Professional of the corporate debtor.



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13. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Ashok Kumar Aggarwal to meet out the expense 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.
 14. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
 15. 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.
 16. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is

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also sent to the ROC for updating the Master Data. ROC shall send compliance reports to the Registrar, NCLT.

17. In view of the above, the Company Petition (IB) No. 192 of 2025 stands allowed and the Respondent/Corporate Debtor is, hereby, admitted into the CIRP in terms of the Section 9(5) of the IBC, 2016.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

