

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH- III

IB-3478/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Dr. Lal PathLabs Limited

...Petitioner/Operational Creditor.

Versus

M/s Aapka Urgicare Private Limited

...Corporate Debtor

Delivered on 23.07.2021

Coram:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

Appearances:

Operational Creditor : Manoj Kumar & Shweta Bharti (Advocates)

Corporate Debtor :

O R D E R

Per: Narender Kumar Bhola, Member (Technical).

1. Under consideration is IB-3478/ND/2019 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)



Rules, 2016. The Operational Creditor *M/s Dr. Lal PathLabsLtd.*, is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., *M/s Aapka Urgicare Private Limited*, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2.The Operational Creditor/Petitioner has averred as follows: -

- a. The Corporate Debtor executed Memorandum of Understanding dated 18.10.2012, 29.10.2012 and 01.05.2013 with Operational Creditor to avail the diagnostic services being provided by the operational creditor, and to pay the agreed consideration to the operational creditor within agreed timeline and in case there is delay in the payment of a part or whole of the amount raised in the invoice, corporate debtor was obliged to pay to operational creditor a delayed interest @ 18% p.a. on a unpaid amount for such delay from the date of payment became due till the date of actual payment.
- b. It is submitted by the petitioner that the corporate debtor failed to pay the admitted dues of the petitioner of Rs. 7,94,014/-even after repeated follow ups, thereafter, operational creditor preferred the Arbitration Petition No. 746 of 2017 before Hon'ble High Court praying for referring the dispute to Delhi International ArbitrationCentre.On 29.10.2018 the operational creditor and corporate debtor participated in the mediation proceedings before



the Delhi HighMediation and Conciliation Centre during the course whereof the corporate debtor made an offer to settle the dispute through payment of Rs. 7.92 lakhs in entirety by 30.05.2019 to the operational creditor. Resultantly, the matter was settled and settlement agreement dated 29.11.2018 was executed. However, Corporate Debtor defaulted in making the payments to the operational creditor as per the settlement agreement and also post-dated cheque given by the Corporate Debtor as a security got dishonored.

- c. It is further submitted by the Petitioner that Operational Creditor requested for payment through email. However, out of Rs. 7.92 Lakh only an amount of Rs. 3,92,000/- received till the filing of the present petition and not the entire outstanding as agreed in Settlement agreement dated 29.11.2018.
 - d. It is stated that outstanding amount of Rs. 4,00,000/- along with pendent lite and future interest @ 18% per annum from the date of default in payments as per the settlement agreement dated 29.11.2018 till the actual date of payment fell due on 26.02.2019, 26.03.2019, 26.04.2019 and 26.05.2019 and same has recurred on a monthly basis.
3. The Corporate Debtor has been provided with several opportunities to cause appearance and file objection. However, as none appeared on



behalf of the corporate debtor during the proceeding and after being satisfied that the service has been satisfactorily affected as evident from the proof of service filed by the Petitioner, this tribunal proceeded Ex-parte vide order dated 04.01.2021.

4. During the final arguments it is argued by the petitioner that the corporate debtor never raised any dispute with respect to the services rendered by the Operational Creditor to the Corporate Debtor. During the arguments this tribunal raised a query regarding the limitation to which the petitioner submitted that the petition is within the limitation as the Petitioner invoked the Arbitration in Hon'ble Delhi High Court prior to filing of the present Petition before this Hon'ble Tribunal and same was referred to Mediation and conciliation and resulted in Settlement Agreement dated 29.11.2018, which bears the signature of the Authorized signatory of Corporate Debtor. Hence, the Petition is within the limitation. It is further submitted that signing of the settlement agreement dated 29.11.2019 is clearly an acknowledgement of debt.
5. The Notification regarding the enhancement of minimum amount of default to Rs. one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor as well as the filing of captioned petition is much earlier to the coming into effect of notification dated



24th March, 2020. Since any notifications issued by the Government are generally prospective in nature unless specifically expressed, hence the said notification is not applicable to the present case. Furthermore, the debt was acknowledged by the corporate debtor by signing the Settlement agreement dated 29th November 2018 annexed as Annexure A-8 with the petition. Hence, this Tribunal is inclined to admit this application and accordingly initiate the process of CIRP of the Corporate Debtor. The Applicant has not proposed any insolvency resolution professional. This Tribunal, hereby, appoints Insolvency Professional namely, Mr. Prabhat Jain having Registration Number IBBI/IPA-001/IP-P01980/2020-2021/13123 (Email ID- prabhat@pdmco.in) as Interim Resolution Professional from the List provided by IBBI.

6. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.
7. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -




- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.
9. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under



section 19 for discharging his functions under section 20 of the IBC, 2016.

10. The Petitioner is directed to pay a sum of Rs. 2,00,000/- to the interim resolution professional upon the IRP filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The said amount shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as CIRP cost.
11. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
12. The order is pronounced through video conferencing.


(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


(P.S.N. PRASAD)
MEMBER (JUDICIAL)