

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 259/I&BP/NCLT/MAH/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Nisarga Healthcare Private Limited

....Operational Creditor

v/s.

**Academy for Counseling and Education Private
Limited**

.... Corporate Debtor

Order Delivered on 31.10.2018

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Harsha Laddha, Advocate and Rutuja Patil, Advocate

For the Respondent: Mr. Rajesh, Manager/Director of Corporate Debtor

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 (IBC) by Nisarga Healthcare Private Limited, Operational Creditors against Academy for Counseling and Education Private Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on the grounds that, as on 10.11.2017, Corporate Debtor has defaulted in making repayment of ₹1,56,828/-, inclusive of interest, which is due for payment for supply of Herbal Neuro Smart Syrups and Neuro Smart Syrup.
2. It is the case of the petitioner that it has supplied Herbal Neuro Smart Syrups and Neuro Smart Syrup to the Corporate Debtor and has raised 12 different invoices dated from 18.11.2015 to 03.08.2016. The

Petitioner has further stated that out of total ₹1,98,604/- due against the said 12 invoices the Corporate Debtor repaid ₹75,000/- till 06.09.2016 and the remaining amount of ₹1,23,604/- remain pending on which it has calculated an interest of ₹33,224/- in order to calculate the amount due of ₹1,56,828/- from the Corporate Debtor.

3. The Petitioner even after repeated reminder did not received any payments from the Corporate Debtor, sent a demand notice under section 8 of Insolvency and Bankruptcy Code, 2016 dated 10.11.2017 which was received by the Corporate Debtor only on 27.11.2017.
4. The Corporate Debtor in its reply has admitted that the Petitioner was engaged for supply of Herbal Neuro Smart Syrups and Neuro Smart Capsules and that the amount claimed by the Petitioner vide its demand notice dated 10.11.2017 are not denied. The Corporate Debtor has informed the Bench that the company has ceased to operate and that it has liabilities more than its assets. The respondent has submitted that due to losses it had to shut down its four (4) out of six (6) centers resulting into the drastic downfall in the income from operations in F.Y. 2017-18 resulting into the closure of the remaining two centers as well.
5. It is in these circumstances that the Corporate Debtor has pleaded that it is not in a position to pay off its debt due to the Petitioner and has agreed to admission of the petition and initiation of Corporate Insolvency Resolution Process.
6. The Petitioner has submitted the board resolution passed by the Board of Directors of the Nisarga Healthcare Pvt. Ltd. at their meeting held on 09.11.2017 resolving to initiate Corporate Insolvency Resolution Process against the Corporate Debtor and appointing Mr. Girish Soman, director of the Petitioner Company as the authorized signatory.
7. The Petitioner has further submitted on affidavit, attached to the Petition, that it has not received any notice of dispute by the Corporate Debtor relating to the dispute of the unpaid amount before the service of the Notice under the Insolvency and Bankruptcy Code, 2016 till 10.11.2017. it further states that, the Petitioner on his request to State

Bank of India, the Bank maintaining his account, the Bank has provided their certificate stating that there is no payment made towards the unpaid amount by the Corporate Debtors. The bank certificate is attached to the Petition as Exhibit M along with bank statements dated for the period 17.11.2017 to 03.01.2018.

8. When a section 9 petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4) of section 9, if any.
9. The Petitioner has annexed the demand notice, sent to Corporate Debtor as per section 8 of Insolvency and Bankruptcy Code, 2016 and the same was received by the Corporate Debtor, the invoices against which it claims the outstanding amount from the Corporate Debtor as well as the bank certificate and Bank Statements to show that no payment is received from the Corporate Debtor in its bank account. The Corporate Debtor has not raised any dispute regarding the unpaid operational debt which is stated by the Petitioner on affidavit and is also admitted by the Corporate Debtor. The application made by the Petitioner is complete in all respects as required by law and it clearly shows that the operational debt has not been paid as also confirmed by the Corporate Debtor.
10. The Corporate Debtor having named the Interim Resolution Professional (**IRP**) with his consent and there being no disciplinary proceedings against the proposed IRP.
11. On perusal of the pleadings and documents submitted and the arguments of the counsel appearing for both the sides, we are of the view that the present case is fit for Admission under the Insolvency and Bankruptcy Code, 2016 for the reasons mentioned in the following paragraphs.

12. We hereby admit this petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 declaring moratorium with consequential directions as mentioned below:

- I. That this Bench hereby prohibits
 - 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, tribunal, 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.
- II. 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.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 31.10.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 259/IB/2018

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints Mr Rakesh Rameshwarlal Rathi, having Registration Number [IBBI/IPA-001/IP-P00696/2017-2018/11211] as Interim Resolution Professional to carry the functions as mentioned under IBC.
13. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

31st October, 2018