

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
16-03-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**CP (IB) No. 371/9/HDB/2019**  
U/s 9 of IBC, 2016

**IN THE MATTER OF:**

E-Square International

**...Operational Creditor**

Vs

Rainbow Children's Medicare Pvt Ltd

**...Corporate Debtor**

**C O R A M:-**

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

**O R D E R**

Learned Counsel Mr. Praveen Jain(vc) for Operational Creditor and Learned Counsel Ms. Janaki(Vc) for Corporate Debtor are present.

Orders in CP(IB) No.371/9/HDB/2019 pronounced vide separate sheets. In the result, this CP(IB) No.371/9/HDB/2019 is dismissed.

  
**MEMBER (I)**

*Srinivas*

  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH - I**

**CP(IB) No. 371/9/HDB/2019**

*[U/s. 9 of I&B Code, 2016 r/w Rule 6 of I & B (AAA) Rules, 2016]*

In the matter of:

**E-Square International**

Sharma Complex, 59A/2, Kalu Saral  
Sarvapriya Vihar  
Near Panchsheel Park  
New Delhi – 110 016

.... Operational Creditor

**Vs.**

**M/s. Rainbow Chindren's Medicare Private Limited**

8-2-120/103/1  
Survey No.403, Road No.2  
Banjara Hills  
Hyderabad –500 034

... Corporate Debtor

Date of Order: 16.03.2022


**Coram:**

Hon'ble Dr.Venkata Rama Krishna Badarinath Nandula, Member (Judicial)  
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Parties / Counsels Present:**

For the Petitioner : Mr. Mukesh Gupta, PCA, Mr. VVSN Raju, Mr.ABN  
Raj, Mr. Praveen Kumar Jain, Rianna Lobo,  
Advocates

For the Respondent: Mr.A. Venkatesh, Mr. C. Tulasi Krishna, Ms. Sahithi  
Nomula, Mr. Pramod Maligi, Ms. Jayanthi Talluri,  
Advocates



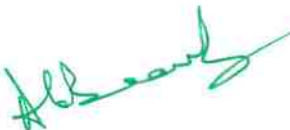
**PER : BENCH**

**ORDER**

I. This is a Petition filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt amount of Rs.1,46,91,000/- (Rupees One Crore Forty Six Lakhs Ninety One Thousand only) and interest of Rs.45,98,081/- @ 24% from the date of default i.e. 17.01.2018.

II. The gist of the Operational Creditor's brief is -

- i. E-Square International, for short, 'Applicant/Operational Creditor' is engaged in the business of providing consultancy services in real estate. Rainbow Children's Medicare Private Limited, for short 'Respondent/Corporate Debtor' is a Multi Super Specialty Healthcare Hospital chain in Tier-II & Tier-III cities. The Managing Director & Senior Management of the Respondent approached the Applicant during late 2015 to use professional services of the Applicant towards facilitating the space/site for their new Hospital Project at New Delhi. The



Applicant identified and facilitated the property, Madhukar Multi Specialty Hospital & Research Centre, Plot No.5, FC-29, Geetanjali, Adjacent to Malviya Nagar Metro Station, Malviya Nagar, New Delhi -110 017 for opening the hospital by the corporate debtor. This property was on a perpetual lease from Delhi Development Authority, for short 'DDA', with Madhukar Multi Specialty Hospital & Research Centre, for short 'lessor'. As per the request of the MD of the Corporate Debtor, the Applicant sent a brokerage letter containing the brokerage equivalent to 60 days of rent of the lease amount, which was later reduced to 45 days of rent, both the parties agreed with the same and the applicant raised an Invoice No.0602, dated 16.01.2018 for Rs.1,46,91,000/- towards brokerage for the services rendered by the Applicant. The email correspondence between the parties are filed at page nos.46 to 86 of the application. A copy of Sub-Lease Deed executed between Madhukar Multi Specialty Hospital and Research Centre and Rainbow Children's Medicare Private Limited is filed as Annexure-F at page nos.59 to 85 of the application.

- ii. According to the Operational Creditor, the Operational Creditor has made many calls to the Managing Director of the Corporate Debtor requesting to release the brokerage amount. When the due amount was not paid by the Corporate Debtor after continuous follow up, got issued a Demand Notice dated 11.04.2019 in Form-3, demanding payment of the outstanding



debt amount of Rs.1,46,91,000/- (Rupees One Crore Forty Six Lakhs Ninety One Thousand only) and interest of Rs.45,98,081/- @ 24% from the date of default i.e. 17.01.2018. In response to the demand notice, the Corporate Debtor sent a reply letter dated 17.04.2019 wherein the Corporate Debtor categorically rejected the claims and demands made in the Demand Notice dated 11.04.2019. A copy of the letter dated 17.04.2019 is filed at page nos. 149 to 150 of the application.

- iii. The Operational Creditor, while contending that the contents of the reply notice are false and untenable and submitted that having been left with no further option, filed the instant Application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

III. The gist of the Corporate Debtor's brief is –

- a) It is vehemently denied that the Managing Director alongwith the senior management has approached the applicant for the project in New Delhi in 2015. It is stated that the corporate debtor through various sources has got to know that M/s. Madhukar Multi Speciality Hospital & Research Centre, New Delhi was looking to lease its hospital facility, and after negotiations, both the parties entered into a sub-lease agreement. The respondent neither approached nor made any agreement with the applicant at any point



of time. Hence, the respondent is not liable to pay any claim amount to the applicant.

- b) The Applicant has failed to show any evidence that the respondent has approached the applicant and also showed interest in appointing the applicant as its broker. The applicant has fabricated / created a concocted story for the purpose of filing the present application and to extort money from the respondent.
- c) It is denied that the applicant had identified the property of M/s.Madhukar Multi Speciality Hospital and Research Centre as required by the Respondent and participated in couple of meetings as a representative of M/s.Madhukar Multi Speciality Hospital and Research Centre and also stated that the Respondent is not aware about the same.
- d) All the emails and documents are forged, created by the applicant for the purpose of filing the instant case. The Applicant has failed to file an iota of evidence to prove that the Respondent has acknowledged the letter and requested for change of terms of the agreement.
- e) It is stated that the applicant himself has sent an email filed at page 46 of the application requesting the respondent for confirmation of their offer and admittedly there is no such confirmation by the respondent. There being no confirmation by the Respondent at any



point of time, there is no concluded contract between the parties and/or the privity of contract.

- f) It is stated that the Managing Director of the Respondent, Dr.Ramesh, a highly reputed Doctor in the country and hardly has any time to go through his emails and/or respond to frivolous mails which are in the nature of sham. Mere sending of emails is not relevant or corresponding obligation for some strangers does not obligate the Managing Director of the Respondent to reply to such emails, more particularly, when there is no privity of contract with such persons. Thus, the present application is not maintainable.
- g) It is denied that the applicant has introduced the officials of M/s. Madhukar Multi Speciality Hospital & Research Centre to the Respondent and that on 12.01.2016, the applicant had attended a meeting between the Managing Director of the respondent and the officials of M/s. Madhukar Multi Speciality Hospital & Research Centre and also not correct that the meeting was attended by Architect of the Respondent, Mr. Siddardha Srinivas, Managing Director of the company.
- h) If really there was a meeting on 12.01.2016 and the property was finalised on 12.01.2016, there would not have been the mail dated 11.01.2016 offering to identify the site. On 18.01.2016, the applicant is yet to identify the site and such scenario, there could not have been any identification of property and sending of floor



drawing before 18.01.2016. Therefore, Annexure-B is a false document and the contents thereof are false and the Respondent had never agreed for any brokerage much less the brokerage/60 days rent.

- i) The Respondent further stated that it is a private limited company having turnover approx. Rs.553 crores. The Applicant has got 12 number of units all over India having approximately 1200 number of beds and it provides employment to approx.3000 number of persons. The Respondent is a solvent company and in the event if such frivolous application is admitted, the respondent will suffer great and irreparable loss.

IV. The gist of the Operational Creditor's brief in rejoinder is –

- a) It is stated that dismissal of privity of any contract between the Applicant and Respondent is done with a malafide intention to deprive the applicant of its lawful remuneration for the services provided to the present respondent, i.e. of a broker. It is submitted that the broking services was provided to the present respondent and M/s. Madhukar Multi Speciality Hospital & Research Centre betweenwhom the sub-lease deed was executed with respect to the property situated at Plot No.5, FC-29, Geetanjali, New Malviya Nagar Metro Station, Gate No.1, New Delhi. The applicant facilitated the entire transaction of said sub-lease and to be remunerated for the services provided. The sub-lease deed has been



admitted by the Respondent and also admitted having meetings in the Applicants presence with the representatives of M/s. Madhukar Multi Speciality Hospital & Research Centre. The respondent has failed to any cogent response to the factum of having received the emails and communication sent by the applicant and stating that the director of the operational creditor never had the time to respond to emails. Such a fallacious statements cannot be the basis to deny liability.

- b) It is denied that the Respondent's director never had the time to respond to emails and stated that such a fallacious statement cannot be the basis to deny liability. It is also stated that the Respondent by its conduct clearly shown the acceptance of the services of the Applicant as well as the consideration towards brokerage being charged by the present applicant for the said services. The entirety of facts clearly establishes a concluded contract between the applicant and the respondent and the mere bald denial by the respondent by giving absurd and fallacious excuses does not exempt the Respondent from its liability to pay the dues of the Applicant.
- c) It is denied that there is no acknowledgement of debt that the invoice as raised by the Applicant herein on the respondent was sent to Dr. Ramesh Kancharia over his email, who had also signed the sub-lease deed. A copy of the WhatsApp message sent to Dr. Ramesh is filed at page no. 86 of the application. A hard copy of

the invoice was acknowledged by Ms. Yogita, who is the Accounts Head of the Corporate Debtor at the Hospital itself. Further, no other official of company except Monika Sood and the said Managing Director was interacting with the Applicant.

- d) It is also denied that emails were sent to Dr. Ramesh Kancharia relating to the service conditions of the Applicant and they have been claimed to have been forged without any basis.
- e) The Respondent agreed that the representative of the Applicant had participated in couple of meetings without specifying as to when the Applicant was part of the said meeting.
- f) It is stated that due to clerical error the letter dated 11.01.2016 has been erroneously marked as Annexure-B in the application which as per the contents of paragraph 10 is the email dated 13.01.2016. It is stated that post the meeting dated 12.01.2016, the Applicant had sent an email dated 13.01.2016 with an attachment which is infact the letter dated 11.01.2016 specifying the terms and conditions of service.
- g) The applicant submitted a letter dated 24.11.2017, issued by Madhukar Multi Specialty Hospital& Research Centre stating that full and final settlement of Rs.65,00,000/- towards brokerage/service charges for sub-lease of 3654 sq. mtrs. area in their building to the Rainbow Group/Rainbow Children's Medicare



Private Limited, will be paid in three instalments, which was signed by both the parties. A copy of the letter is filed at page no.21 of the application.

- h) It is submitted that the Applicant has raised the following invoices upon M/s. Madhukar Multi Speciality Hospital & Research Centre:

Sl.No.	Invoice No. & Date	Invoice Amount including GST (Rs.)
1.	0601/24.11.2017	23,60,000/-
2.	0603/18.12.2017	23,60,000/-
3.	0604/18.01.2018	29,50,000/-
Total Amount		76,70,000/-

M/s. Madhukar Multi Speciality Hospital & Research Centre has paid the remuneration on its part by issuing the following cheques after deducting the applicable TDS.

Sl.No.	Cheque No. & Date	Amount (Rs.)
1.	002850 / 24.11.2017	22,60,000/-
2.	002931 / 21.12.2017	22,60,000/-
3.	148222 / 20.01.2018	28,25,000/-
Total Amount		73,45,000/-

Copies of the above cheques and Certificates of Allahabad Bank and Union Bank of India with respect to receipt of the above amounts are filed at page nos. 24 to 30 of the application. As such, it is conclusively proving that the applicant was involved in for the



purposes of concluding the transaction of sub-lease between Respondent and M/s. Madhukar Multi Speciality Hospital & Research Centre.

- V. In the light of the context, the Point that emerges for consideration of this Adjudicating Authority is –

Can the Adjudicating Authority enquire into the existence or otherwise of an operational debt claimed to have arisen by virtue of an alleged positive silence of the corporate debtor?

- VI. We have heard the Learned Counsels for both parties, perused the documents and Case Law.

- VII. POINT:

Can the Adjudicating Authority enquire into the existence or otherwise of an operational debt claimed to have arisen by virtue of an alleged positive silence of the corporate debtor?

At the outset, it is pertinent to refer herein to the illuminating ruling rendered by the Hon'ble Supreme Court of India, on the law relating to the petitions filed under Section 7 or 9 of the I&B Code, 2016. namely, Mobilox Innovations Private Limited, Hon'ble Supreme Court of India, has held that;

“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 requires 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. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application” (Emphasis is ours)

In the same ruling, it has been also held that,

“Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and (iii) 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?”

“If any one of the aforesaid conditions is lacking, the application would have to be rejected.” (Emphasis is ours).

VIII. Since the existence of an Operational Debt payable by the corporate debtor and the default in payment of the said debt, being the, *sine qua non*, for maintaining an application under Section 9 of IBC, by the Operational Creditor, and as the Corporate Debtor herein has denied existence of any such debt and default, the operational creditor must show to this Adjudicating Authority that an Operational Debt of Rs.1,46,91,000/- which is due and payable by the corporate debtor, has remain unpaid.

IX. In its endeavour to establish existence of an operational debt payable by the corporate debtor, the operational creditor has relied on the following among other documents:



1. Offer Letter dated 11.01.2016.
2. Terms of the Appointment Letter dated 02.02.2016.
3. Email correspondence between the parties on 13.01.2016, 18.01.2016, 25.01.2016, 29.01.2016, 02.02.2016, 05.02.2016, 06.02.2016, 07.02.2016, 26.02.2016 pertaining to the lease.
4. Copy of the lease deed dated 01.09.2017.
5. WhatsApp messages sent to the MD of the corporate debtor containing invoice.

XI. We have carefully perused the above documents relied on by the operational creditor.

XII. According to the Ld. Counsel for the operational creditor the positive silence on the part of the corporate debtor in not responding to the offer letter dated 11.01.2016, several emails, *supra*, sent by the Operational Creditor, besides the alleged participation of one Monika Sood, who is said to be the representative of the corporate debtor in the discussion meetings with the operational creditor, an implied agreement/contract between the corporate debtor and the operational creditor to pay the brokerage charges as indicated in the letter dated 02.02.2016 has emerged. This plea however has been denied by the corporate debtor.

XIII. It is needless to say that an offer when accepted by the offeree, results in an agreement and an agreement enforceable by law becomes a contract.



XIV. Therefore, under law an offer can be accepted either by express words or by positive conduct. However, when formation of such type of contracts are disputed, higher degree of proof as to their formation besides critical examination of the relevant factual as well as the legal matrix is essential, unlike in a written contract.

XV. In the case on hand as per the emails dated 13.01.2016 and 05.02.2016, the operational creditor sought the acceptance of the corporate debtor, as follows:

vide Email dated 13.01.2016:

*“Please find attached the brokerage letter mention our service fee. May I request you to please give your confirmation on the same and revert with a confirmation email”.*

vide Email dated 05.02.2016:

*“ Just a gentle reminder. Request you to please revert with the confirmation on the brokerage letter”.*

XVI. Therefore, yet another question that require examination will be when the offeror insisted for written acceptance from the offeree, as in this case, can the implied consent of the offeree (assuming) amounts to acceptance or not?

XVII. Hon’ble Supreme Court of India, in re, *Mobilox, Supra*, held that,

“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires 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. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed”.

XVIII. Here, it is pertinent to state that the plea putforth by the operational creditor as regards the operational debt even though undoubtedly maintainable under law, yet, the said pleas, since can be effectively and properly be decided only in a regular trial but not in proceeding under section 9 IBC, before this Adjudicating Authority, which is summary, we hold that we cannot adjudicate the plea of existence of operational debt in this case.

Here it pertinent to refer to the ruling of Hon’ble Supreme court of India, *in re, Mobilox, Supra*, wherein it was held that,

“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence.” (Emphasis is ours)

XIX. Therefore, the very plea of the Operational Creditor that an implied contract as to payment of brokerage by the corporate debtor to the operational creditor has emerged between the parties and by virtue of a positive silence and the conduct of the corporate debtor, by virtue of the peculiar facts and circumstances of this case. We hold that the same require a detailed hearing/investigation of both facts and the law relating to the subject debt, lest the truth or otherwise of emergence of an implied contact as to payment of brokerage by the corporate debtor to the operational creditor cannot be ascertained.



XX. In this regard, we profitably rely on *Mobilox, Supra*, wherein it was held that,

“the Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.

XXI. That apart, we are fully convinced that the resistance by the corporate debtor to the plea of operational debt is *plausible*. We are also convinced that nothing is on record to show that the dispute as to existence of an operational debt, is spurious, hypothetical or illusory.

XXII. Therefore, the very emergence of an implied contact as to payment of brokerage by the corporate debtor to the operational creditor, which the geneses of the operational debt claimed by the applicant, since require a detailed investigation of the facts and the law relating to the subject claim, for the reasons we have already discussed above, we hold that the application is not maintainable before this Adjudicating Authority. The application therefore is liable to be dismissed. We, accordingly hereby, dismiss the same.

XXIII. In the result, the application is hereby dismissed. No costs.

  
VEERA BRAHMA RAO AREKAPUDI  
MEMBER (TECHNICAL)

  
Dr.N.V.RAMA KRISHNA BADARINATH  
MEMBER (JUDICIAL)

Syamala