

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II**

C.P.(IB)-2412(MB)/2018

(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

MIS Healthcare Private Limited

Having Registered Office at: 16, Shwetambari Apt, Near Navashya Maruti, Sinhgad Road, Pune- 411030.

.....Operational Creditor/ Applicant

Vs

Agfa Healthcare India Private Limited

Having Registered Office at: 402, 4th Floor, Nitco Biz Park, Plot No. C/19, Road No: 16, Wagle Industrial Estate, M.I.D.C, Thane (West)- 400604.

.....Corporate Debtor/Respondent

Order delivered on: 17.06.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Hasnain Kazi, Adccocate

For the Corporate Debtor : None present

ORDER

Per- Justice P.N. Deshmukh (Retd.), Member Judicial

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/S Healthcare Private Limited (for brevity 'Operational Creditor') through its Authorised Signatory, Mr. Rajendra Badgujar, who has been duly authorised vide board resolution dated 28.05.2018 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Agfa Healthcare India Private Limited (for brevity 'Corporate Debtor') for default in repaying an amount of **₹15,60,326.94** together with interest of **₹6,73,291.76**, aggregating to **₹22,33,618.70** as on 11.08.2015.
2. On reading the application and other material placed before this Bench, the Operational Creditor and the Corporate Debtor entered into a service agreement dated 01.01.2014. As per the agreement, the operational creditor was appointed to provide maintenance and services to pharmaceutical equipment, installation and maintenance thereof at the place where the said equipment were installed. As against the service provided by the

Operational Creditor, the Operational Creditor raised invoices against the Corporate Debtor on 31.12.2015, 31.12.2016 and 31.12.2017 amounting to ₹5,32,213.18; ₹5,22,398.78 and ₹5,05,714.98, respectively. This Operational Creditor has issued Section 8 notice (Form 3) on 04.12.2017, the Operational Creditor has further sent Section 8 notice (Form 3) through e-mail on 07.12.2017.

3. The Corporate Debtor also replied to the said demand notice and submitted that the demand notice issued only for harassing the corporate debtor as company petition No. 1136/2017 on the same subject was already withdrawn by the Operational Creditor. It is stated that Corporate Debtor has terminated the agreement dated 01.01.2014 as operational creditor violated the terms and conditions of the said agreement and raised the counter claim against operational creditor amounting to ₹15,23,224. The corporate debtor also relied on email dated 29.05.2015, where the corporate debtor raised issue regarding quality of service, which remained unresolved, and also relied on email dated 16.12.2015, where the corporate debtor asked operational creditor to return the old spare parts, therefore, the corporate debtor has not defaulted in payment as there is dispute with respect to the invoices on the basis of which operational creditor is claiming the amount.

4. The Corporate Debtor in its reply affidavit has taken the defense that the company petition on same subject is already dismissed by the National Company Law Board, Mumbai vide order dated 08.11.2017, this fact was suppressed by the operational creditor. It is stated that the amount claimed by the operational creditor is in serious dispute, which required adjudication from proper authority, therefore, the petition under IBC is not maintainable. The Corporate Debtor has submitted that it is ready to deposit the principal amount in NCLT, Mumbai or before such forum as this tribunal may direct until the adjudication of disputed claim of the operational creditor. It is further averred that the corporate debtor vide email dated 25.06.2015 and 13.09.2015 asked operational creditor for service reports and installation reports in respect of the claim of the operational creditors and has asked to return the old spares, however, not replied by the operational creditor till date as stipulated under clause 7 of the service agreement. The Corporate debtor raised the counter claim for the alleged breach of agreement as entered between the operational creditor and the corporate debtor as the operational creditor have taken the cash as service charges directly from customers of the corporate debtor and kept with them. Hence, prayed that petition may be dismissed.
5. In response to this, the Operational Creditor also filed the rejoinder to the reply of the Corporate Debtor and denied all the

contentions raised in reply and further submitted that the company petition no.1136 of 2017 was withdrawn by the operational creditor for the want of technical discrepancy as the notice in prescribed format was not served upon the corporate debtor, therefore, the same has no effect on the facts and circumstances in relations to the claims forming subject of the present petition. It is further averred that in its reply letter dated 14.05.2016 to the legal notice of the Applicant dated 22.04.2016, the respondent has admitted that the claims in furtherance of the debit notice of ₹15,60,326.94 was revised and reduced to ₹10,43,923.20, this by itself is also an admission of liability by the Respondent. However, the Respondent has contended that the payment thereof is subject to the condition of the Applicant returning to the Respondents defective spare parts to the tune of ₹15,23,224, and ultimately held the Applicant liable to pay the balance amount of ₹4,79,300.80, being the differential amount towards return of the spare parts i.e. ₹15,23,224 and the approved claim of the Applicant i.e ₹10,43,923.20. It is argued that all the defective goods lying with the Applicants were returned to the Respondents on 21.10.2015 by courier, and the same was communicated to the Respondent vide email dated 24.10.2015. It is further stated that the respondent has failed to produce any material on record to suggest that the engineers of the applicant were inappropriate or dishonest in their conduct. At the end, it is submitted that the claim is well covered under the definition of debt under the

Code, therefore, the applicant has taken recourse to the present petition.

6. Heard the submissions made by the Learned Counsel for both the parties and perused the material on record, we are of the view that the corporate debtor in its reply letter dated 14.05.2016 to the legal notice of the Petitioner dated 22.04.2016, the Respondent has admitted that the claims in furtherance of the debit notice of ₹15,60,326.94 was revised and reduced to ₹10,43,923.20, this by itself is also an admission of liability by the Corporate Debtor. However, the Corporate Debtor has contended that the payment thereof is subject to the condition of the Petitioner returning the defective spare parts to the Corporate Debtor. In this regard, Petitioner has already submitted that all the defective goods lying with them were returned to the Corporate Debtor on 21.10.2015 by courier, and the same was communicated to the Corporate Debtor vide e-mail dated 24.10.2015. Moreover, the Petitioner has filed the copy of the said e-mail. Hence the Petitioner has proved the 'existence of debt' and 'default' on the part of the Corporate Debtor. The Petitioner has filed the present Petition before this Tribunal on 22.06.2018 and as such the Notification effected in increasing the threshold limit from Rupees One Lakh to Rupees One Crore as on and from 24.03.2020 does not apply to the present case. Under the said circumstances, since the debt and default on the part of the Corporate Debtor being proved and

also by looking at the consent given by an Insolvency Professional, we hereby admit this petition by appointing Mr. Jitender Kothari (Insolvency Professional) as IRP with a direction to the IRP to compute this claim by deducting the payments made by the Corporate Debtor during the pendency of this Company Petition. The Petitioner shall pay the remuneration of the IRP as well as initial costs to the IRP until constitution of the Committee of Creditors, Accordingly this petition is **admitted** with the direction as follows:-

a. **The above Company Petition (IB) 2412(MB)/2018 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Agfa Healthcare India Private Limited.

b. This Bench hereby appoints Mr. Jitender Kothari, having Registration No: IBBI/IPA-001/IP-P00540/2017-2018/10965, E-mail: jitenderkothari@rediffmail.com, 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. 2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

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

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)