IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH –II, CHENNAI

CP(IB)/230(CHE)/2021

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016)

In the matter of ***Vasan Dental Hospitals Private Limited***

Jamuna International,
Represented by its Partner,
Ms.J.Vanithamani,
New No.56, (Old No.105),
G.N.Chetty Road, HMH Plaza, 2nd Floor,
T.Nagar, Chennai-600 017 ... *Operational Creditor*

-Vs-

Vasan Dental Hospitals Private Limited,
CIN No.: U85110TN2010PTC074635,
No.5-A, Main Road, Thillai Nagar,
Trichy– 620 018 ... *Corporate Debtor*

Order pronounced on 3rd February 2022

CORAM
JUSTICE (RETD) S.RAMATHILAGAM,MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Mr.C.J.Yeswanthram, Advocate
For Corporate Debtor : No Representation

ORDER

Per: **JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Adjudication is IBA/230/2021 that has been filed by **M/s. Jamuna International** (hereinafter referred to as **'Operational Creditor'**) under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 against **Vasan Dental Hospitals Private Limited** (hereinafter referred to as **'Corporate Debtor'). The** prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Operational Creditor from which, it is evident that the Operational Creditor is M/s. Jamuna International. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification No.U85110TN2010PTC074635 and the registered office of the Corporate Debtor as per the Application is stated to be at No.5-A, Main Road, Thillai Nagar, Trichy, Tamil Nadu – 620018. As per Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. Part IV of the application signifies the amount of debt to the tune of Rs.62,14,082/- as the outstanding dues that is payable by the Corporate Debtor. It is averred in the application that, the last default occurred on 28.03.2018. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as follows:

a) The Purchase order issued by the Corporate Debtor.

b) The invoices raised by the Operational Creditor.

c) A copy of the e-mail, wherein the Corporate Debtor acknowledged its debt to the Operational Creditor.

d) The Workings and Computation of the debt.

4. It was averred in the application that the Operational Creditor is an authorized distributor of 3M Unitek Orthodontic materials and is engaged in the business of supplying dental and orthodontic products.

5. It was further averred that the Corporate Debtor had issued purchase orders to the Operational Creditor for the purchase of materials. In respect to that, the Operational Creditor had raised invoices between the period of April 2017 and March 2018 against the Corporate Debtor for the material delivered. However, the Corporate Debtor has defaulted in honouring the invoices raised.

6. It was further averred that the Operational Creditor had enquired the Corporate Debtor about the default vide e-mail dated 18.04.2018. In response to that, the Corporate Debtor had shared a copy of their ledger as on 31.03.2018 to acknowledge their debt to the Operational Creditor.

7. Subsequently, the Operational Creditor caused Demand Notice dated 22.03.2021 to the Corporate Debtor. Since, no response or repayment from the Corporate Debtor, the Operational Creditor had filed this application on 15.09.2021, sought initiation of CIRP against the Corporate Debtor.

8. This application came up before this Tribunal on 05.10.2021, wherein the Learned Counsel for the Operational Creditor is directed to establish the maintainability of this application on the aspect of pecuniary jurisdiction.

9. In compliance to direction, the Learned Counsel for the Operational Creditor filed a written submission and argued that in the present case the default has occurred prior to 24.03.2021 and the increase of pecuniary jurisdiction from Rs.1 lakh to Rs.1 crore for filing an application under Section 9 of IBC 2016 vide notification of Ministry of Corporate Affairs in S.O.1205 (E) dated 24.03.2021 is not retrospective and will not apply to the present case. In support of the arguments he relied on various precedents.

10. We heard the submissions and perused all the records placed before us. Section 4 of the IBC reads as follows: –

> *"**4. Application of this Part –** (1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees. Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees."*

11. The Notification No. S.O 1205 (E) dated 24.3.2020 issued by the Ministry of Corporate Affairs is extracted below:

> *"**S.O. 1205(E).**—In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016*

(31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section."

As can be seen from the above notification, the threshold limit of debt has been raised from Rs.1 lakh to Rs.1 crore. Accordingly, the application under section 7 or section 9 will be admissible only if the debt in default is more than the threshold amount of Rs.1 crore.

12. Further it is pertinent to note that in ***Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd.*** the Hon'ble Appellate Tribunal held that,

> *"...notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs.1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if debt is of a date earlier than 24.3.2020..."*

Since the present application under section 9 was filed on 15.09.2021, which is after 24.03.2020, therefore the threshold limit of Rs.1 crore of debt will be applicable in the present case.

13. In view of the above discussion this application stands **dismissed**.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar D