

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1509(ND)2019

IN THE MATTER OF:

M/s Randstad India Private Limited
Randstad House, Old No. 5 and 5A
New No. 9, Pycrofts Garden Road
Chennai-600006

...Operational Creditor

VERSUS

Dalmia Biz Medicare Limited
Flat No. 203, 2nd Floor
Indra Prakash Building 21
Barakhamba Road
New Delhi-110001

...Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 13.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor : Ms. Sonali Khanna, Advocate

For the Respondent : None



(IB)-1509(ND)2019

M/s Randstad India Pvt. Ltd. Vs. M/s Dalmia Biz Medicare Ltd.

JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition 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 Randstad India Private Limited (for brevity 'Operational Creditor') through its authorized representative Mr. Tapos Moitra, who is duly authorized vide Board Resolution dated 11.04.2017, with a prayer to initiate the Corporate Insolvency process against M/s Dalmia Biz Medicare Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Randstad India Private Limited is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U74210TN1992PTC023097, having its office at Randstad House, Old No. 5 and 5A, New No. 9, Pycrofts Garden Road, Chennai-600006.

3. The Corporate Debtor namely, M/s. Dalmia Biz Medicate Ltd. is a Company incorporated on 17.02.2014 under the provisions of Companies Act, 1956 with CIN No. U85100DL2014PTC264941, having its registered Office at Flat No. 203, 2nd Floor, Indra Prakash Building 21, Barakhamba Road, New Delhi-110001.



4. As per the averments made in the petition, the Nominal Share Capital of the Respondent Company is Rs.25,00,000 and Paid up Share Capital of the Company is Rs.1,00,000.

5. It is submitted by the Operational Creditor that it had provided deputation services through its employees in connection with the Corporate Debtor's support functions, based on Deputation Services Agreement dated 13.04.2017 executed between the Applicant and the Corporate Debtor.

6. It is further submitted by the Operational Creditor that it had provided the Services to the Corporate Debtor diligently, which were duly accepted by the Corporate Debtor without any protest or demur. The details of the invoices for the services provided by the Operational Creditor from 30.06.2017 to 04.07.2017 are reproduced below :

Payment to be made on or before	Invoice No.	Gross Amount of Invoice (in Rs.)
30.06.2017	R50279041	5,45,774.00
30.06.2017	R50279042	10,42,901.53
04.07.2017	R50280886	4,31,673.20
Total		20,20,348.73

7. It is stated by the Operational Creditor that in view of the non-payment of the outstanding amount by the Corporate Debtor, a meeting was held between the Parties and pursuant to that a Memorandum of Understanding (MoU) dated 04.07.2017 was executed between the Parties whereby, the Corporate Debtor shared

its payment plan with the Operational Creditor to clear the outstanding dues of Rs.15,45,764 in six equal monthly installments of Rs.3,33,189.83 each from July, 2017 to December, 2017 on the dates agreed in the MoU. The Corporate Debtor paid only three installments on 15.07.2017, 15.09.2017 and 15.10.2017 and defaulted in payment of remaining three installments amounting to Rs.7,72,882 in aggregate.

8. As per the Ledger Account Annexed by the Operational Creditor, the last Part Payment received by the Operational Creditor was of Rs.2,57,627 on 15.10.2017.

9. It is submitted by the Operational Creditor that the amount of default/liability of the Respondent is of Rs.7,72,882 excluding interest @ 15% per annum from 15.10.2017.

10. That the Operational Creditor submits that it had sent a Demand Notice dated 11.01.2019 under Section 8 of IBC, which was replied by the Respondent Company vide their Letter dated 19.03.2019.

11. That the Operational Creditor in their Affidavit under Section 9(3)(b) of IBC, 2016 has made specific averment regarding the receipt of the reply/notice of dispute dated 19.03.2019.

12. As none appeared on behalf of the Respondent Company during the proceedings, the Respondent was proceeded ex-parte vide Order dated 08.08.2019 passed by this Tribunal.



13. After going through the reply dated 19.03.2019, this Bench is of the view that the Corporate Debtor had failed to point out any pre-existing dispute between the Parties.

14. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoices, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

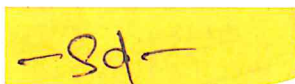
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate 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 Securitisation 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.”



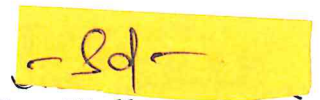
15. The Operational creditor has not proposed any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Ms. Madhu Juneja as an IRP, Registration No. IBBI/IPA-001/IP-P00044/2017-18/10118 (Email: madhujun94@gmail.com) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this Order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

16. The Operational Creditor Company is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

17. In terms of the above, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Operational Creditor, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)