

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-403(ND)/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

In the matter of:

1. Avbodh Medicare LLP

2. Dr. Amar Singh

.... Operational Creditors

Vs.

Felix Healthcare Pvt. Ltd.

.... Corporate Debtor

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Order Delivered on: 06.09.2022

ORDER

PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

The instant petition is filed by Avbodh Medicare LLP and Anr. , through its authorized representative (hereinafter referred as 'Applicant'/ 'Operational Creditor') having registered office at C-104, South Extension-II under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate

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Corporate Insolvency Resolution Process in respect of Felix Healthcare Pvt. Ltd. (hereinafter referred as 'Respondent Company' or 'Corporate Debtor').

2. The Respondent Company Felix Healthcare Pvt. Ltd. having its registered office situated at A-651, New Ashok Nagar, Delhi-110096. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. The brief facts of the case leading to the filing of this application as averred by the applicant are as follows:

- a. The applicants submits that its authorized representative i.e. Dr. Amar Singh, entered into a license Deed dated 07th July, 2015 with the Corporate Debtor through the Director and CMD of the Corporate Debtor i.e. Dr. Rashmi Gupta. In this regard it is worthy that the name of Dr. Amar Singh and Dr. Rashmi Gupta appear on the license deed because it was agreed between the parties that a subsequent deed would be entered into between Avbodh and Felix, however, the Corporate Debtor making payments to Avbodh Medicare LLP.
- b. The applicants submits that the License Deed dated 07th July, 2015 stipulated that the Operational Creditor herein was required to set up a physiotherapy Center in an area to be provided by the Corporate Debtor and the Operational Creditor was to provide physiotherapy services to the patients of the Corporate Debtor. The services as per the license deed have been in operation since August, 2015.
- c. The applicants submits that pursuant to the license deed the Operational Creditor provided an Amount of Rs. 10 Lakhs as



interest fee security deposit on 6th July, 2015. And the said amount according to the Clause (ii) of the License Deed was to be returned to the Operational Creditor at the time of expiration of the terms of the license or at the determination of the License Deed for the breach of the terms and conditions of the License. Also, as per the License Deed, the Operational Creditor was to provide physiotherapy and other such services as enshrined in clause (xvii) of the Deed and all the billing to be done at the billing department of the Corporate Debtor as per Clause (xviii) of the Deed. Further, it is also pertinent to state that as per Clause (xviii), the payment made by the patients in cash or credit was to be divided between the parties on sharing basis. And, also as per the Clause (xvi) of the deed the treatments given to credit payments shall be made by the Corporate Debtor within one month of the receipt of the payment from the said category of organization, with deductions taken into account. Hence, as per the license deed signed between the parties it can be concluded that the Corporate Debtor was solely responsible for the collection of amounts towards services rendered by the Operational Creditor.

- d. The applicants submits that on regular basis they have given their services and the details of the patients with their identity number have been shared with the Corporate Debtor. But, since 2016 and till date Corporate Debtor has been making regular defaults in the payments due to the Applicant for the services rendered by them.
- e. Further, the applicants submits that they had issued a notice dated 11th April 2018 to the Corporate Debtor notifying the breach done by them as per the terms of the license deed and to which the Corporate Debtor replied on 5th June 2018 and stated that the payment of dues of the Operational Creditor has been stopped due to the lack of qualified and trained staff and personnel to be engaged in providing services as per the License Deed. Further, the Applicant herein, replied to the Corporate Debtor on 18th July, 2018 stating therein that the Corporate Debtor has always



interfered with the smooth functioning of the physio therapy center and the same is in violation of the License Deed.

- f. Applicants further stated that due to non-clearance of the dues from the Corporate Debtor the License Deed was terminated by the Applicant vide notice dated 4th July, 2018 and also demanded the security deposit of Rs. 10,00,000/- given to the Corporate Debtor on 6th July, 2015.
- g. The applicant submits that despite sending the reminder to the Corporate Debtor they didn't bother to clear the dues nor replied to the reminder. Hence, the Operational Creditor served the Demand Notice dated 27th July 2018 demanding the Corporate Debtor to clear the dues of Rs. 49,23,522/-.
- h. The Applicants further stated that the said petition was earlier filed inadvertently before the NCLT, Allahabad Bench numbered as , Company Petition (IB) No. 367 of 2018. Accordingly, the Applicant herein filed a Transfer Petition namely Company Petition (IB) No. 367/ALD/2018 with C.A. 360 (PB)/2019 before the Hon'ble Principal Bench at New Delhi 21st February 2019 and the said transfer petition was allowed vide order dated 13th March, 2019 granting liberty to the Operational Creditor to withdraw its Application from NCLT Allahabad as NCLT Allahabad has no territorial Jurisdiction and to file the same before NCLT, New Delhi.
- i. The Applicants also stated that during the pendency of the proceedings in the NCLT Allahabad the Corporate Debtor initiated arbitration proceedings before an Arbitrator appointed by the Corporate Debtor. The Operational Creditor appeared before the Sole Arbitrator and apprised him about the pendency of the proceedings before the NCLT, Bench but the Arbitrator ignored the said fact.
- j. The Applicant further stated that with regards to the biased nature of the sole Arbitrator the Operational Creditor filed a petition under Section 14 of the Arbitration and Conciliation Act,

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1996 before the District court in Gautam Budh Nagar bearing Arbitration Petition No. 14/2019, wherein, the Ld. District Judge vide order dated 18th March 2019 issued notice and summon for the records of the Sole Arbitrator. In spite of being aware of the fact that the Arbitration Petition is being pending before the Civil Court, the Arbitrator has sent various orders to the Operational Creditor in an illegal manner.

- k. The applicant have provided with the following documents on record to prove the claims:
- i. Copy of License Deed dated 7th July 2015 executed between the parties.
 - ii. Copy of Excel worksheets from the year 2016 till date, illustrating the amounts due to be paid by the Corporate Debtor.
 - iii. Copy of legal notice dated 11th April 2018 issued to the Corporate Debtor.
 - iv. Copy of the reply to the legal notice filed by the Corporate Debtor.
 - v. Copy of the termination notice dated 4th July 2018 issued by the Operational Creditor.
 - vi. Copy of the Demand Notice dated 27th July, 2018 sent to the respondent corporate debtor.

4. The corporate debtor has filed its reply cum objections and the averments of the corporate debtor in the reply are stated in brief as below:-

- a. The respondent corporate debtor submits that the Operational Creditor has suppressed the material fact that an arbitration award dated 27.04.2019 against the Operational Creditor has been passed, wherein they had been directed to pay Rs. 34,63,512/- in favour of the Respondent.
- b. The respondent corporate debtor submits that there has been a continuous act of commission and omissions leading to serious deficiencies in the services rendered by the Operational Creditor between 2017-18 which in result leads to the violation of the terms and conditions of the License Deed.

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- c. The respondent corporate debtor submits that they had issued notice dated 04.10.2018 to the Operational Creditor regarding the violations of the terms of the license deed committed by them.
- d. The respondent Corporate Debtor submits that the license deed dated 07.07.2015 executed between the parties would make it evident that the same was executed by Dr. Rashmi Gupta in her personal capacity and not on behalf of the Respondent i.e. Felix Healthcare Pvt. Ltd. And also, it is pertinent to state here that the demand notice was neither served to the executant of the License Deed at her address nor at the registered office of the Respondent.
- e. The Corporate Debtor further submits that the opening of the License Deed makes it evident that the same was executed by the Petitioner in his personal capacity and not in any manner as the authorized representative or signatory of M/s Avbodh Medicare LLP. And the party which executed the said license deed i.e. Dr. Rashmi Gupta in her capacity as CMD and the Chairperson of the Felix Hospital has not even been made party to the present petition. Hence, the said petition is not maintainable on the ground of Non-joinder of necessary party.
- f. The Corporate Debtor stated that the petitioner failed to engage the services of qualified and expert physiotherapist having MPT and BPT degree and in most of the occasions interns were engaged or those who just passed out.
- g. The Corporate Debtor further stated that the petitioner was required to depute qualified occupational therapist and speech therapist but the same were never employed which again leads to the violation of the terms of license deed.
- h. The Corporate Debtor also stated that the complaints made to them regarding the payment of salary done to the staff of the Operational Creditor i.e. on paper they were shown that they are being paid Rs. 15,000/- wherein, they were paid Rs. 10,000/-.

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- i. The Corporate Debtor stated that the Operational Creditor was regularly provided with the true accounts and payments made towards them.
 - j. The Corporate Debtor submits that the Operational Creditor was running parallel physiotherapy services.
 - k. The Corporate Debtor further stated that the Operational Creditor has claimed Rs 39,23,552/- along with the refund of Rs. 10Lakhs is not correct as the Operational Creditor owes Rs. 2,30,000/- towards maintenance charges and electricity bills arrears are to the tune of Rs. 7,12,616/-.
5. The Applicants has submitted their rejoinder in response to the reply submitted by the Corporate Debtor:-
- a. The operational creditors submit that the instant petition under Section 9 of the Code, 2016, clearly pre-dates the arbitration proceedings initiated between the parties. The applicants further submits that no reliance on the Arbitration Proceedings as well any arbitral award can be placed as the same is against the principle laid down under the Arbitration and Conciliation Act, 1996.
 - b. The corporate debtor submits that the issue of invocation of the arbitration clause for resolution of any dispute/ differences, between the parties is itself against the principle of equity.
 - c. The operational creditors submits that the corporate debtor itself does not honor the obligations of the said license deed dated 07.05.2015, as binding between the parties, thereby causing severe loss to the operational creditor. The operational creditors further submits that the corporate debtor did not raise the said objection of deficiency of services at any stage prior to filing of the reply and this is the first time that the corporate debtor had raised the objection.
 - d. The operational creditors submits that the only disputes exists between the parties long before issuance of demand notice by the operational creditor, but such disputes led to an arbitration proceeding which has now culminated in the passing of an arbitral



ward dated 27.04.2019 against the operational creditor. The operational creditor further submits that no disputes were pending between the parties before any court.

e. The operational creditors submits that there is an 'operational debt' and non-payment of the said debt was a ground for initiation of the CIRP under the IBC as the corporate debtor is evading and avoiding the payment of the dues and debt owned to the operational creditor.

6. We have heard the submission of the made by the Ld. Counsel of both the parties and perused the petition, reply, rejoinder and written submissions filed by both the parties. The relevant documents annexed with the respective submissions have been examined in detail.

7. Admittedly, license being dated 07.07.2015 was executed between Dr. Rashmi Gupta being CMD Chairperson of Felix Healthcare Pvt. Ltd. and Dr. Amar Singh i.e. applicant herein. As per the agreement, the physiotherapy services were to be provided by Dr. Amar Singh, whereas the space in hospital to be provided by respondent. As per agreement, the profits have to be shared by the applicant as well as the respondent. The relevant Para of the agreement dated 07.07.2015 qua rental sharing is as under:-

"SHARING

The sharing of the total billing/revenue/collection between the parties hereto will be as under:-

Sr. No.	Particulars	First Party	Second Party
1.	OPD Patient	50%	50%
2.	OPD	50%	50%
3.	PROSTHETICS	20%	80%
4.	DOMICILIARY	30%	70%
5.	Corporate Physiotherapy	40%	60%
6.	Sessions	40%	60%

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between the parties. This fact also found supported from the fact that there was “arbitration proceedings” pending between the parties and an award was also passed in Arbitration Case No.01/2018 on 27.04.2018 in favour of the applicant in those proceedings i.e. Felix Healthcare Pvt. Ltd. of Rs.34,63,512/- against Dr. Amar Singh. Though, the said Arbitration Award has been challenged, meaning, thereby that still arbitration proceedings are pending between both the parties. Apparently, the award was passed on 27.04.2018, whereas the present petition has been filed on behalf of the applicant on 28.01.2020. Hence, there was already dispute between the parties regarding not only the amount, but also services provided by Dr. Amar Singh.

9. On behalf of the respondent, it is being continuously stated that the employees engaged by the respondent were not fully paid and this fact is admitted by applicant in email dated 24.03.2022. Further, the time punctuality was not maintained in the Hospital for providing physiotherapy services to the patients, which adversely affected the goodwill of the respondent. Apparently, there was ‘pre-existing dispute’ between the parties and these disputes are not illusory in nature. Therefore, the present petition under Section 9 cannot be maintained.
10. In the given facts and circumstances, the citations referred by the Operational Creditor qua demand notice ***Mobilox Innovations (P) Ltd. V. Kirusa Software (P) Ltd., Alloysmin Industries vs. Raman Casting Pvt. Ltd., HSH Nordbank V. Goodwill Hospital and Research center limited, Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited and Another*** are not helpful in the present petition.

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In sequel of the above discussion, the present petition being devoid of any merit stands dismissed, with no order to cost.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(DR.BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

I.A./2543/ND/2022

IN

IB/403/ND/2020

In the matter of:

Avbodh Medicare LLP

Through Dr. Amar Singh

... Applicant

Versus

Felix Healthcare Private Limited

...Corporate Debtor

Order delivered on:06.09.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

The present application has been filed on behalf of the Operational Creditor seeking impleadment and amending the cause title of the present case by adding the name of Mr. Amar Singh as Operational Creditor.

2. In the present case it is being submitted that the Operational Creditor through its Authorised Representative/Partner entered into a License Agreement dated 07.07.2015 with the Corporate Debtor through its Director and CMD Dr. Rashmi Gupta and as per the said License Deed the Operational Creditor was required to set up a physiotherapy Centre in the area to be provided by the Corporate Debtor and the Applicant, herein, was to provide physiotherapy services to the patients of the Corporate Debtor.
3. Further it is submitted that parties had agreed that post signing of a License Deed, there would be another formal agreement between the parties to have a company in order to facilitate free functioning of services and these

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meetings were conducted by Mr. Dilip Chopra the then Marketing expert of the Corporate Debtor and Operational Creditor i.e. Applicant herein, however, the respondent always evaded the discussion and signing of the agreement. Thus the formal agreement between the parties with regard to Avboth Medicare LLP was never formally executed. In term of Section 8 of the Insolvency and Bankruptcy Code, 2016, the Demand Notice dated 27.07.2018 was issued on behalf of Dr. Amar Singh upon the respondent seeking payment of unpaid dues as per License Deed dated 07.07.2015. No reply to the Demand Notice was made within ten days. Accordingly, the Applicant was constrained to file the present application under Section 9 of Insolvency and Bankruptcy Code, 2016. The applicant by way of present application wants to amend the cause title thereby adding Mr. Amar Singh as an Applicant No. 2 as an abundant caution. It is further submitted that the same would not cause any prejudice to the Respondent.

4. Notice of the same was given. Ld. Counsel for the Respondent preferred not to file any reply in the same and stated that he will argue the same orally.
5. Arguments heard on this application of both the parties. Ld. Counsel for the Respondent opposed the same stating that the present application cannot be entertained at this juncture and the matter has reached the stage of arguments. Accordingly, he prayed for dismissal of the instant application. On perusal of the application, it is evident that the present petition has been filed on behalf of Avbodh Medicare LLP through Dr. Amar Singh. It is settled proposition of law that any partner/proprietor on behalf of the partnership firm or proprietorship firm can file any application under Section 9 of the Insolvency and Bankruptcy Code, 2016. Herein, the present application, instead of being filed on behalf of Dr. Amar Singh, has been filed on behalf of the Avbodh Medicare LLP and the present application seeks to implead Dr. Amar Singh at the arrays of the Applicants as Applicant No.2. Once Dr. Amar Singh is already representing the Avbodh Medicare LLP, then it would

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not cause any prejudice to the other party, if Dr. Amar Singh is also impleaded as Applicant No.2 in the present application.

6. Taking into consideration the above said facts, the present application stands allowed and Dr. Amar Singh is hereby arrayed as Applicant No.2. Memo of Parties is already filed alongwith the present application. The same is taken on record.

Accordingly, **the IA/2543/ND/2022** stands **allowed**, with no order to cost.

(DR.BINOD KUMAR SINHA)
MEMBER (T)

(DHARMINDER SINGH)
MEMBER (J)