

NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

202. C.P. (IB)/280(MB)2024

IN THE MATTER OF

Fresenius Medical Care India Private Limited

... Petitioner

Vs

Quality Care Dialysis Private Limited

... Respondent

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 06.12.2024

CORAM:

MS. REETA KOHLI

MS. MADHU SINHA

MEMBER (J)

MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner/ OC: Adv. Aviral Jain (VC)

For the Corporate Debtor: Adv. Priyanka V Pandit, Adv. Deepak Biswas (VC)

ORDER

1. The present Petition has been preferred by the Operational Creditor for the defaulted amount of Rs. 1,07,10,159/- as on 30.11.2023. After adding the interest @ 12%, the defaulted amount is stated to be Rs. 1,92,43,407/-. The date of default has been stated to be August 2021 and the default still continues as the Respondent/Corporate Debtor has failed to pay due amount. Despite the service of Demand Notice.
2. The Case of the OC is that the Operational Creditor had entered into an Equipment Lease Agreement (“ELA”) dated June 25, 2018 with the Corporate Debtor, wherein, the Operational Creditor had leased dialysis equipment to the Corporate Debtor on a fixed monthly lease fee basis. In addition to the ELA, Operational Creditor had also executed an even-dated Supply Agreement with the Corporate Debtor on June 25, 2018 for supply of minimum consumables every year meant to be utilized for operating the leased equipment.
3. ELA was executed in the first place with a mutual understanding that the Corporate Debtor shall place purchase orders for a minimum quantity of

consumables every year as per the Supply Agreement. In terms of Clause 3.1 of the ELA, Corporate Debtor in return for leasing the equipment from the Operational Creditor was under the obligation to pay a monthly lease fee. However, despite numerous reminders and diligent followups by the Operational Creditor, Corporate Debtor blatantly failed to abide by the terms and conditions of both the agreements i.e. ELA & S.A.

4. The Operational Creditor had sent an email on September 21, 2020 highlighting the lease fee overdues for an amount of INR 11,75,981/- (Rupees Eleven Lakhs Seventy-Five Thousand Nine Hundred and Eighty-One Only) and requested the Corporate Debtor to clear the overdues on or before September 22, 2020.
5. Thereafter, the Operational Creditor also sent an email on March 18, 2021 highlighting the delays in payment of outstanding lease fees. Subsequently, follow-up emails were sent on March 22, 2021; March 23, 2021; March 27, 2021 and March 30, 2021 for clearing the outstanding dues at the earliest.
6. Failing to receive any payment and/or response from Corporate Debtor, Operational Creditor again intimated the Corporate Debtor about the outstanding lease fee amount till October 21 and demanded payment of outstanding sum of INR 18,27,000/- (Rupees Eighteen Lakh Twenty-Seven Thousand Only) on immediate basis. In respect thereof, a reminder email too was sent on October 7, 2021 to the Corporate Debtor.
7. Having been left with no other option the Operational Creditor was constrained to issue a formal notice dated December 19, 2021 under Clause 10.1 (b) of the ELA and demanded rectification of breach within 30 (thirty) days from receipt of written notice, failing which, both the agreements shall be terminated.
8. A meeting was conducted on February 15, 2022 between the representatives and/or Directors of Operational ~ Creditor and Corporate Debtor, wherein, issues of overdue balance amount of INR 21.31 lakhs and irregular purchase of consumables were notified.

9. Pursuant to the meeting conducted on February 15, 2022, three follow-up emails were also sent on February 25, 2022; March 28, 2022; March 30, 2022 reminding the Corporate Debtor to clear the lease overdues amounting to INR 24,36,000/- (Twenty-Four Lakhs Thirty Six Thousand Only) but Corporate Debtor did not act on his promise. Copy of emails dated February 25, 2022; March 28, 2022; March 30, 2022 are part of the record.
10. Subsequently, Operational Creditor sent a notice dated September 7, 2022 to Mr. Suresh Vasu Chairman, Corporate Debtor informing him of its intention to terminate the two agreements if Corporate Debtor failed to clear the outstanding dues and comply with its respective obligations within 30 (thirty) days of receipt of the said notice.
11. It is pertinent to note that Operational Creditor in this notice also highlighted the issue of Corporate Debtor's failure to maintain a minimum quantity of consumables under the Supply Agreement. Despite sending consistent emails, reminders, follow-up emails and meetings with the Corporate Debtor. Till date, Operational Creditor has not received its outstanding dues and Corporate Debtor has continued to be in constant breach of its obligations.
12. Having no other option, Operational Creditor filed a petition bearing OMP(I)(Comm) No. 7 of 2023 under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Patiala House Court, New Delhi for seeking interim reliefs restraining the Corporate Debtor from creating any third-party rights in the leased equipment including an irrevocable bank guarantee for an amount of Rs. 1,87,10,532/- amongst other reliefs. During the pendency of the aforesaid petition, Corporate Debtor by way of an email dated March 9, 2023 itself admitted the amount due and agreed to arrange for making payment of the outstanding dues within next few months. First instalment was to be made in March, 2023, whereas, no such instalment of any sort was ever received by the Operational Creditor.
13. Having failed to receive any payments from the Corporate Debtor, Operational Creditor by way of two separate notices dated May 16, 2023 terminated the

agreements and also invoked the arbitration clauses under both ELA and Supply Agreement.

14. Corporate Debtor specifically admitted to a portion of the outstanding operational debt of Rs. 1,07,10,159/- (One Crore Seven Lakhs Ten Thousand One Hundred and Fifty Nine Only) (outstanding lease fees) by way of reply dated June 2, 2023; and by way of a separate reply dated June 2, 2023 denied any dues arising under the Supply Agreement.
15. The petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been disposed of vide order dated August 18, 2023.
16. The Corporate Debtor has defaulted in payment of Rs.1,92,43,407/- (Rupees One Crore Ninety Two Lakhs Forty Three Thousand Four Hundred and Seven Only) as on November 30, 2023, out of which, an operational debt of Rs.1,07,10,159/- (One Crore Seven Lakhs Ten Thousand One Hundred and Fifty Nine Only) stands to be duly admitted by the Corporate Debtor. There is no dispute in respect of the admitted operational debt of Rs.1,07,10,159/- (One Crore Seven Lakhs Ten Thousand One Hundred and Fifty Nine Only). Which is above the stipulated threshold under Section 6 of IBC.
17. It is pertinent to mention that the demand notice under Section 8 of the Code dated October 7, 2023 was sent via registered post. In addition, the Corporate Debtor was sent intimation on its registered email address mentioned in the MCA Master Data on www.mca.gov.in. The Corporate Debtor did not respond to demand notice.
18. On the other hand, the case of the Corporate Debtor is that the Respondent/CD admits the debt only towards outstanding lease fee as per ELA. The Corporate Debtor has denied any other claims or dues arising under the Supply Agreement dated 25.06.2018 with the Operational Creditor.
19. In view of the reply filed by the Respondent/Corporate Debtor and also in view of the communication dated 02.06.2023 having been sent by the Respondent, in response to the notice of termination of Equipment Lease Agreement and invocation of arbitration wherein the Corporate Debtor has admitted the facts

stating that last three years have been very turbulent and since the onset of Covid-19 when everything was shut down, few of their hospitals were sealed for over two months, which resulted in reduced treatment or zero income. In addition, it was also stated that HDFC Bank had also reduced their OD limit which in turn reduced their working Capital by one crore causing a huge burden on their cash flow resulting in increased vendors outstanding and payables. It was further stated that the CD was committed to honour all its financial obligations including that of the Banks and Financial Institutions. The Corporate Debtor requested for an extension of a helping hand from the Petitioner.

20. It deserves to be emphasized that though in this communication a request for restructuring was proposed but nothing of the kinds have been done by the Corporate Debtor. Keeping in view of the fact that there is a debt due towards the Corporate Debtor and there is a default of the due debt.

21. The Corporate Debtor has admitted the said stated default, thus we left with no other option but to admit the Corporate Debtor into CIRP by passing the following:-

ORDER

A. The above Company Petition No. (IB) 280 of 2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Quality Care Dialysis Private Limited.**

B. Since the Operational Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench hereby appoints **Ms. Sapna Pankaj Chourasia**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00943/2020-2021/13033, having Email id sapna.chourasia@gmail.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) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim

Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

- 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 or 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

K. Accordingly, the C.P.(IB) 280 of 2024 is **admitted**.

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

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
REETA KOHLI
Member (Judicial)

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