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

CP(IB)/108/CHE/2021

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

In the matter of ***Medall Healthcare Private Limited***

M/s Pranav Labs
Represented by its Partner Mr. Srinivasulu Sandireddy
D.No.1-1478, Rudrampet,
Ananthapur, Andhra Pradesh - 515004

... *Operational Creditor*

-Vs-

M/s Medall Healthcare Private Limited
191, Poonamallee High Road, Kilpauk
Chennai - 600010

... *Corporate Debtor*

Order Pronounced on 02nd May 2022

CORAM

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : R.V. Yajura Devi, Advocate

For Corporate Debtor : A.K Mylsamy & Associates LLP

ORDER

***Per:* ANIL KUMAR B, MEMBER (TECHNICAL)**

Under adjudication is an Application filed by **M/s Pranav Labs,** (hereinafter referred to as **"Operational Creditor"**) under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, 'I&B Code, 2016) r/w Rule 6 of the Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 against **Medall Healthcare Private Limited** (hereinafter referred to as **"Corporate Debtor"**) to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a Partnership Firm represented by its partner Mr. Srinivasulu Sandi Reddy. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 24.10.1994 bearing CIN : U85110TN1994PTC029023, under the Companies Act, 1956 and the Registered Office Address of the Corporate Debtor as per the Application is stated to be situated at 191, Poonamallee High Road, Kilpauk, Chennai – 600 010, Tamil Nadu. From Part-III of the Application, it is seen that the Operational Creditor has proposed one Mr. Venkataraman Subramanian (IBBI/IPA-002/IP-N01068/2020-2021/13433) to be appointed as the Interim Resolution Professional.

3. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.3,16,96,440/- (Principal sum is Rs. 2,36,11,644 and Interest amount @ 24% is Rs.80,84,796) which is due and payable by the Corporate Debtor. Part-V of the Application discloses the details of the documents

filed by the Operational Creditor, in order to prove its 'operational debt' and the list of documents which filed along with the Application are as follows;

a) Copy of email sent by Corporate Debtor to the Operational Creditor containing invoices prepared by the Corporate Debtor,
b) Workings for Computation of default,
c) Copy of the mail correspondences wherein debit notes were issued by the Operational Creditor to Corporate Debtor,
d) Copy of bank statement from May 2019 to March 2021,
e) Copy of letter sent by the Operational Creditor to the Corporate Debtor dt. 17.01.2020,
f) Copy of letter sent by the Corporate Debtor to the Operational Creditor dt. 17.03.2020,
g) Copy of letter sent by the Operational Creditor to the Corporate Debtor dt. 05.05.2020,
h) Copy of letter sent by the Operational Creditor to the Corporate Debtor dt. 27.07.2020,
i) Copy of letter sent by the Corporate Debtor to the Operational Creditor dt. 29.03.2021,
j) Copy of letter sent by the Corporate Debtor to the Operational Creditor dt. 05.04.2021,
k) Copy of Franchise Agreement dt. 17.12.2015
l) Copy of Supplementary Agreement dt. 01.10.2018

4. Learned Counsel for the Operational Creditor submitted that the Operational Creditor has rendered services to the Corporate Debtor upon entering into a franchise agreement dated

17.12.2015, setting up and operating the cluster of healthcare centres and collection centres in the trade name of the Corporate Debtor, which is in the business of providing healthcare service and related know-how, systems and technical expertise in relation to commissioning, administering and operating the clinical laboratory diagnostic facilities.

5. Learned Counsel for the Operational Creditor submitted that, the Operational Creditor has issued a Demand Notice dated 25.03.2021 as stipulated under section 8 of IBC 2016 to the Corporate Debtor and a reply received from the Corporate Debtor on 05.04.2021.

6. Learned Counsel for the Operational Creditor submitted that the as per the franchise agreement the Operational Creditor provides services to the government patients and prepares and submits respective invoices to the Corporate Debtor. Thereafter, the Corporate Debtor uploads the said invoices to the online portal for Government approval and upon the approval of the invoices by the Government prepares a reconciliation statement and shares these documents with the Operational Creditor after thorough scrutiny and applicable deductions. The copies of email correspondences from Corporate Debtor sharing the monthly reconciliation

statement containing the amount due payable to the Operational Creditor is annexed as Annexure II (xii).

7. Learned Counsel for the Operational Creditor submitted that as and when there was any dissatisfaction of service rendered by the petitioner the deductions are immediately carried out by the Respondent in the relevant month and the reconciliation statement would then be accepted by the petitioner taking note of all the deductions. Thereafter, the Respondent prepares the invoices and sends to the petitioner for signature, who then sends it back to the Corporate Debtor for honouring payments.

8. Learned Counsel for the Operational Creditor submitted that the Respondent had raised past disputes which does not relate to the invoices relied upon in this petition. The Corporate Debtor had issued instructions and directions with regard to rendering of services by the Operational Creditor and it was duly followed by the Operational Creditor. Under the said circumstances, the Learned Counsel for the Operational Creditor prayed for the initiation of CIRP against the Corporate Debtor.

9. The Learned Counsel for the Corporate Debtor filed a Counter Affidavit and submitted that at the outset, the Application as filed by the Operational Creditor is not maintainable, in view of the fact that there was no debt that has become due and payable by the Corporate Debtor.

10. The Learned Counsel for the Corporate Debtor has also submitted that the Corporate Debtor has raised multiple disputes with respect to the services rendered by the Operational Creditor even before the receipt of Demand Notice from the Operational Creditor. It was further submitted that the Operational Creditor suppressed various facts and documents containing reference to pre-existing disputes and that the Affidavit provided by the Operational Creditor under Section 9(3)(b) of the Code falsely stated that there was no notice given by the Corporate Debtor relating to pre-existing disputes.

11. The Learned Counsel for the Operational Creditor has filed rejoinder and the Operational Creditor denies the allegations made by the Corporate Debtor in the counter.

12. Heard submissions made by both the parties and perused the documents placed on record. It is manifestly clear from the records that the arrangement between the Corporate Debtor and the Operational Creditor was that the Corporate Debtor would send a monthly reconciliation statement showing the amount payable considering appropriate penal deductions in respect of any service dispute, if any to the Operational Creditor and invoices were prepared based on the acceptance given by the Operational Creditor to the above said reconciliation statement. A reconciliation

statement shared between the parties for the month of December 2019 as placed in the application is reproduced below:

Statement of reconciliation for the month of Dec'19 between M/s.MEDALL Healthcare Pvt Ltd and SANDIREDDY SRINIVASULU		
Particulars	**Amount**	**Amount**
Revenue (No of Samples 22612 @ Rs.141)	Rs.3,158,292	
Total Revenue		Rs.3,158,292
Less : Private Revenue (Details Enclosed)		
Dec'19- MEDALL Share – Private Revenue	Rs.11,212	
Dec'19- MEDALL Share – LCC Revenue	Rs.0.00	
Dec'19- MEDALL Share – LTL Revenue	Rs.0.00	
		Rs.11,212
ADD: Std Test Pvt Revenue Share 5% refund for Dec'19		Rs.0.00
ADD: SASH refund for Dec'19		Rs.384
Less : Material Received from Vendors and other Deductions		
Dec'19- CAT 4	Rs.443,378	
Barcode Labels (26000*Rs.1.90)	Rs.49,202	
Printing & Stationery – Prescription pads (0Nos @ Rs.0.00)	Rs.0.00	
Printing & Stationery – Private Prescription pads (0Nos @ Rs.0.00)	Rs.0.00	
Printing & Stationery – CIR Books (0Nos @ Rs.0.00)	Rs.0.00	
Printing & Stationery – Batch Control Sheet (0Nos @ Rs.0.00)	Rs.0.00	
Ice Box (0Nos @ Rs.0.00)	Rs.0.00	
Sample Collection Boxes (0Nos @ Rs.0.00)	Rs.0.00	
Colour Coded Tray (0Nos @ Rs.0.00)	Rs.0.00	
Stock Received from DRC	Rs.0.00	
Rent and EB Deduction	Rs.0.00	
Total CAT 4		Rs.493,080
Net Revenue Share (Total Revenue – Total CAT 4)		Rs.2,683,885
Less: Penalty For Sample Prescription Mismatched		Rs.50,000
Less: Penalty for EQAS		Rs.0.00
Total Amount Payable to / by MEDALL		**Rs.2,633,885**

13. Further, it is seen that the disputes raised by the Corporate Debtor do not pertain to the invoices which are alleged to be in default in this application. Also, from the monthly reconciliation statement sent by the Corporate Debtor it is seen that penalties on dispute are deducted in the relevant month. Thus, taking into consideration the facts and circumstances of the case there is a "Debt" and "Default", we are of the view that the Petition filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has named the Insolvency Resolution Professional, this Tribunal appoints ***Mr.Venkataraman Subramanian*** with ***Reg.No. IBBI/IPA-002/IP-N01068/2020-2021/13433,*** *(e-mail Id: ipvenkataraman@gmail.com)* as the "Interim Resolution Professional" subject to the condition that no disciplinary

proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

14. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

15. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

16. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

17. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-***(Rupees One Lakh Only)* to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. Based on the above terms, 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 the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

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

Sudhir