

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

**Company Petition (IB) No. - 504(PB)/2023**

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

**IN THE MATTER OF:**

**M/s Prime Tower A Partnership Firm  
... Operational Creditor / Applicant**

**Vs.**

**M/s. G. V. Meditech Private Limited  
.... Corporate Debtor / Respondent**

**ORDER PRONOUNCED ON: 03.04.2024**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the OC : Adv. Saurabh Pandey and Adv. Shivam Kumar,  
Advocates

For the CD : Senior Adv. P. Nagesh, Adv. Sanjana Saddy, Adv. Lavam  
Tyagi, and Adv. Akshay Sharma

**ORDER**

1. This Application has been filed by M/s Prime Tower A Partnership Firm, **(the Applicant/Operational Creditor)** on 24.04.2023 before this Adjudicating Authority under Section 9 of the Insolvency and

Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (**Adjudicating Authority Rules**), for initiating the Corporate Insolvency Resolution Process (**CIRP**), declaring moratorium and for appointment of Interim Resolution Professional (**IRP**) for **M/s G. V. Meditech Private Limited, (the Respondent/Corporate Debtor)** on the ground that the Respondent has failed to pay the outstanding payment due to the Applicant of **INR 6,48,61,385/- (Rupees Six Crores, Forty-Eight Lacs, Sixty-One Thousand, Three Hundred and Eighty-Five only)** comprising of principal amount of INR 4,38,61,894/- (Rupees Four Crores, Thirty Eight Lacs, Sixty One thousand, Eight Hundred and Ninety Four only) dues till February 2023 and interest of INR 2,09,99,491 (Rupees Two Crores, Nine Lacs, Ninety Nine Thousand and Four Hundred and Ninety One only) calculated @ 24% p.a., till February 2023.

2. The Applicant M/s Prime Tower A Partnership Firm is a partnership concern which came into existence on 01.01.2010 and has constructed a commercial complex in the heart of the city Varanasi.
3. The Respondent, M/s G.V. Meditech Pvt. Ltd. is a company incorporated under the Companies Act, 1956 on 03.09.2002 with CIN No. U85110DL2002PTC116794 and having its registered office at 70-B Pocket-Egangotri Enclave Alaknanda, New Delhi, India, 110019. Therefore, this Adjudicating Authority has the jurisdiction to deal with this Application. The Respondent is engaged in providing medical and healthcare services.

#### **SUBMISSIONS BY THE APPLICANT**

4. Respondent is running hospital in the name and style of “Surya Hospital” since 2012.
5. The Respondent approached Applicant with the request to provide space on lease. A registered lease deed was executed on 15.08.2012 for a period of 9 years for monthly rent of INR 6,41,300/- payable every month. In case the payment of rent is delayed by more than 30 days

the lessee shall be liable to pay 24% annual interest for the rent overdue for period of such delay.

6. On 07.05.2013 an additional lease deed was again executed between the parties for the remaining portion of the commercial complex (which was lying vacant) for the remaining period of the first lease deed executed on 15.08.2012.
7. The rent as per the lease deed was to be enhanced after every three years at the rate of 15%.
8. The date of default is 01.04.2021. Further, as per Record of Financial Information in Form C furnished by Applicant to the National E-Governance Services Limited, the debt start date is 01.04.2021, principal amount overdue is INR 4,38,61,894/- and interest amount overdue is INR 2,09,99,491/-.
9. In 2021 -2022 various notices were sent by the Applicant to Respondent for payment of rent along with interest but there was no satisfactory reply by the corporate debtor. The Respondent assured the Applicant that it would reimburse the dues at the earliest and on this premise another lease deed was executed on 21.01.2022 which was for a period of only 12 months with effect from 17.08.2021 till 16.08.2022 for monthly rent of INR 13,90,000/- plus GST. The Respondent has further admitted the claim made by the Applicant and requested time till 31.12.2022 for vacating the premises.
10. The Applicant has served demand notice dated 13.03.2023 under section 8 of the Code, which was delivered on 17.03.2023 but till today no reply has been given by the corporate debtor to the demand notice.

#### **SUBMISSIONS BY RESPONDENT**

11. The Corporate Debtor (**CD**) was approached by the Petitioners when the Corporate Debtor was looking for a reliable space for setting up and operating its hospital. On the assurance of a long-term relation, the parties entered into a lease deed registered on 15.08.2012 for a period

- of 9 years for the monthly rent of INR 6,41,300/-. An interest free security deposit of INR 38,47,800/- was also paid by the Applicant.
12. Contrary to the provisions of the lease deed, the premises let out on a lease to the Applicant by the Respondent was a bare structure with a slab over it. Entire construction as per the needs was made by the CD including wiring, water line, sewerage line, walls, plastering, partition, windows, doors, etc. and the Respondent incurred huge expenses for the same. The bills pertaining to these expenses incurred by the Respondent were shown to the Applicant.
  13. Parties further entered into a lease deed for certain additional vacant portion of the demised premises on 07.05.2013 for a tenure of 8 years 3 months 15 days w.e.f. 01.05.2013 till 15.08.2021 i.e., the remaining portion of the demised premises for a monthly rent of INR 3,12,103/- for the additional portion leased out vide this additional lease deed.
  14. There was an understanding reached between the parties in December, 2021 that the Respondent would vacate the lease premise by December, 2022. However, the Applicant created undue pressure upon the Respondent and coerced Respondent into executing a fresh lease deed on 21.01.2022 for a period of 12 months w.e.f. 17.08.2021 till 16.08.2022 for a monthly rent INR 13,90,000/- plus GST payable in advance. That contrary to understanding reached between the parties in December 2021, the Applicant vide a shorter notice dated 05.08.2022 asked to vacate the lease premises and pay the dues and interest on rent on or before 17.08.2022.
  15. The Respondent / CD replied vide letter dated 13.08.2022 reiterating its position that Respondent would vacate by December 2022. Vide this letter the Respondent also expressed that it has incurred huge expenses upon construction and making improvements by the Respondent / CD upon the lease premises and thus the account shall be settled after determining the cost of improvements. The Respondent submits this claim of set off to be a pre-existing dispute and seeks dismissal of the Application *inter alia* on this ground.

16. The Applicant have suppressed from this Hon'ble Tribunal material facts including the fact that the Applicant instituted a suit against the CD u/s 23 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, wherein the Applicant inter alia, sought reliefs of eviction and claimed rent alleged to be due. The Hon'ble Rent Authority, Varanasi after perusing the record and hearing the submissions of the parties was pleased to dismiss the said suit vide order dated 12.01.2023 observing that the Petitioner had approached the court on the basis of wrong facts. This also constitutes a pre-existing dispute and the Respondent seeks dismissal of the Application *inter alia* on the ground of suppression of material facts.
17. Application is not maintainable under section 9 as the Operational Debt has not arisen and the Applicant does not even claim to have supplied any services whatsoever to the Respondent.
18. The Respondent's further submission is that the claim is barred under section 10A of the Code because as per Applicant's chart, amount to the tune of INR 13,03,599/- allegedly became due during the section 10A period. Further, the Applicant is claiming interest dues to the tune of INR 1,41,20,331/- for a period prior to the date of default.
19. The Applicant in the calculation chart annexed with the Demand Notice have sought a claim double and four times rent relying upon Section 23 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, which cannot be applied to this Hon'ble Tribunal.
20. Applicant has also failed to adjust security deposit to the tune of INR 47,84,109/- and thus Respondent is entitled to receive interest thereon for the period for which security deposit is wrongly held by the Applicant. The Application is not maintainable for the want of pecuniary jurisdiction. No interest is payable by the Respondent to the Applicant and thus claim of the Applicant after adjusting security deposit and deducting interest amount, would not touch the threshold of INR 1 crore.

21. Respondent further says that Demand Notice issued by the Applicant under section 8 of the Code is not compliant with the law, as the same is alleged to be in Form 3 however no invoice has been annexed thereto.

### **ANALYSIS & FINDING**

22. We have heard Ld. counsel for the Applicant and Ld. Senior counsel for the Respondent and perused the averments and relevant documents on record.
23. From perusal of the submissions, we found that so far as Lease Deeds executed from time to time between the parties, terms and conditions thereof have not been disputed.
24. The very first Lease Deed was executed on 15.08.2012, whereby the Applicant (the lessor) had let out premises as described (at page 175 of the Application) in the said Lease Deed (**Lease Premises**) on lease for period of 9 years i.e., till 15.08.2021 to the Respondent, (**the Lessee**). The monthly rent was fixed at INR 6,41,300/- subject to 15% enhancement upon the expiry of a term of three years.
25. Further, on 07.05.2013 another Lease Deed was executed between the parties for letting out an additional space to be included in the lease premises described (at page no. 221 of the Application) for period of Eight Years, Three Months and Fifteen days w.e.f. 01.05.2013 till 15.08.2021. Rent for the additional space let out in this indenture was fixed at INR 3,12,103/- subject to 15% enhancement upon the expiry of a term of three years.
26. Further on 21.01.2022, another lease deed has been executed between the parties for the period w.e.f. 17.08.2021 till 16.08.2022 for a monthly rent of INR 13,90,000/- plus GST.
27. With these undisputed factual findings, we will first determine whether the Respondent owes “Operational Debt” to the Applicant. Respondent has submitted that no “service” has been provided by the Applicant and thus there is no Operational Debt. On this we are inclined to discuss, observations made by the Hon’ble NCLAT in following cases:

**A. Jaipur Trade Expocentre Private Limited vs M/s Metro Jet Airways Training Private Limited Company Appeal (AT) (Insolvency) No. 423 of 2021**

17. Apart from definition as contained under Section 5(21), the 'operational debt' has not been explained in any other provisions of the Code. The definition under Section 5(21) uses the expression 'operational'. The expression 'services' used in Section 5(21) has also not been defined in the Code. When an expression used in statute is not defined, the Court has to explain the meaning of undefined expression in accordance with the well-established rules of statutory interpretation...

...

19. We have noted Clause 4 of the Agreement dealing with License Fee. Clause 4 (b) provides:

"4(b) In addition to the above, the LICENSEE shall pay all government taxes including but not limited to Service Tax, VAT, GST, Excise etc., over and above the License fee, which are or may become applicable in the future, in relation to the payments under this agreement."

**20. The above condition stipulates that Licensee shall pay all government taxes including but not limited to Service Tax, VAT, GST, Excise etc., over and above License Fee. The Agreement itself thus support payment of GST. The payment of GST is contemplated only for 'goods' and 'services' and the Clause 4 of the Agreement clearly indicates that when Licensee is to be taxed for GST, it being taxed for 'services'. The definition of 'services' given under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "2017 Act") in Section 2(102) is to the following effect:**

**"2(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged"**

...

**22. The Agreement dated 15.04.2017 is not with regard to any 'goods'. The Agreement dated 15.04.2017 has to read to mean that the Agreement between the parties was with regard to 'services' within the meaning of Section 5, sub-section (21) of the Code. Had the Agreement dated 15.04.2017 did not contemplate services, there was no occasion for making the Licensee liable to pay GST over and above the License Fee. The License Fee to be paid under the Agreement included Government Taxes like GST etc. The above Clause of Agreement, thus, throws considerable light on the nature of provision, which was provided by the Licensor by the Agreement.**

..  
24. The 'operating cost' as defined, is an expense incurred in the conduct of the principal activities of the enterprise. The 'operational debt' is also a debt which is incurred in the conduct of principal activities of the enterprise. In the present case, the Corporate Debtor has taken a licensed premises for running an Educational Institution. All cost incurred by the Corporate Debtor and cost which remained unpaid shall become a debt on the part of Operational Creditor. The payment of License Fee is an obligation on the Corporate Debtor under the Agreement dated 15.04.2017...

**25. The claim of the Operational Creditor for payment of License Fee is fully covered as 'claim' of the definition under Section 3, sub-section (6) and similarly liability or obligation in respect of claim becomes a debt on the part of the Corporate Debtor within the meaning of Section 3 (11), which defines debt in following words:**

*"(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt"*

32. Now, we come to the judgment relied by learned Counsel for the Respondent. The main judgment relied by learned Counsel for the Respondent is judgment of three Member Bench of this **Tribunal in Mr. M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors. (supra)**. In the above case the Corporate Debtor granted a license of industrial premises consisting of land measuring 1667 Sq. yards. The Corporate Debtor stopped making payment. A civil suit was also filed by the Corporate Debtor before the Civil Court. A Demand Notice under Section 8 was issued and Application under Section 9 was filed. The Adjudicating Authority admitted the Application against which order, the Appeal was filed by the suspended Director of the Corporate Debtor. This Tribunal took the view in the facts of the case that since the Lessor has filed the petition for the realization of enhanced lease rent from the lessee, the same does not come within the meaning of Section 5(21)...

...  
36. **The judgment of this Tribunal in Mr. M. Ravindranath Reddy's case does not consider the extent and expanse of the expression 'service' used in Section 5(21) of the Code. As noted above the Tribunal in the above case has relied on Section 14(2) of the Code for interpreting 'service', which was only a very restricted meaning of service. We are thus of the view that the judgment of this Tribunal in Mr. M. Ravindranath Reddy does not lay down the correct law.**

**B. M/s Smartworks Coworking Spaces Private Limited vs M/s Turbot HQ India Private Limited Company Appeal (AT) (Insolvency) No. 772 of 2022**, which reads as follows:

10. The above clause provides that client that is the Corporate Debtor can terminate agreement with 30 days notice after the lock in period whereas there are restriction on the services provided in the agreement. **The present is a case where in pursuance of the agreement, Corporate Debtor took the possession of the premises. When we look into the agreement, there is a number of services, site plan containing the various facilities which has to be provided by the service provider to the corporate debtor like meeting room, writing wall, work stations, etc.** The Corporate Debtor in pursuance of the agreement entered into premises on 01st October, 2018. On 04th June, 2019, Corporate Debtor issued an email to the Operational Creditor which is to the following effect:

...

14. In IBC, Section 3 of the Code is definition clauses. Section 3(6) defines “claim” in following words:

**“3(6). “Claim” means-**

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) **right to remedy for breach of contract under any law** for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”

15. Section 3(6)(b) of the code clearly provides a right to remedy for breach of contract is a claim. The debt is defined under Section 3(11) which is to the following effect:

**“3(11) “debt” means a liability or obligation in respect of a claim** which is due from any person and includes a financial debt and operational debt.”

16. As per agreement dated 17th August, 2018, Operational Creditor was entitled to receive payment of entire lock-in period during which Corporate Debtor was prohibited to terminate the agreement. The cancellation of agreement as contemplated in clause 1.4 noted above indicates that client can terminate the agreement with 30 days’ notice after the lock-in period. The lock-in period in the present case mentioned in the agreement is 36

months thus right to terminate the agreement by the Corporate Debtor can be exercised only after lock-in period. We have noticed the email dated 04th June, 2019 sent by the Corporate Debtor where it was corporate debtor who expressed their intention to terminate the Agreement with effect from 1st week of September, 2019. **When the Corporate Debtor terminated the agreement contrary to the agreement clause 1.4, the claim for breach of contract clearly arose in favour of the Appellant. We have noticed the definition of claim under Section 3(6) (b) according to which the claim of the Appellant against the Corporate Debtor arises due to breach of contract which is a claim within the meaning of IBC.** In section 9 Application, the Operational Creditor has in part-IV of the Application mentioned all details of transaction and details of operational debt giving details of correspondence between the parties and the details of the operational debt which accrued on account of pre-mature termination of the agreement by the Corporate Debtor.

In **Jaipur Trade (supra)**, we noted that since the Agreement envisage the payment of GST / Service Tax, transaction was perceived to be 'service' within the meaning of CGST Act. *Pari Materia* in the present case also lease deeds duly provide for payment of GST, which is evident from the following terms:

Lease Deed dated 15.08.2012 and 07.05.2013:

*10.2 Service Tax in respect of Lease rentals under this Lease Deed will be charged to-and borne by the Lessee, provided the Lessors issue a bill / Invoice containing the name, address and service tax registration number of the Lessors, description, value of taxable service and service tax payable.*

Lease Deed dated 20.01.2022:

*9.2. Goods and Service Tax, in respect of Lease rentals under this Lease Deed will be charged to and borne by the Lessee, provided the Lessors shall issue a B-to-B bill invoice containing the name, address and Goods and service tax registration number of the Lessor, description, value of taxable service and GST payable.*

Thus, lease transaction in the present case by the parties themselves have been deemed to be 'service' within the meaning of the CGST Act. Thus claim i.e., rental dues arising out of such transaction has to be read as 'debt' within the meaning of section 5(21) of the Code.

Further, In the **Smartworks (supra)**, various facilities were provided by the Applicant to the Respondent and the same have been perceived to qualify as “services”. *Pari Materia*, from perusal of terms of lease deed dated 15.08.2012, as quoted herein below, we find that the Applicant has provided various facilities under the Agreement to the Respondent and therefore, debt, if any (to be examined subsequently) qualifies as ‘Operational Debt’ and the Applicant is entitled to stand as Operational Creditor:

6. **REPAIRS TO DEMISED PREMISES**

*The Lessee agrees to undertake all day-to-day minor repairs within the Demised Premises. However, all major structural repairs, in the structure major expenses towards amenities provided, etc. shall be undertaken by Lessors at their own cost and expense, within a reasonable time. **In the event any major and/or structural repair is needed with regards the Demised Premises, the Lessee shall intimate the Lessors in writing of all major repairs to the Demised Premises that are to be carried out from time to time by the Lessors. In the event of a failure on the part of the Lessors to take the necessary action to undertake the said repairs within seven (7) days from the date of Intimation thereof by the Lessee, the Lessee shall have the right to conduct such repairs at its own cost and expense after giving notice to the Lessors and to adjust the amount spent on such repairs, together with interest thereon @ 24% per annum, from the Lease Rent payable to the Lessors.***

8. **PARKING**

***The lessor has provided basement parking rent free to the lessee but said parking space shall not be used for any other purpose. The lessor has retained one service room in parking for his own use.***

9. **SIGNAGE**

*The Lessors agrees to provide the suitable location for signage of the company in the Demised Premises and to maintain it within the demised premises.*

28. Hence, we of the view that Applicant has provided services to the Respondent against which if there is any default in payment as per the lease deed, the same would give rise to the ‘Operational Debt’.

29. So far as contention on section 10A is concerned, we find as per the undisputed record, the debt start date is 01.04.2021 which clearly falls beyond the period covered by section 10A i.e., 25.03.2020 to 25.03.2021. Even if INR 13,03,599/- as shown as balance in the chart at page 41 of the Application and claimed to be due for 267 days is deducted, the claim of principal debt for INR 4,38,61,285/- will not come down below the threshold of INR 1 crore.
30. Another issue that the Respondent has raised is that the Demand Notice is not compliant as the same is issued in Form 3 and no invoice is there. On this we are inclined to discuss the observation and ruling of the Hon'ble NCLAT in the following matter:

**A. Tajinder Pal Setia v. Kone Elevator India Pvt. Ltd. & Ors.  
Company Appeal (AT) (Insolvency) No. 1060 -1061 of 2023:**

***18. The Operational Creditor is at liberty to submit Demand Notice either in Form-3 or Form-4. When Notice is issued in Form-4, copy of the Invoice is required to be attached with the Notice. The Demand Notice issued by the Operational Creditor was in Form-3, hence, no infirmity can be found in the Demand Notice, if invoices were not attached. In the Application, which was filed under Section 9 Demand Notice dated 15.10.2018 clearly mentions that debt of 92,70,000/- is due and payable on the basis of supply, installation, testing and commission Agreement dated 05.02.2013. The Demand Notice further referred to letter dated 25.11.2015 addressed by the Corporate Debtor confirming the debt of Rs. 92,70,000/-payable by the Corporate Debtor. Thus, the basis of the Demand Notice was Supply Agreement and acknowledgement letter issued by the Corporate Debtor. No invoices were referred to in the Demand Notice. Hence, submission of the Appellant that Demand Notice should have been accompanied with the invoices cannot be accepted.***

31. In view of the above, we are of the opinion that if the demand notice in form 3 is accompanied by the document (lease deed) showing existence of transaction and rent payable then there is no requirement to also annex the invoice(s) with the said demand notice. In the present case, we see demand notice at page 63 of the Application is duly accompanied by Lease Deed dated 15.08.2012, 07.05.2013 and 21.01.2022. Each of

the said lease deed expressly mentions the lease amount payable every month by the Respondent to the Applicant. Lease Deed dated 15.08.2012 duly mentions under clause 3. *Rent*, that INR 6,41,300/- is payable in advance per month. Lease Deed dated 07.05.2013 also under clause 3. *Rent* fixes an additional monthly rent of INR 3,12,103/- for the additional premises let out. Both the lease deeds provide for enhancement of rent by 15% upon expiry of each term of three years. Further Lease Deed dated 21.01.2022 also under clause 3. *Rent* fixes a monthly rent of INR 13,90,000/-. We do not find any infirmity with the demand notice issued in Form 3 accompanied with the lease deed and not the invoices.

32. Next, we are inclined to examine that whether the Applicant as an Operational Creditor has been able to establish 'Operational Debt' and 'Default'.
33. We see that the Applicant has issued demand notice dated 13.03.2023 in Form 3 (page 65 of the Application), which is also shown to have been served upon the Respondent. Respondent did not reply to the Demand Notice nor is it a specific case of the Respondent that no demand notice was issued or served. The only contention Respondent has raised is with respect to the 'Form' which we have discussed to affirm that the Demand Notice issued in Form 3 does not carry any infirmities. Further Affidavit under section 9(3)(b) has been placed (page 35 of the Application) stating that Respondent has not given any specific notice relating to denial of the claim or disputed the unpaid operational debt.
34. Applicant has placed all lease deeds which duly contain terms on lease rentals payable by the Respondent to the Applicant as already noted in para 31 above. Further, the Applicant has attached Account Statements along with calculation chart, which has not been specifically disputed by the Respondent with any record in support of denial. Further, we take note of the letter dated 13.08.2022 of the Respondent. In the said letter, defence of the Respondent is based on some alleged 'understanding' between the parties, as per which Lessee

was allowed to vacate the premises only by December 2022. However, the understanding alleged does not find any mention in any record, and also the lease deed dated 21.01.2022 was valid only for the period from 17.08.2021 to 16.08.2022. From records we find that towards the end of this lease period, the Applicant on 18.08.2022 had issued a Legal Notice (page 247 of the Application) to the Respondent for vacation of premises by 16.08.2022 and payment of rent. Hence, we see that defence of alleged 'understanding' is only a moonshine defence.

35. Further as regards the contention of the Respondent raised vide letter dated 13.08.2022 that it is entitled to set off against alleged improvements, we see the allegation to be a bare statement without there being even a single record to show that Respondent has ever communicated the alleged improvements / bills to the Applicant-Operational Creditor for the purpose of set off. It is only for the first time vide letter dated 13.08.2022 after more than ten years of contractual lease period in force, the Respondent has raised the issue of improvement and set off for the first time. The letter seems to be fuelled by the only motive to create some moonshine dispute as there is no prior communication between the parties with respect to alleged improvement and set off.
36. Even otherwise on perusal of the lease deed, we see that lease deeds have expressly provided for '*Interior Alterations and Modifications*', whereby Lessee has been given liberty to carry out internal work/improvements suitable for their business purpose at its own cost and expense. The clause reads as follows:

#### *7. INTERIOR ALTERATIONS AND MODIFICATIONS*

*7.1. The Lessee shall be at the liberty, to make such internal partitions and/or put up cupboards, repair or modify false ceilings, railings, mirrors and other fixtures and fittings as may be required from time to time, or be considered necessary for the purposes of its administrative and hospital and health care business requirements, without any such prior written permission from the Lessors. The Lessee will also be permitted to Install Air conditioning systems (in the front, rear or sides of the Building, if required or wherever. indicated by the Lessors for that particular*

purpose), carry out other interior decoration work by erecting wooden counters, partitions or cabins, storage facilities, blinds, electrical/ communication / systems cabling and other fittings, fixtures and paraphernalia for the better use of the Demised Premises; etc. without causing any damage to the structure of the Demised Premises as per the requirements of the Lessee and subject to prior written intimation to Lessor.

7.2. The lessee is permitted to out source hospital canteen business to third party and provide cooking utensil furniture and fixture at its own cost: Hospital canteen shall be within the building space so demised to the lessee.

7.3. The Lessors hereby authorise the Lessee to Install or fix all such fixtures deemed necessary by the Lessee to construct one additional patient lift ramp and bath rooms and including installations like hospital bed, operation equipment, technological health care, pathology machines etc. beside lights, fans, carpets, curtains, partitions, cabins, computers, word processors, fax, telephones, office equipment, telephone exchange and other fittings, including but not limited to items like chairs, tables; modular partitions, air conditioning equipment, generator, UPS, EPABX, VSATS, water heaters, fixtures and paraphernalia for the better use of the Demised Premises for its business as for its business as the, Lessee may think, fit from time to time **entirely at the cost and expense of the Lessee** and subject to prior written Intimation to Lessor. However, the lessee may put temporary only after prior written permission of lessor to the said effect.

Provided that on expiry or sooner determination of the Lease the Lessee shall remove the Interiors plants equipments fitting fixtures and other Installation brought and put by them and thereafter shall handover the demised premises' building as it was on the date of delivery of possession.

37. We see that Respondent has not pleaded that there are no dues payable by the Respondent to the Applicant and thus we are of the view that debt and default (more particularly above threshold of INR 1 crore) is an admitted case. As regards the existence of Pre-existing dispute which the Respondent has made its best effort to make, we are of the firm view that these alleged pre-existing disputes are only moonshine as alleged understanding on vacation of premises and improvements are contrary to the records.
38. As regards the claim of security deposits for sum of INR 47,84,109/- are concerned, we see that the lease deed provides as follows:

Lease Deed dated 15.08.2012:

4. SECURITY DEPOSIT

*i. The Lessee has for the execution of this Lease Deed deposited with the Lessors, a sum of **Rs. 38,47,800/-** (Rupees Thirty-Eight Lac Forty-Seven Thousand Eight Hundred Only) as interest free deposit/ advance (as per detailed in schedule of payment) against 6 Months' Rent, for the due performance by the Lessee of the terms of this Lease Deed, the receipt whereof the Lessors hereby acknowledges. **The advance mentioned hereinabove, shall be on the expiry of this Lease, either by efflux of time or earlier determination thereof as provided in this Lease, shall be refunded forthwith to the Lessee vacating the Demised Premises and handing over possession thereof to the Lessor. It is clarified the refund shall be made by the Lessor after adjustment of rent due and compensation of damage, if any, caused to the demised premises.***

Lease Deed dated 07.05.2013:

4. SECURITY DEPOSIT:

*The Lessee has for the execution of this Lease Deed deposited with the Lessors, a sum of **Rs. 9,36,309.00** (Rupees Nine Lacs Thirty-Six Thousand Three Hundred Nine Only) as Interest free security deposit/advance (as per detailed in schedule of payment) against 3 Months' Rent, for the due performance by the Lessee of the terms of this Lease Deed, the receipt whereof the Lessor hereby acknowledges. **The advance mentioned, hereinabove, shall be on the expiry of this Lease, either by efflux of time or earlier determination thereof as provided in this Lease shall be refunded forthwith to the Lessee vacating the Demised Premises and handing over possession thereof to the Lessor. It is clarified the refund shall be made by the Lessor after adjustment of rent due and compensation of damage, if any, caused to the demised premises.***

We note the fact that the security deposit was adjustable against the dues payable and/ or damages to the lease premises if any caused. However, we also find that the claim amount of INR 6,48,61,385/- even after deducting security deposit of INR 47,84,109/- would remain well above threshold of INR 1 crore. We also note that the Applicant has failed to mention the aforesaid terms on security deposit.

39. Further as regards the claim of the Respondent on Inflated Debt is concerned, we see in the chart at page 41 of the Application, amount charged as lease rental post expiry of lease period i.e., from September 2022 up till March 2023, *prima facie* seems to be inflated, as balance in each month from January 2022 to July 2022 shows to be INR

14,99,141/-. While for August 2022, the balance figures up till 16.08.2022 (the date of expiry of lease) shows to be INR 7,74,813/- and for remaining part of month it shows to be 22,27,587/-. Further for the month of September 2022, the balance figures up till 16.09.2022 is INR 16,01,280/- while for the remaining part of the month it is INR 30,02,400/-. For the month of October, up till 16.10.2022 it is 15,49,627/- while for the remaining part of the month it is INR 45,55,176/-. Further, the balance figure for each month from November 2022 up till March 2023 has been shown to be INR 60,04,800/-, which seems to be about four times the rent charged until July 2022. We find it pertinent to note from the contention of the Applicant that perhaps these inflated rents have been charged on account of section 23 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021. However, even if such inflated part of lease rent along with INR 13,03,599/- which accrued in section 10A period as stated above are deducted from total claimed dues of INR 6,48,61,385/- payable by the Respondent, the debt payable remains well above the threshold of INR 1 crore.

40. It is contention of the Respondent that the Applicant has failed to disclose the dismissal of the suit filed under the Uttar Pradesh Regulation of Urban Premises Tenancy Act 2021, which constitutes pre-existing dispute. We note that the suit was dismissed vide order dated 12.01.2023 (at page 64 of the Reply) with the observation that the Applicant had approached the court based on wrong facts. Order dated 12.01.2023 by the Rent Controller Authority is extracted herein below:

*Date:- 12.01.2023*

*Papers presented*

*The parties present in person.*

*Heard the arguments of both sides. During the debate, it was brought to notice by the plaintiff that as per the notice sent by the plaintiff to the defendant on the termination of the occupancy period mentioned in the lease deed, the defendant in its reply notice has vacated the rented building/property after December, 2022 and the plaintiff will get the possession. It has been mentioned to get it done. It is clear from the scrutiny of the file that the suit in question has been filed by the plaintiff*

*on September 14, 2022 and the notice and response notice sent to the defendant have not been attached with the file, which shows that the plaintiff is approaching the court on the basis of wrong facts and wish to get the disposed of the case by misleading the authority. Therefore, the suit filed by the plaintiff under Section 23 is dismissed. In case of defendant not vacating the premises in question or does not execute a fresh tenancy agreement, the plaintiff can obtain reprieve by filing a fresh eviction suit.*

Sd/-  
12..01.23  
(GULAB CHANDRA)  
ADDITIONAL DISTRICT MAGISTRATE (CITY) /  
RENT AUTHORITY VARANASI.

From perusal of the order, we see that the Applicant was also given a liberty to file fresh eviction suit, if required and there is no dismissal on merits. Therefore, there is nothing in such order dated 12.01.2023, which would constitute a valid pre-existing dispute to the amount claimed and therefore, we are inclined to reject such contention.

41. We thus find that there is admitted 'Operational Debt' above INR 1 crore which is payable by the Respondent to the Applicant.
42. For the reasons mentioned above we are inclined to admit this Application.
43. In view of the above findings, we are satisfied that the present application fulfils the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -

- a. The Application bearing no. **C.P.(IB)-504(PB)/2023** filed under section 9 of the Insolvency and Bankruptcy Code 2016 for initiation of 'Corporate Insolvency Resolution Process' is **ADMITTED**.
- b. We declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code 2016. The necessary consequences of imposing the moratorium shall follow.
- c. The Applicant has not proposed the name of the Interim Resolution Professional. Section 9 of the Insolvency and Bankruptcy Code 2016 does not make it mandatory for the

Operational Creditor to propose the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority appoints **Mr. Saurab Sharma** having registration number IBBI/IPA-001/IP-P-02550/2021-2022/13951 contact: 7428006867, and email id: sk04sharma@gmail.com as an Interim Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by the IBBI.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, **Mr. Saurab Sharma** is appointed as IRP.

- d. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section 9 of the Code. The expression immediately means within three days from the date of appointment as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. During the CIRP period, the management of the Corporate Debtor shall vest in the Interim Resolution Professional (IRP)/ Resolution Professional (ROP) as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order.
- f. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Adjudicating Authority hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- g. The IRP or the RP as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of INR 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- i. In terms of the Insolvency and Bankruptcy Code 2016, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- j. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

**Sd/-**  
**RAMALINGAM SUDHAKAR**  
**PRESIDENT**

**Sd/-**  
**AVINASH K. SRIVASTAVA**  
**MEMBER (TECHNICAL)**