

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

C.P (IB) No.1642/KB/2018

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

Dr. Arpan Chaudhuri, residing at P 782/C, Block A, Lake Town, Kolkata-700089.

... Operational Creditor

Versus

In the matter of:

M/s Future Speciality Medicare Private Limited, having registered office at 44A, S.P. Mukherjee Road, Kolkata-700026.

...Corporate Debtor

Date of hearing :04/05/2022

Order Pronounced on : 12/07/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

For Operational Creditor : Mr. Swapna Choubey, Adv.
Mr. Bratin Kumar Dey, Adv.

For Corporate Debtor : Mr. Jitendra Patnaik, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **Dr. Arpan Chaudhuri**, (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **M/s Future Speciality Medicare Private Limited**, CIN: U74999WB2010PTC153450, having its registered office at having registered office at 44A, S.P. Mukherjee Road, Kolkata-700026, (hereinafter referred as the Corporate Debtor).
3. It is submitted in the petition that the Operational Creditor was working with the Corporate Debtor and the total salary due to the Operational Creditor is Rs.17,01,440/- since 13.01.2018, which is as per the letter of appointment dated 01.02.2016 issued by the Chief Executive Officer Corporate Debtor along with interest @ 18% per annum, which is amounting to Rs.65,440/-
4. It is submitted that the Operational Creditor was appointed as full time Director- Critical Care by the Chief Executive Officer, M/s Future Speciality Medicare Private Limited by an engagement letter dated 01.02.2016 with a condition to pay Rs. 3,00,000/- Photocopy of the letter of appointment is annexed as Exhibit-A.

5. It is submitted that while discharging his duties as a full time Director= Clinical Care in Baroma Sirona Hospital, the applicant acted honestly, diligently and in a lawful manner and the undersigned has not committed any misconduct in any manner. There is no lack of integrity on his part and also there is no fault on his part and/or negligence in discharging his official duties. The Operational Creditor has performed his duties as a Director faithfully and maintained devotion to duty in an appropriate and lawful manner.

6. It is submitted that on being in duty, the applicant was mentally harassed by the Board of FSMPL and for that it is the Operational Creditor, who had to beg apology for sending mail against such harassment. Finding no other way, the Operational Creditor took decision to send his resignation to the authority. Photocopy of such resignation letter is annexed as Exhibit.B.

7. It is submitted that after accepting the resignation, the Operational Creditor was imputed with purported and mala fide allegations, which are baseless and the Operational Creditor sent his reply in that regard. Photo copy of the show cause and its reply are annexed as Exhibit-C.

8. It is submitted that the undersigned lastly received his salary on 26.12.2017, but not in entirety. But, unfortunately the salary since 1st December, 2017 to 12th January, 2018 was not paid to the undersigned without any rhymes and reason.

9. It is submitted that owing to over time, it was agreed by and between the Operational Creditor and hospital authority that the Operational Creditor would receive an additional amount to the tune of Rs.40,000/- per month for his over duty since October, 2016, which he received for the month October, 2017 and November, 2017. But thereafter with the best reason known to the

hospital authority, they failed to meet the terms of employment and neglected to pay such additional salary of Rs.40,000/- per month, which ultimately accrued to the tune of Rs.4,80,000/- Photocopy of the Bank Statement showing such payment is annexed as Exhibit-D.

10. It is submitted that although the Corporate Debtor accepted the resignation of the Operational Creditor, the Corporate Debtor failed to provide the two months' notice period and thereby they are liable to pay 60 days' salary to the tune of Rs.6,80,000/-

11. It is submitted that the Operational Creditor also sent a Demand Notice to all the Directors in March, 2018 (Exhibit-E).

12. It is submitted that the Corporate Debtor is in default of a sum of Rs. 17,01,440/- inclusive of an interest @ 18% per annum, which is payable from the date of acceptance of registration.

13. The Operational Creditor has placed on record the following documents in support of its claim, which are as under:-

- i. Photocopy of the said letter of appointment.
- ii. Photocopy of such resignation letter.
- iii. Photocopy of the show cause and its reply.
- iv. Photocopy of the Bank Statement showing such payment.
- v. Photocopy of such demand letters.

14. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

15. **In reply to the petition**, the Corporate Debtor filed an affidavit of through it authorised person namely Mr. Rupankar Sadhu. It is submitted that the instant application is not maintainable in law and/or facts. It is submitted that the said application is filed with an intention to take revenge

against the Board of Directors of the Corporate Debtor.

16. It is submitted that the application filed by the Operational Creditor as a pre-emptive measure to ward off / defend himself from any criminal or civil complaint/ case which the Corporate Debtor may file against the Operational Creditor.

17. It is submitted that since the claim is disputed, the purported demand notice as served by the Operational Creditor is bad. Since the demand notice, which is the base of the Application is bad.

18. It is submitted that the Operational Creditor has not served a copy of the petition to the Corporate Debtor. The affidavit of service, if any filed by the Operational Creditor is forged with intent to proceed in the matter ex-parte. The Operational Creditor has not approached this Adjudicating Authority with clean hands and for this the application must be dismissed with exemplary cost.

19. It is submitted that the Operational Creditor was engaged by the Corporate Debtor in its Baroma Sirona Hospital located at Panskura, East Medinipur, West Bengal under the designation of Director Critical Care. Effective date of the appointment of the Operational Creditor was 1st February, 2016 and his appointment was for a period of three years which was renewable for further variable period subject to appropriate review overall performance.

20. It is submitted that under the terms of appointment for which a letter of appointment dated 1st February, 2016 was issued, the applicant shall be paid professional fee of Rs. 3 lakh per month less statutory deduction as per prevailing government policy.

21. It is further submitted that as per termination clause being clause no. 8 of the letter of appointment dated 1st February, 2016 which is annexed to the application at page no. 11 to 14 and marked as Exhibit 'A', the applicant may resign from the service by giving 60 days' notice to the corporate debtor. At the same time, it has also been provided that the service of the applicant can be terminated without assigning any reason whatsoever by giving 60 days' notice or 60 days pay in lieu. Further it is also specifically mentioned that in the event of any specific instance of medical negligence, the said matter shall be placed before the Medical Disciplinary Committee, to be constituted by the hospital and the decision will be final and binding; and may cause ground for termination of service. As such to resign, the Applicant had to give 60 days' notice. In absence of such 60 days notice the applicant is liable to pay 60 days pay in lieu thereof. Whereas, the applicant through electronic mail dated 12th January, 2018 at 11.30 PM tendered his resignation with effect from 13th January, 2018, the next day without giving mandatory 60 days notice. The said email along with the resignation letter dated 12th January, 2018 is annexed as Exhibit 'B'.

22. It is submitted that after tendering his resignation, the applicant vide his email dated 12/01/2018 at 11.40 pm further informed that he will be servicing the notice of 2 months as per the appointment letter and also informed that he will be performing normal duties during that period. However, he never performed his duties for which he is claiming pay for notice period of 2 months.

23. It is submitted that the Company vide mail dated 15/01/2018 intimated that the management will decide on the resignation of the Applicant and instructed not to attend any patient till then.

24. It is further submitted that subsequently, vide email dated 20/01/2019, the Company has intimated the applicant that his resignation with effect from 13/01/2018 has been accepted. Further, in the said mail the

Applicant was asked to show cause for his mischievous and illegal acts and conducts.

25. It is submitted that against such show cause, the applicant after 50 days vide his reply dated 12/03/2018 replied to the show cause. The said reply is false, fabricated and concocted for the purpose of litigation.

26. It is submitted that from 13/01/2018, the effective date of resignation the applicant has not attended the hospital. The applicant in his reply dated 12/03/2018 admitted that the show cause dated 20/01/2018 has been issued post acceptance of his resignation and when the employer employee relation between him and the hospital has ceased to exist. As such, there is no question of termination of his service by the Company. The Applicant further reiterated in his demand letter dated 15/03/2019 about acceptance of his resignation. Nowhere the Applicant stated that his service has been terminated.

27. It is submitted that the applicant is a general physician who has been engaged for specific job as mentioned under clause no. 5 of the letter of appointment 1st February, 2016. However, the applicant was found creating disturbance and disruption in the day to day service of the hospital, indulgence in the practice of rescheduling his OPD timings without any discussion and approval of the management, arbitrarily instructing the RMOs and other junior administrative staffs not to admit patients and developing a practice how not to admit the patients, alluring staff members to join other hospital/institutions, making unauthorized and unnecessary interference in the method and practice of treatment of other consultants, remaining absent without grant of leave, encouraging RMOs not to attend patients particularly in the pediatric department, inciting other consultants to go against the decision of the Board of Directors/Management damaging the reputation and working culture of the hospital, causing hindrance in running of the hospital,

rendering loss to the hospital and destroying the working culture at the hospital by abusing his position. The applicant also acted with dishonest intention in breach of trust to tender wrongful loss and damage to the hospital and the company. For this the applicant was show caused vide electronic mail dated 20th January, 2018 sent by Mr. Utpal Chakraborty, one of the directors of the corporate debtor while accepting the resignation of the applicant with effect from 13th January, 2018 as desired by the applicant.

28. The applicant for disruption of the business and to defame the hospital and its management and to render loss to the corporate debtor has vide his email dated November 8, 2017 created a false and fabricated story about the treatment of a 7 month old child in the hospital. To make it worse he has mailed to all the directors of the corporate debtor and also some of the doctors who are not related to the pediatric department about such false and fabricated incident.

29. It is stated that to ascertain the fact about such false incident of 7th November, 2017 for which the applicant has sent mail to all the directors and others on 8th November, 2017, the Board of Directors of the corporate debtor advised Dr. Vijay Kumar, a senior doctor and one of the directors of the corporate debtor to inquire into the matter. During the process of inquiry Dr. Vijay Kumar reviewed the patients note and drug chart, discussed with the treating consultant and have also consulted other pediatricians of repute on the matter. Dr. Vijay Kumar thoroughly reviewed the matter and concluded that there is no evidence of any clinical malpractice or abnormal/dangerous prescriptions, as alleged by the applicant. Dr. Vijay Kumar has also found out that the treatment has not resulted in any such complications or there was any adverse outcomes for the patient as alleged by the applicant.

30. **It is submitted that in the Rejoinder affidavit**, the Operational Creditor has submitted that the Corporate Debtor has tried to bring new issues and the Corporate Debtor has miserably failed to answer the issues raised in the petition, particularly the allegation as to why the Corporate

Debtor failed to pay salary to the Operational Creditor for a sum of Rs.17,01,440/- as per the letter of appointment dated 1st February, 2016 issued by the Chief Executive Engineer, **M/s Future Speciality Medicare Private Limited.**

31. The Operational Creditor has disputed and denied each and every allegation which have been made contrary to the records and reiterated the statements made in the petition.

32. It is submitted that before filing this petition, the Operational Creditor had written several letters as well as email requesting for the dues of the Operational Creditor but the Corporate Debtor has never raised any dispute nor made any reply to the demand for salary. The Corporate Debtor in spite of having admittedly received the demand notice, did not raise any dispute but raised the dispute only when the matter was fixed for ex parte.

33. It is submitted by the Operational Creditor that the letter of resignation was given on 12th January, 2018 and as per the letter of appointment, the Operational Creditor had to give 60 days notice, that means the Operational Creditor ought to have been allowed to work for further 60 days but the Corporate Debtor issued show cause on 20th January, 2018, where the resignation of the Operational Creditor was purportedly accepted.

34. It is submitted that after the acceptance of resignation, show cause notice could not have been issued, as such by implication, the Corporate Debtor ratified that his resignation was under consideration and that the Operational Creditor was entitled to get 60 days salary.

35. During the Course of arguments, the Ld. Counsel appearing for the Operational Creditor submitted that in terms of the facts mentioned in the reply affidavit, it is clear that the Operational Creditor was entitled to the relief claimed by the him in the petition and the Corporate Debtor has failed to pay the salary dues of Rs.6,80,000/-which the Corporate Debtor has failed to pay and committed a default. The total amount along with interest is stated

to be Rs.17,01,440/-.

36. Since the Operational Creditor has completed all the formalities required for filing a petition under section 9 of the IBC i.e. demand notice has been served which was duly received by the Corporate Debtor and no reply thereto was given by the Corporate Debtor.

37. On the other hand, the Ld. Counsel for the Corporate Debtor has submitted that the demand notice was not served. It is submitted that the affidavit under section 9 (3)(b) is, therefore, twisted by the Operational Creditor by that the "Corporate Debtor was served a notice demanding payment under Form-3 of the IBC,2016.

38. It is submitted that the Operational Creditor was reprimanded by an email dated 03/12/2017. It is submitted that by email dated 12.01.2018, the Operational Creditor was issued show cause notice as to why the action should not be taken against him for illegal activities which were brought to his notice from time to time but the Operational Creditor did not prefer any reply to the show cause notice but in the purported letter dated 12th March, 2018, the Operational Creditor is claiming to have replied to the said show cause. It is submitted that the reply was never received by the Corporate Debtor and no postal receipt or email proof has been filed.

39. It is submitted by the Ld. Counsel for the Operational Creditor that the Operational Creditor is claiming salary for Rs.17,01,440/- which is inclusive of 18% interest p.a.

40. It is submitted that in terms of the termination clause of the appointment letter, the service of the Operational Creditor could be terminated by giving 60 days notice or 60 days pay in lieu but in the instant case, the Operational Creditor has resigned, and he was not terminated.

41. As per the said letter of appointment, the appointee may resign from the service by giving 60 days notice to the company. In this matter, the

Operational Creditor had resigned by letter dated 12.01.2018, which was sent through email which stated that “I will be serving the notice period of 2 months as per my appointment letter with effect from 13.01.2018 and performing my normal duties during that period”.

42. In response to the said resignation letter of the Operational Creditor, an email dated 15.01.2018 was sent asking the Operational Creditor not to go to the hospital and attend any clinical work till the management decides on his resignation. The Operational Creditor was then issued a show cause notice by email dated 20/01/2018 within 7 days of his resignation. The Operational Creditor did not reply to the said show cause notice. It is submitted that by a purported letter dated 12th March, 2018 after two months of the show cause notice, the Operational Creditor claims to have replied to the said show cause notice but no reply is stated to have been received by the Corporate Debtor.

43. It is stated that the Operational Creditor intentionally did not reply to the show cause notice dated 20.01.2018 and did not report for duty and since the resignation of the Operational Creditor had been accepted, the employer, employee relationship ceased to exist. Ld.Counsel further submitted that the Corporate Debtor has a counter claim against the Operational Creditor because the Operational Creditor did not report for duty.

44. After hearing Ld.Counsel for the parties, it seems to be a case with strange facts, where the insolvent company did not pay the lawful dues of its Doctor who unfortunately had to approach this adjudicating Authority claiming his salary for two months along with interest.

45. During the Course of arguments, the Ld. Counsel for the Operational Creditor agreed to restrict his claim only to three months pay but even then the Corporate Debtor did not agree to pay even the 3 months salary of the Operational Creditor. From the facts of the case, it appears that the Operational Creditor who was working as Director Critical Care has been able

to prove its case, and the Corporate Debtor did not bother even to send reply to the demand notice or other letters written by the Operational Creditor . This shows the complete callousness and insensitivity on the part of the Corporate Debtor in dealing with its employees who deserve to have some soft corner by the management.

46. We, therefore, consider it a fit case for admission because the Corporate Debtor has failed to pay the dues of the employee who had to approach this Adjudicating Authority by way of a petition under section 9 of the Code.

47. We, therefore, pass the following orders:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.

- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Rajiv Kumar Agarwal, IRP** having Reg. No.**IBBI/IPA-001/IP-P00552/2017-2018/10982** email ID. rajiv@kvrassociates to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x) **Mr. Rajiv Kumar Agarwal**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

48.Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

49. List the matter on **24/08/2022** for filing of **Progress Report**.
50. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 12th day of July, 2022

PJ