

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/1117/2019

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. Ideas 21T Technology Services Private Limited***

M/s. M.V. Hospital for Diabetes Private Limited

No.4, West Mada Church Street,
Royapuram,
Chennai – 600 013

... Operational Creditor

-Vs-

M/s. Ideas 21T Technology Services Private Limited

8th Floor, RR Towers,
TVK Industrial Estate,
Guindy,
Chennai – 600 032

... Corporate Debtor

Order Pronounced on 10th March 2021

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : Ambili Menon, Advocate

For Corporate Debtor : N. Tamilarasu, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. The IBA/1117/2019 has been filed by **M/s. M.V. Hospital for Diabetes Private Limited** (*hereinafter referred to as "Operational Creditor"*) under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) seeking to initiate Corporate Insolvency Resolution Process Rules, 2016 (CIRP) against **M/s. Ideas 21T Technology Services Private Limited** (*hereinafter referred to as "Corporate Debtor"*).

2. A perusal of Part I of the Application shows that the Petitioner is a Private Limited Company. In relation to the Corporate Debtor, the particulars of the Corporate Debtor are given in Part – II from which it is seen that the Corporate Debtor is a Private Limited Company incorporated on 31.07.2012 bearing CIN: U72900TN2012PTC087019. The Registered office of the Corporate Debtor as per the Application is stated to be situated at 8th Floor, RR Towers, TVK Industrial Estate, Guindy, Chennai – 600 032.

3. In relation to Part III of the Application it discloses that the Operational Creditor has not proposed the name of any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the same. Part IV details the transaction between the Operational Creditor and the Corporate Debtor leading to the debt and default and the amount which is being

claimed is Rs.14,75,380/-. The date of default is being mentioned as from 22.09.2016 to 28.02.2019.

4. Part V in the prescribed Application discloses the documents based on which the claim is sought to be substantiated by the Operational Creditor as against the Corporate Debtor and the Operational Creditor has attached the cheques issued in favour of the Corporate Debtor, the emails exchanged between the parties, the legal notice issued by the Operational Creditor, the judgment and decree passed in O.S. No. 6412 of 2017 and other documents.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is a Hospital of International repute and has been in the forefront of treatment of diabetes and is doing the services for the past 60 years. It was submitted that the Operational Creditor was using a software called "PALASH" since 2008 and as the management decided to upgrade the software to match the growing needs, the Operational Creditor had issued an advertisement in the newspaper on 04.03.2012 calling for the Hospital Management Software and implementation services from Chennai region. The Corporate Debtor responded to

the said advertisement and approached the Operational Creditor with their proposal by name "IDEAMED".

6. The Learned Counsel for the Operational Creditor submitted that based upon the proposal received from the Operational Creditor, a draft purchase order was placed and sent by the Operational Creditor on 17.12.2012 and based upon the same, the Operational Creditor has paid 10% of the total amount and thereafter they entered into an agreement on 18.12.2012. It was submitted that the estimated completion period for the said project was 6 to 9 months. It was submitted that on examination of the progress of the Corporate Debtor's product, it was seen that the demos did not match the features of the existing program and this was brought to the notice of the Corporate Debtor and the Corporate Debtor has assured that they can give the results. Further, the Operational Creditor has paid a sum of Rs.3.5 Lakh as demanded by the Corporate Debtor for the services rendered by the Corporate Debtor.

7. It was submitted that there were numerous bugs and problems in the software provided by the Corporate Debtor and thereafter the Operational Creditor has paid another sum of Rs. 2 Lakh to the Corporate Debtor and inspite of making the payment

the Corporate Debtor has not implemented or executed the work undertaken by them. It was submitted that the Operational Creditor has paid a total sum of Rs.10.39 Lakh and since the Corporate Debtor has failed to provide service to the satisfaction of the Operational Creditor, the Operational Creditor has issued a legal notice on 22.09.2016 and called upon them to refund the amount of Rs.10.39 Lakh with interest at the rate of 18% and since there was no response from the Corporate Debtor, the Operational Creditor has filed a Civil Suit O.S. No. 6412 of 2017 on 01.09.2017 and the Civil Court has also passed a Decree in favour of the Operational Creditor by way of its order dated 28.02.2019 to repay the amount of Rs.10.39 Lakh with interest.

8. The Learned Counsel for the Operational Creditor submitted that the Demand Notice as stipulated under Section 8 of IBC, 2016 was sent to the Corporate Debtor on 17.07.2019 and the same was received by the Corporate Debtor on 22.07.2019 and in spite of receiving the Demand Notice, the Corporate Debtor has failed to reply nor repay the amount to the Operational Creditor. Hence, it is submitted that the present Application has been filed by the Operational Creditor under Section 9 of IBC, 2016.

9. The Respondent has filed its preliminary counter raising objection as to the maintainability of the present Application as filed by the Operational Creditor. It was submitted by the Learned Counsel for the Corporate Debtor that it was the Corporate Debtor who has offered software services to the Operational Creditor and as such the Petitioner does not qualify to be an Operational Creditor as defined under Section 5(20) and 5(21) of IBC, 2016. Further, it was submitted that the Civil Suit as filed by the Operational Creditor was an *ex parte* decree passed on 28.02.2019 and the Respondent has preferred a petition to set aside the *ex parte* decree dated 28.02.2019 along with condone delay application before the Hon'ble XV Additional City Civil Court. Hence, it was submitted by the Learned Counsel for the Corporate Debtor that the present Application as filed by the Petitioner is liable to be dismissed.

10. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. Before going into the merits of the case, from the documents filed and the arguments advanced by the Learned Counsel for the parties, it is pertinent to decide under the provisions of IBC, 2016 on the issue as to whether the Petitioner qualifies to be an Operational Creditor in relation to the Corporate

Debtor. In order to better address the issues, the following definitions under IBC, 2016 is required to be taking into consideration;

Sec. 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;

Sec. 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;

Sec. 3 (12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1[paid] by the debtor or the corporate debtor, as the case may be;

Sec. 5 (20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

Sec. 5 (21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

11. It is not in dispute and the Learned Counsel for the Operational Creditor has also submitted during the course of arguments that it is the Corporate Debtor who has rendered service to the Operational Creditor and not *vice versa*. Under

these circumstances, it is to be noted that for a 'debt' to qualify as an 'Operational Debt', it has to undergo the following percolation process;

- (a) The amount in default should fall within the definition of 'claim' as defined under Section 3(6) of IBC, 2016.
- (b) Such a 'claim' should be capable of being treated as a 'debt' as defined under Section 3(11) of IBC, 2016.
- (c) And such 'debt' should fall within the confines of "Operational Debt" as defined under Section 5(21) of IBC, 2016.
- (d) And the said "Operational Debt" must be owed by the Corporate Debtor to the Creditor, who can then be considered as an Operational Creditor under Section 5(20) of IBC, 2016.

12. Thus, for a person to qualify as an Operational Creditor he must have supplied the goods or rendered service to the Corporate Debtor, which is not the proposition in the present case and on the other it is the Corporate Debtor who has supplied the service to the Operational Creditor of which it is claimed to be deficient. It is also relevant to point out here that, in the matter of **Jindal Steel and Power Limited –Vs- DCM International Limited**, similar issue fell for consideration before one of us while

sitting in New Delhi Bench – III, and the definition of “Operational Debt” and as to how a claim can be construed as an “Operational Debt” was discussed in detail and the ratio laid down in the said matter was upheld by the Hon’ble NCLAT. From the ratio of the said Judgment it is quite clear that only a supplier of goods or provider of services who has provided such goods or services can claim to be an “Operational Creditor” and not in the reverse (i.e.) a person who availed the services or received the goods from the Corporate Debtor and in relation to the said transaction a ‘claim’ had arisen.

13. Thus, in view of the reasons stated supra, we are of the considered view that the Applicant is not an Operational Creditor in relation to the Corporate Debtor and as such this Petition is liable to be dismissed and accordingly stands **dismissed**. No costs.

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond