



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.600/Chd/Hry/2019

Under Section 9 of IBC, 2016

In the matter of:

Kox Med and Lab Private Limited

LG-29, DLF South Point Mall
DLF Phase-V, Gurugram
Haryana-122002

...Petitioner-Operational Creditor

Versus

Alchemist Hospitals Limited

Near Shopping Complex,
Sector-21,
Panchkula, Haryana-134109

...Respondent-Corporate Debtor

Order delivered on: 14.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present: -

For the Petitioner-Operational Creditor : Mr. Jayesh Gupta, Advocate
For the Respondent-Corporate Debtor : Ms. Gunjan Rishi, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Kox Med and Lab Private Limited** (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **Alchemist Hospitals Limited** (for brevity 'Corporate Debtor' / 'Respondent').



2. The Corporate Debtor, namely, Alchemist Hospitals Limited, is a Company incorporated on 09.11.1994, under the provisions of the Companies Act, 1956 with CIN No.5U85110HR1994PLC033860 with its registered office at Near Shopping Complex Sector-21, Panchkula, Haryana-134109, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure II-F.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor supplied cardiac implants and disposables to Corporate Debtor as per the purchase order raised. The Corporate Debtor vide e-mail dated 23.04.2015, mentioned that as per its books of account, the applicant's account is showing a credit balance of Rs.18,48,879/- and sought information on the amount from the applicant. Even after the confirmation the said amount had not been paid.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 18,35,559/- (Rupees Eighteen Lakhs Thirty Five Thousand and Five Hundred Fifty Nine Only/-) is the Principal amount along with Rs.16,50,120/- (Sixteen Lakhs Fifty Thousands and One Hundred Twenty Rupees Only/-). The default occurred on 16.04.2015 i.e. when the last invoice was raised upon the Corporate Debtor. Copy of supply contract dated 27.12.2013 (Annexure II-B), invoices (Annexure II-C), working for computation of amount (Annexure II-E) and Statement of Bank Account (Annexure III) are attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 20.10.2018 and the same has been delivered to the corporate debtor vide registered post. The Corporate Debtor gave a reply dated 30.10.2018, to



the demand notice wherein, it was stated that no payment was due to be paid. The claim made by the petitioner is time-barred and beyond the statutory period of limitation. There was no occasion of default in any unpaid operational debt. The material supplied was of inferior quality. The commitments made were not complied. The petitioner failed to justify the quantum of invoices raised.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The corporate debtor has filed an objection vide diary No.01134/01 dated 24.03.2022, wherein it is stated that the respondent is not the Corporate Debtor of the petitioner. The petitioner was in a commercial transaction with the Alchemist Hospitals Limited which is a completely distinct legal entity. The petitioner has wrongly implicated the respondent against whom no cause of action lies. There was no contractual relationship between the parties. The Alchemist Hospitals Limited was demerged by way of an order dated 11.01.2016 by the Hon'ble High Court of Punjab and Haryana in Company Petition No.154/2015 connected with Company Petition No.71/2015. It is currently undergoing CIRP and a moratorium was declared therein vide order dated 31.01.2019, passed by National Company Law Tribunal, Chandigarh. A public announcement dated 02.02.2019 inviting submissions of claim from creditors is appended as Annexure R-4.

7. The rejoinder was filed vide Diary No.01134/5 dated 07.09.2022, wherein it is stated that the debt is attributable to the Corporate Debtor under the supply contract dated 27.12.2013 wherein the manufacturer undertook to provide relevant goods to Alchemist Hospitals Limited (Demerged Company) for the period between 16.10.2013 to 15.10.2014. The supply agreement was entered into with Alchemist Hospitals Limited, the only entity in existence at the time of entering into the said supply agreement was Corporate Debtor and not Alchemist Hospitals (Gurgaon) Private Limited. The petitioner was under impression that



goods were supplied to the Corporate Debtor. The parties entered into a second supply contract dated 12.01.2015 for the period 15.10.2014 to 14.10.2015 starting prior to the incorporation of the Gurgaon entity and there can be no contract with any entity which was not in existence at the time the contract was entered into. The terms of the supply contract were altered by virtue of the second supply contract, the Corporate Debtor failed to inform the petitioner of the same. There was non-disclosure of the demerger. The Petitioner demanded payment of outstanding dues from the Corporate Debtor, the contention regarding demerger or shift of liability was never raised. Therefore, the contractual relationship and commercial transactions were between Operational Creditor and Corporate Debtor. It is further submitted that CIRP/ liquidation proceedings of Alchemist Hospitals (Gurgaon) Private Limited have no bearing on the outstanding debt of the Operational Creditor. The short written submissions have been filed by the applicant vide Diary No.01134/7 dated 12.12.2022

8. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

9. The issues for consideration are:-

i. *Whether the present application is maintainable against the present Corporate Debtor?*

ii. *Whether the application is filed within limitation?*

i. **Whether the present application is maintainable against the present Corporate Debtor?**

It is seen from the records that the petitioner was in a commercial transaction with Alchemist Hospitals Limited which is a completely distinct legal entity from the party impleaded. The petitioner has wrongly impleaded the respondent against whom no cause of action arises. There was no contractual



relationship between the parties. The Alchemist Hospitals Limited was demerged by way of an order dated 11.01.2016 by the Hon'ble High Court of Punjab and Haryana in Company Petition No.154/2015 connected with Company Petition No.71/2015. It is currently undergoing CIRP and a moratorium was declared therein vide order dated 31.01.2019, passed by National Company Law Tribunal, Chandigarh. Public announcement dated 02.02.2019 inviting submissions of claim from creditors. Even if the memo of parties is amended then also the petition is not maintainable because no simultaneous CIRP Proceedings can be initiated against the same corporate debtor. Reliance can be placed upon the decision of **Hon'ble National Company Law Tr in the case of Vrundavan Residency Pvt Ltd. v. Mars Remedies Pvt Ltd. IA No. 891/NCLT/AHM/2022 IN CP (IB) 300/NCLT/AHM/2020** wherein it was held that no simultaneous CIRP proceedings can be initiated against the same corporate debtor. The bench declined the initiation of CIRP Proceedings against the corporate debtor which was already admitted into CIRP. Thus, the petition under Section 9 of the Code is not maintainable against the respondent.

ii. Whether the application is filed within limitation?

The other issue for consideration is whether this application is filed within limitation. Therefore, the period of limitation would begin from the date of default 16.04.2015 i.e. when the last invoice was raised upon the Corporate Debtor. The corporate Debtor has allegedly confirmed the balance payment to be made to the Operational Creditor by email dated 23.04.2015. Even if the date of communication between the parties is taken as the date of default then also the present application is barred by statutory period of limitation as this application was filed vide Diary No. 995 on 27.02.2019 and was re-filed on 04.11.2019 vide Diary No. 6100. The statutory period for filing the petition for initiation of the CIRP in respect of the corporate debtor is three years. Reliance can be placed upon



the decision of the **Hon'ble Supreme Court in the case of B.K. Educational Services Private Limited v. Parag Gupta and Associates Civil Appeal No.23988 Of 2017 And 439/2018, 436/2018, 3137/2018, 4979/2018, 5819/2018, 7286/2018** wherein it was held that the limitation period for the application under the IBC shall start from the date of default. Therefore, if an application under the IBC is filed after three years from the date of default, the same shall not be accepted. Thus, the present petition is time-barred.

10. In the given facts and circumstances, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. Therefore, the claim of the petitioner is rejected and the petition stands dismissed, however, without any order as to the costs.

-sd-14.02.2023
(Subrata Kumar Dash)
Member (Technical)

-sd-14.02.2023
(Harnam Singh Thakur)
Member (Judicial)

February 14, 2023
SM/TB