



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-378/(ND)/2022

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

In the matter of:

M/s. Translumina Therapeutics LLP

Having its registered office at:
Ground Floor, Metro Tower, LSC MOR Land
New Rajinder Nagar, Delhi-110060

...Applicant/Operational Creditor

Versus

M/s. Medeor Hospital Limited

Having its registered office at:
B-33-34, Qutab Institutional Area
New Delhi-110016

...Respondent/Corporate Debtor



Coram:

**SHRI. BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

Counsel for Applicant: Mr. Rakesh Kumar

Counsel for Respondent: Mr. Saad Shervani

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 17.01.2023

1. This is an application filed by the Applicant M/s. Translumina Therapeutics LLP seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Medeor Hospital Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 3,99,63,829.55/- (Rupees Three Crores Ninety Nine Lakhs Sixty Three Thousand Eight Hundred Twenty Nine and Fifty Five Paisa). The details of transactions leading to the filing of



this application as averred by the Applicant/Operational Creditor are as follows:

- i. That the Operational Creditor is engaged in carrying on the business of manufacturing and supplying of medical, precisions and optical instruments.
- ii. That the Operational Creditor was supplying medical equipments to the Corporate Debtor since the year 2017. The Operational Creditor had running account with the Corporate Debtor since the year 2017.
- iii. That the Operational Creditor was supplying medical equipments to three units of the Corporate Debtor, namely, Manesar-Gurgaon; Qutab Institutional Area and Dwarka.
- iv. That in the year 2019, the Corporate Debtor started delaying the payments of the invoices raised by the Operational Creditor and huge amount of invoices piled up towards the pending payment.
- v. That the Operational Creditor was continuously following up with the Corporate Debtor for the recovery of its due and outstanding amount.



- vi. That the Corporate Debtor did not pay any heed to the continuous demand and requests of the Operational Creditor and did not pay the legitimate money of the Operational Creditor.
- vii. That the Corporate Debtor on 28.09.2020 issued an account confirmation letter to the Operational Creditor for an amount of Rs. 61,77,657/- (Rupees Sixty One Lacs Seventy Seven Thousand Six Hundred and Fifty Seven) from its Dwarka Unit and another account confirmation letter was issued to the Operational Creditor by the Corporate Debtor in February, 2020 for an amount of Rs. 56,91,549/- (Rupees Fifty Six Lacs Ninety One Thousand Five Hundred and Forty Nine) from its Manesar unit.
- viii. That due to the outstanding debt by the Corporate Debtor, the Operational Creditor issued a Demand Notice dated 01.04.2022. The said Demand Notice was delivered to the registered office of the Corporate Debtor on 04.04.2022. The Operational Creditor has not received any reply of the Demand Notice from the Corporate Debtor.



ix. That the Operational Creditor had earlier also filed the Petition under Section 9 of the IBC, 2016 against the same Corporate Debtor with respect to the same default of the debt, i.e., 1B-1072/ND/2020. The Operational Creditor choose to withdraw the said petition by recording the statement that due to the defect in the demand notice the Operational Creditor wishes to withdraw the said petition.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

i. That the Petition is not maintainable and is liable to be dismissed in limine as the same is in teeth of the settled position of law that a fresh Petition under Section 9 of IBC is barred when a previous Petition on the same cause of action is withdrawn without liberty to file fresh.

ii. That the Petition was filed on 25.04.2022, all Invoices which are dated prior to 25.04.2019 (beyond the three-year limitation period) are time



barred and hence, cannot be included in the alleged 'debt' as claimed in the Petition.

- iii. That bogus invoices were placed on record by the petitioner which are not countersigned and stamped by the petitioner and the same are forged and fabricated invoices.
- iv. That it is a settled position of law that unless there is an agreement between the parties with regard to the interest payable, no interest amount shall be considered as 'debt' as defined in the IBC. The Petitioner has on its own whims and fancies added an exorbitant interest amount of Rs 1,92,57,182.11 to the alleged debt.

3. The Counsel for the Operational Creditor has filed its written submissions stating that:

- i. That the previous petition was withdrawn by the Operational Creditor since the demand notice was defective. The Operational Creditor inadvertently missed to attach the copy of invoices with the demand notice. Apprehending that the petition may be



dismissed due to the technical defect, it was withdrawn.

- ii. That the Corporate Debtor has taken the stand that the 107 invoices amounting to an amount of Rs. 2,929,532.35/- have already been paid. The said invoices were only partly paid. The balances are still pending. The invoices were cleared on the FIFO basis.
- iii. That the Operational Creditor has rightly claimed the interest amount as it is the MSME unit and as per the provisions of the MSME Act, 2006 it is entitled to claim the interest at 36%. Moreover, the defaulted amount which is admitted through account confirmation letter is more than Rs. 1 crores. It does not make any difference with respect to the default of the Corporate Debtor.

4. We have heard the Ld. Counsels for the Operational Creditor and Corporate Debtor and perused the averments made in the application as well as the documents enclosed with the application.



5. The Corporate Debtor has contended that the present Application is not maintainable as an earlier application bearing number IB-1072/ND/2020 against the same Corporate Debtor with respect to the same default was withdrawn by the Applicant. However, on perusal of the order dated 28.02.2022 in IB-1072/ND/2020 passed by this Tribunal dismissing the application as withdrawn, it is seen that the application was withdrawn by the Applicant due to default in filing/issuance of demand notice. The said Application was withdrawn solely on technical grounds and was not decided on merits. Further, the Hon'ble National Company Law Appellate Tribunal in the matter of *R. Mangalam Vs. SPML Infra Ltd.*, wherein the petition filed under the provisions of the Insolvency and Bankruptcy Code, 2016 was dismissed because of defects held that:

“5. Be that as it may, Appellant cannot be allowed to face agony of being remediless. The remedy is available under law as the application has not been decided on merit. This Appellate Tribunal accordingly disposes of the appeal by observing that the appellant shall be at liberty to file fresh application under Section 7 of the I&B Code in



respect of the same cause of action and in the event of such application being filed within two weeks from the date of this order, the Adjudicating Authority would entertain the same and admit if it found fit and in conformity with legal requirements, uninfluenced by the impugned order. ”

Therefore, we are of the view that the present Application deserves an opportunity to be decided on merits.

- 6.** The second contention of the Corporate Debtor is that the present Application is barred by limitation. The present petition was filed on 25.04.2022 and the Corporate Debtor vide letter dated 28.09.2020 has confirmed outstanding balance of Rs. 61,77,657/- due towards the Application thereby giving a fresh lease of limitation in terms of Section 18 of the Limitation Act, 1963 and the judgement of Hon'ble Supreme Court in the case of *Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal & Anr Civil Appeal No. 323 of 2021* wherein it was held that: “Section 18 of the Limitation Act, which extends the period of limitation depending upon an acknowledgement of debt made in



writing and signed by the Corporate Debtor, applies to proceedings under the IBC”.

- 7.** The third contention of the Corporate Debtor is that the present Application has been filed on the basis of fabricated invoices. The said contention of the Respondent is devoid of merit as the Applicant has attached emails in support of the invoices raised establishing that the medical equipments were duly utilised by the Respondents.
- 8.** The last contention of the Respondent is that the Applicant is not entitled to claim any interest on outstanding dues. The total debt claimed by the Applicant is Rs. 3,99,63,829.55/- including interest of Rs 1,92,57,182.11. In this regard, we are of the view that even if the interest component of Rs. 1,92,57,182.11 is excluded from the debt amount, then also the present Application is well above the threshold limit u/s 4 of IBC, 2016.
- 9.** In the light of the above and in view of the fact that the Corporate Debtor has not raised any contention w.r.t



any pre-existing dispute between the parties and after giving careful consideration to the entire matter, hearing the arguments of the learned counsels for the Operational Creditor as well as the Corporate Debtor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this Tribunal admits this application and initiates CIRP on the Corporate Debtor with immediate effect.

10. The name of Insolvency Resolution Professional has not been proposed in the Application filed by the Operational Creditor. This Adjudicating Authority, hereby appoints Mr. Mahesh Kumar Mittal (Email – mkmittal14@rediffmail.com), Reg. No: IBBI/IPA-003/IP-N00300/2020-2021/13242 to act as Insolvency Resolution Professional from the panel of Insolvency Professionals (IPs) valid from the period 01.01.2023 to



30.06.2023 issued by IBBI in terms of Section 16(4) of the IBC, 2016. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

11. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the



moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (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 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 corporate debtor.*

14. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession,



clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the ‘Corporate Debtor’. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of his obligation, imposed



by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(Rahul Bhatnagar)
Member (Technical)

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Member (Judicial)