



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 90/KB/2023

***An application 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 DIPY ENTERPRISE

...OPERATIONAL CREDITOR

VERSUS

**M/S LIFELINE MEDICAL RESEARCH & CANCER INSTITUTE
[U74900WB2015PTC207741]**

... CORPORATE DEBTOR

Date of Pronouncement: 12th January 2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Surya Prasad Chattopadhyay, Adv.

Mr. Arjun Samanta, Adv.

Mr. Aditya Mondal, Adv.

O R D E R

Per: D. Arvind, Member (Technical)

- 1.** This Court is congregated through a blended mode.
- 2.** Heard. Ld. Counsel for the parties.
- 3.** This is an application preferred by DIPY ENTERPRISE (hereinafter referred as "Applicant", "Operational Creditor" or "OC") for



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initiating Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) of LIFELINE MEDICAL RESEARCH & CANCER INSTITUTE, (A unit of Akansha Medicare Pvt. Ltd.) (hereinafter referred as “Respondent”, “Corporate Debtor” or “CD”) under Section 9 of Insolvency and Bankruptcy Code, 2016.

Brief facts of the case in nutshell:

4. The instant Application has been preferred by the Operational Creditor under Section 9 of IBC against the Corporate Debtor who failed to pay due and payable operational debt, pursuant to supply of material to Corporate Debtor. The Operational Creditor has supplied medicines to the Corporate Debtor from time to time during the disputed period.
5. The Corporate Debtor had placed orders on Operational Creditor for supply of medicines by issuing “medicine slip” which bore the name of the patient along with the name of the attending doctor against the medicine sought to be purchased.
6. Based on such “purchase orders” in the form of “medicine slip” Operational Creditor has supplied medicines on credit basis out of its stock.
7. The Operational Creditor claims that it has invoiced and entrusted such medicines with the Corporate Debtor valued at Rs. 1,04,71,741/- (Rupee One crore four lakhs seventy-one thousand seven hundred forty-one only).
8. The receipt of such medicine was duly acknowledged by the Corporate Debtor from time to time by putting their signature/official stamp on the same.
9. It is claimed that the Corporate Debtor has raised claims/bills corresponding to the medicines supplied by the Operational



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Creditor with the Health Department, Government of West Bengal under the Swasthya Sathi Scheme and already received payment for the same but fraudulently has not paid the Operational Creditor the corresponding amount and hence this Application.

Submissions made by the Applicant:

- 10.** Ld. Counsel for the applicant submits that invoices for the supplies made to the Corporate Debtor are attached as part of the application from Page Nos. 68 to 129 as Annexure – B.
- 11.** It is submitted that statement of account as on 31.12.2021 is attached in Page Nos. 130 to 141 to the said application, as Annexure B1.
- 12.** Ld. Counsel for the applicant further submits that ledger account indicating total outstanding as on 11.03.2022 is in Page No. 143 and 144 of the application.
- 13.** According to him, the total outstanding principal amount is Rs. 1,04,71,741/- and interest at the rate of 18 per cent is Rs. 7,85,380/- and the total due as on the date of filing of application is Rs. 1,12,57,121/-.
- 14.** Ld. Counsel for the Applicant further submits that on 21.02.2022, the applicant issued a legal notice calling upon the Corporate Debtor to pay the said outstanding sum of money, but Corporate Debtor replied back through his advocate stating that the said outstanding is false and fictitious, without any basis.
- 15.** Ld. Counsel for the Applicant submits that on 18.05.2022 the Operational Creditor filed a commercial mediation for amicable settlement of dispute of non-payment of debt before the District Legal Services Authority (in short “DLSA”).



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- 16.** The said settlement was referred to mediation centre at the High Court at Calcutta and the same was disposed with Form – 3 Non-Starter Report giving the reason of failure to participate in the proceeding by Corporate Debtor, despite tendering their consent to participate in Mediation Process.
- 17.** The Corporate Debtor did not communicate with the Mediation Centre High Court at Calcutta even after receiving the final notice of submission and thus, the effort for amicable settlement failed and the debt is pending to be paid from February 2022.
- 18.** Copies of notice under Section 8 of IBC issued on 07.09.2022 is in Annexure – D along with proof of service.
- 19.** No reply was received to the said notice from the Corporate Debtor and therefore, the Corporate Debtor cannot claim pre-existing dispute to defend this application filed by the applicant. Hence, this application merits admission.
- 20.** We have noted that the Ld. counsel for the Respondent was present on 27th April, 2023 and 21st June, 2023 when the matter was posted on 21st June, 2023. It is submitted by the Ld. Counsel for the Corporate Debtor that a settlement proposal between the parties is in progress and therefore, the matter may be posted for hearing on 2nd August, 2023 for reporting settlement, if any. On 2nd August, 2023 due to paucity of time the matter could not be taken up for hearing, thereafter it was posted on 15 September 2023.
- 21.** On 15 September, 2023 none appears for the Corporate Debtor and therefore, last chance was given in the matter and the case was posted on 31st October, 2023. When the matter came on 31st October, 2023 none appeared on behalf of the Corporate Debtor



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and consequently one final last chance was given and the matter was posted again on 14.12.2023.

- 22.** On 14.12.2023, when the matter was again posted none appeared for the Corporate Debtor and consequently, we reserved it for order and decided to examine the case *ex parte*.

Analysis and Findings:

- 23.** We find that there is no pre-existing dispute in this matter except for the fact that both the parties agreed to mediation but the same failed due to non-participation and cooperation of Corporate Debtor. In the absence of reply affidavit by the Corporate Debtor we are unable to see any reason for refusal to pay the “Operational debt” due to the Applicant. The Corporate Debtor was given several chances to defend the claim of Operational Creditor, as mentioned in para 20 to 22 above.
- 24.** The Applicant has attached invoices for the month of February and March 2021, in the application annexed as pages 68 to 129, which are not related to the invoices claimed to be in default. As 128 invoices claimed to be in default are mentioned in the statement of due, attached in pages 130 to 141 to the application. As per the statement, it is the invoices from April 02, 2021 is claimed to be in default. Even the ledger attached in page 143 to the application starts from 2nd April, 2021 only. Therefore, Invoices mentioned in statement as well as in the ledger do not correspond to Invoices attached as due for payment.
- 25.** Section 8 notice issued by the Operational Creditor has not been replied by the Corporate Debtor though Operational Creditor has placed on record the proof of service.



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- 26.** Under the aforesaid facts and circumstances, we find that medicines have been supplied during 2021-22 for a value of Rs 1,04,71,741/- and the date of default claimed in the application is 21st February, 2022. We have noted from the ledger of Corporate Debtor maintained the Operational Creditor, one payment on 27.07.2021 has made been for Rs. 1,18,15,337/- which appears to have been made again certain invoices. Though, the Operational Creditor did not mention, for which of the invoices raised have been paid, it is obvious that payments have been made invoice-wise consequently Section 59 of the Contract Act, 1872 is applicable. At this juncture, it would be appropriate to go through Section 59 of the Contract Act, 1872, which is reproduced in verbatim as below:

Section 59: Application of payment where debt to be discharged is indicated. — *Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.*

- 27.** If Section 59 of the Contract Act applied, then it is the duty of the Operational Creditor to prove, against which Invoices payments have been made on 27.07.2021, so that Invoices due for payment can be ascertained without any ambiguity.
- 28.** We would infer that as per Regulation 7(2)(b)(ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 invoices demanding payment for the goods and services supplied to the corporate debtor is required to be attached and we find that the same has not been done in the instant case. We would infer that the



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paramount and operative requirement of Section 5(21) of I&B Code to substantiate an 'Operational Debt' is that the claim must bear nexus with the invoices attached as due for payment, whereas invoices attached are of February 2021 and March 2021, whereas the claim is made for invoices from April 2021. To fortify our view, we would rely upon the judgment rendered by the Hon'ble NCLAT in ***Manoj Stone Infra Pvt. Ltd. v. Versus Railsys Engineers Pvt. Ltd*** reported in **(2023) ibclaw.in 444 NCLAT**

“11. [...] Further the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 under Rule 5(1) provides that any operational creditor can issue a notice in relation to an operational debt either through a demand notice or copy of invoices. Also, an operational creditor who is seeking to claim an operational debt in a CIRP can rely either on a contract or on an invoice for the supply of goods and services with the corporate debtor under Regulation 7(2)(b)(i) and (ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Thus, all forms of contracts for the supply of goods or services between the operational creditor and the corporate debtor are included in this.”

(Emphasis Added)

- 29.** In terms of the view above, we would infer that the basis of date of default claimed in the application is vague and therefore, cannot be ascertained with the available documents and records placed before us.
- 30.** In terms of the foregoing discussions, we are of the considered opinion that this application is not maintainable and accordingly **dismiss** the same.



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- 31.** No Costs.
- 32. The Registry** is hereby directed to communicate this Order to the Parties by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- 33.** Further, the **Registry** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means.
- 34.** A certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on this, the 12th day of January, 2024.

NKS_LRA/ AR_Steno/ Bose, R. K. [LRA]