

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/138/2020 filed Under Section 9 of
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. Vasan Dental Hospitals Private Limited

M/s. Bharath Dental Lab
Rep. by its Proprietor
Mr. Shahul Hameed
No. 51/C, Perumal North Car Street,
Tirunelveli Junction, Tirunelveli

---Operational Creditor

V/s

M/s. Vasan Dental Hospitals Private Limited
(CIN: U85110TN2010PTC074635)
15A, 1st Cross Thillai Nagar Main Road,
Trichy-620018.

--Corporate Debtor

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

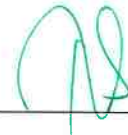
For the Petitioner/OC : *Shri. M.S. Viswanathan, Advocate*
Shri. Arvind Rajagopal, Advocate

For the Respondent/CD: *Shri. Sandeep Kumar Ambalavanan, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order pronounced on: 09.04.2021



Under Consideration is an Application filed by M/s. Bharath Dental Lab, represented by its Proprietor Mr. Shahul Hameed (in short, '**Petitioner/Operational Creditor**') against M/s. Vasan Dental Hospitals Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').

2. The Petitioner/Operational Creditor is a Proprietorship concern and obtained approval from Department of Industries and Commerce, Government of Tamilnadu for commencement of business from 12.10.2009, having its registered office at No.51/c, Perumal North Car Street, Tirunelveli Junction, Tirunelveli-627001.


3. The Learned Counsel for the Petitioner submitted that the Petitioner is engaged in the business of supplying of Dental Dentures and Ceramic Zirconiaprosthentic works as per the requirement of the customers. Between the period 21-02-2012 to 21-09-2017, the Petitioner supplied Dental Dentures and Ceramic



Zirconia prosthetic works worth Rs.54,99,881/- to the Respondent and raised invoices for the same (Page No.298 to 868 of the petition). It is further submitted that the Respondent made the payments to the Petitioner amounting to Rs.37,18,254/- out of total claim of Rs.54,99,881/-. The Petitioner claims that as on 17.12.2019, an amount of Rs.17,81,627/- was still due from the Respondent. In spite of repeated reminders, the Respondent failed to clear the outstanding debt.

4. It is further submitted that on 05.10.2017, a legal notice was issued to the Respondent claiming outstanding amount of Rs. 17,81,627/- and that if the Respondent failed to pay the debt within 7 days, a sum of Rs.18,00,926/- has to be paid along with interest at 12% per annum.

5. The learned counsel appearing for the Respondent/Corporate Debtor in reply to the above notice received on 10.10.2017 stated that all the payments were made on undisputed invoices and that the Respondent was not liable to effect payment for defective/damaged/broken products which were supplied.



Moreover, the Petitioner's Agent who visited Respondent's premises had expressed his inability to rectify the defective products and thereby the Respondent incurred huge loss. Hence, the respondent was not liable to make any payment to the applicant as there are disputes between parties.

6. The learned Counsel for the Petitioner/Operational Creditor in a rejoinder averred that in order to avoid lawful payments due to the Petitioner, the Respondent has built a new story in the name of supply of broken/damaged/defective products. It is further averred that despite demand, the respondent failed to repay the outstanding amount due. Hence, the Petitioner issued demand notice on 15.11.2019 under Section 8 of the IBC, 2016 as per Form-3 as prescribed under Rule 5 in the Insolvency and Bankruptcy (application to adjudicating authority) Rule, 2016 demanding unpaid operational debt of Rs.17,81,627/- and the notice was received by the Respondent on 18.11.2019. It is stated that the Respondent has failed to bring to the notice of the Petitioner about existence of dispute earlier. Copy of Bank Statement for the period



from 02.01.2012 to 17.12.2019 (Page No.869) to show that the Petitioner has not received payment of Rs.17,81,627/- from the Respondent is filed along with the petition. Moreover, the Respondent has not filed reply inspite of opportunity having been given and hence the right of filing reply was closed on 08.02.2021.

7. Upon hearing submissions of the counsel for the Petitioner and having perused the records, this Adjudicating Authority is of the view that the documents filed are not sufficient and debt has not been proved with adequate evidence. The Applicant has not filed any Purchase Order, Tax Invoices, Delivery Challan to prove the "operational debt". The Applicant at Page No.38 to 297 of the application has filed typed outstanding details, reflecting the amount due to applicant and also outstandings supplied to various branches of the Corporate Debtor. This is not invoice copy or delivery challan of the goods. Thereafter, we find continuous typed detail payment outstanding report prepared by applicant. Hence, on overall perusal of documents, there is no absolute clarity of pending invoice and outstanding 'debt'. Since the payments are



also, as admitted by the applicant made on adhoc basis, it is not possible to arrive at the exact alleged amount due and payable, in summary way. This may require trial before Civil Court to decide on the 'debt' and "default".

8. Hence, for want of adequate documentary evidence, this Application IBA/138/2020 is hereby **dismissed**. No order as to costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

KNP