

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT-III

IB-1532/ND/2019 filed under **Section 9**
of the IBC, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016

In The Matter Of Dalmia Healthcare Limited


RANSTAND INDIA PRIVATE LIMITED

....Operational Creditor

Versus

DALMIA HEALTHCARE LIMITED

....Corporate Debtor

Order delivered on 13th ~~January~~ ^{February}, 2020 

CORAM:

CH. MOHD. SHARIEF TARIQ
Member (Judicial)

*For Operational Creditor: Mr. Robin R David, Mr. V. V. Sivakumar, Munawwar
Naseem, Mr. Chitranshul A Sinha, Mr. Chetan Sagar,
Mr. Febin M Verghese, Mr, Dhiraj Philip, Ms. Sonali
Khanna (Advocates) through Dua Associates.*

For Corporate Debtor: Mr. R. K. Pillani (Advocate)

ORDER

1. Under consideration, is an Application IB-1532/ND/2019, filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") for Initiating Corporate Insolvency Resolution Process (hereinafter referred as "CIRP"), declaring moratorium and appointing Interim Resolution Professional.




2. The Ld. Counsel for the Applicant has submitted that the Operational Creditor is engaged in the business of providing manpower to the establishments pursuant to which on 16.03.2017, an Agreement was entered into between the Operational Creditor and the Corporate Debtor for a period of 12 months, commencing from 16.03.2017, for providing deputees to the Corporate Debtor who have a valid contract of employment with the Operational Creditor. The deputees were to work exclusively for the Corporate Debtor until the expiry of such contract with the condition that the Operational Creditor shall not directly or indirectly involve those deputees in any other employment until they are withdrawn from the Corporate Debtor. The terms and conditions for payment and performance of work are also provided in the said Agreement. More specifically, the details about the expenses, service fees are provided under Annexure-II, which provide for the recruitment fee @ 8.33%, absorption fee @ 8.33% monthly service fee – all payout @ 7% on total invoice value, project management cost as per actual and variable fee @3% or 4% on total invoice value. The parameters in relation to the achievements are also provided in percentage. The details of the prescription generated per MR per month and prescriptions honoured are given at page 38 of the typed set filed with the Petition, which also forms part of the Agreement. It is submitted by the Ld. Counsel for the Operational Creditor that in terms of the Agreement dated 16.03.2017, the manpower was deployed by the Corporate Debtor on the projects and pursuant to which five (5) invoices were raised with effect from 5th May, 2017 to 24th August, 2017. The Corporate Debtor has made part payment of Rs.6,66,378/-. However, the remaining amount of Rs.13,32,756/- was not paid. It is worthwhile to note that on 01.07.2017, the Operational Creditor and the Corporate Debtor have entered into a settlement wherein, the Corporate Debtor agreed to pay to the Operational Creditor an amount of Rs.19,99,139/- in six monthly installments of equivalent amount from 15.07.2017 onwards and against the outstanding amount of the Operational Creditor, the said Memorandum of Understanding (hereinafter referred as “MoU”) is an extension of the Agreement dated 16.03.2017. In the MoU dated 23.06.2017, it has been

mentioned that the MoU commits the Corporate Debtor to proceed in good faith to pay the outstanding amount to the Operational Creditor as prescribed in point 'A' of the MoU and to enter into mutual agreeable written agreement whereon the Corporate Debtor shall have a legal obligation to pay to the Operational Creditor as expressly stated herein. The details are given at 'A' about the total amount of Rs.19,99,139/- and an amount of equivalent instalment is detailed from (a) to (f). The MoU has been signed by the authorized signatories of both the parties and the copy of the MoU is placed on record.


3. Legal notice under Section 8 has been sent by the Operational Creditor on 11.01.2019, copy of which is placed at page 53 of the typed set filed with the Petition to which a reply dated 06.03.2019 was given by the Corporate Debtor which is placed at pages 61 to 68 of the typed set filed with the Petition. The Operational Creditor has also complied with Section 9(3)(b) by placing on record an affidavit which is at page 71 of the typed set filed with the Petition, wherein it is stated that the notice under Section 8 has been served on the Corporate Debtor to which reply has been given by raising frivolous and moonshine defence. It is also recorded that the arbitration clause has not been invoked by either of the parties till date. It has been categorically stated by the Operational Creditor that no suit has been pending in relation to the claim raised against the Corporate Debtor. The Operational Creditor has also placed on record the ledger statement, which discloses that the balance is Rs.16,69,153.07/-. The working sheet is placed at page 74 giving the same figure of the outstanding amount.

4. The Corporate Debtor has filed **reply** on 19.09.2019 denying the claim of the Operational Creditor by stating that the Application is not maintainable and the Agreement relied upon by the Operational Creditor do not create any binding contract and the present Agreement cannot be construed as legally



binding and was never executed between the parties. However, it is noted in the reply that the MoU dated 23.06.2017 was signed and undertaken by the Corporate Debtor in good faith, wherein it is clearly mentioned that the Operational Creditor will enter into a mutually agreed written agreement. However, no such agreement pursuant to the MOU dated 23.06.2017 has been entered into. Therefore, there was dispute with respect to the amount raised by the Operational Creditor. It is further contended in the reply that the service rendered by the Operational Creditor was not in accordance with the terms and conditions of the Agreement as the Operational Creditor was to get 384 prescriptions in the first month and so on for other months. However, there were only 70 prescriptions, which were generated by the Applicant in total, which is one of the core issues in not making payments by the Corporate Debtor. Based on this, it has been contended that the Operational Creditor fell short of the targeted figures in providing business to the Corporate Debtor and there arose a dispute as to principal amount as alleged in the invoices. Besides this, it is contended that clause 22 of the said Agreement provides for dispute resolution mechanism by way of arbitral proceedings. But, it is mentioned in the reply that as per the MoU dated 23.06.2017, the Corporate Debtor in good faith agreed for the payment of Rs.19,99,139/- and cleared the instalments for the months of July and August, 2017. However, subsequently the invoice for August, 2017 was raised by the Operational Creditor. Based on this, it has been prayed in the reply that the Petition be dismissed in limine with cost.


5. As seen from the MoU dated 23.06.2017, the Corporate Debtor has proceeded to make payments for the months of July and August and thereafter stopped the payments. The point raised by Ld. Counsel for the Corporate Debtor that a separate Agreement was to be entered into between the Operational Creditor and the Corporate Debtor in the light of the MoU dated 23.06.2017 is moonshine defence. In case, it was the intention of the parties, then the Corporate Debtor should have not proceeded to implement the terms



of the MoU by making payments for the months of July and August. It is noted that there are five (5) invoices in total, four (4) of them were raised with effect from 05.05.2017 to 14.05.2017 with respect to which an amount of Rs.19,99,139/- was recorded in the MoU dated 23.06.2017. Thereafter, a single invoice was raised on 24.08.2017 which involves an amount of Rs.6,676,207/- only.

6. In the circumstances, the defence that has been raised by the Corporate Debtor that there is genuine dispute is hereby rejected. It is further noted that the Corporate Debtor has made contradictory statements, at page 2 of the reply it is recorded that the agreement adduced with the instant application cannot be construed as legally binding and was never executed between the parties; whereas, it is admitted that MoU dated 23.06.2017 was signed by the Corporate Debtor and it undertook to pay in good faith to the Operational Creditor. But, the recital of the reply at page 5 clearly provides that as per the MoU dated 23.06.2017, the Corporate Debtor in good faith agreed for the payment of Rs.19,99,139/- and cleared the instalments for the months of July and August, 2017. The Ld. Counsel for the Corporate Debtor as a last leg of his arguments has submitted that the Agreement dated 16.03.2017 was signed by the Corporate Debtor and not by the Operational Creditor. However, it is pertinent to point out that Agreement dated 23.06.2017 has been signed by both the parties which is an extension of the HR Services Agreement signed on 16.03.2017 by the Corporate Debtor. The operational creditor has ratified the terms of the Agreement by signing the MoU. Therefore, the submissions made by the Ld. Counsel for the Corporate Debtor is not worth consideration.

7. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. Therefore, Application is **admitted** in terms of Section 9(5) of the IBC, 2016 and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.



8. The moratorium is declared which shall have effect from the date of this Order until the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as IRP. Therefore, this Bench based on the list provided by the IBBI appoints Mr. Manish Jain as an IRP subject to the condition that no disciplinary proceedings are pending against the IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's



management immediately. He is directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed. The details of IRP are as under:

Name: Mr. Manish Jain

Registration number: IBBI/IPA-001/IP-P01315/2018-2019/12008,

E-mail: jainmanishca13@gmail.com

Mobile No.: 9871525259

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the IBC, 2016.

12. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

13. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor with immediate effect.

14. The Order is dictated and pronounced in the open court in the presence of the Ld. Counsels for the Operational Creditor and the Corporate Debtor.


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)