

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

CP (IB) No.1053/KB/2019

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Modern Surgical, partnership form represented by its one of the partners Ram Swarup Lohia, having its office at 101/A, C.R. Avenue, Kolkata – 700073.

... Operational Creditor

Versus

OHIO Cardiology Associates Private Limited [U85110WB2006PTC108319], having registered office at 59, Ballygunge Circular Road, Unit – V, 7th Floor, Kolkata - 700019.

... Corporate Debtor

Date of hearing: 29.04.2022

Date of pronouncement: 05.05.2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via video conferencing):

For the Operational Creditor

: Mr. K.C. Garg, Advocate

Ms. Sunita Agarwal, Advocate

Mr. Md. Dilawar Khan, Advocate

Mr. Kamran Hussain, Advocate

For the Corporate Debtor

: Ms. Aditi Jhunjunwala, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This Court convened *via* video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Ramsarup Lohia, one of the partner of Modern Surgical (*'Operational Creditor'*), duly authorised *vide* letter dated 25 May, 2019¹, seeking to initiate Corporate Insolvency Resolution Process (*'CIRP'*) against OHIO Cardiology Associates Private Limited (*'Corporate Debtor'*).
3. The present petition was filed on 11 June, 2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹2,03,100/- (Rupees Two Lakh Three Thousand One Hundred only) along with interest calculated @18% from the date of default i.e., **22 October, 2016**.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.10,00,000/- (Rupees Ten Lakh only) with paid up Capital as Rs.1,00,000/- (Rupees One Lakh only).
5. ***Submission of the learned Counsel appearing on behalf of the Operational Creditor***
 - 5.1 The Operational Creditor is engaged in the business of selling medical instruments, O.T Equipments and Hospital furniture. Whereas, the Corporate Debtor is engaged in the business of providing medical services. The Corporate Debtor used to purchase several items, including equipments and furniture, from the Operational Creditor.²
 - 5.2 The Operational Creditor as per the purchase order from the Corporate Debtor had supplied the items on various occasions i.e., on 22 September, 2016, 04 October, 2016, 24 October, 2016, 07 November, 2016, 06 December, 2016, 19

¹ Page 13A of the Petition.

² Annexure – C of the Petition.

December, 2016, 09 February, 2017 and 23 February, 2017 and thereafter raised invoices against the items supplied.³

5.3 The Corporate Debtor had a running and continuous account with the Operational Creditor and regular payments were made by the Corporate Debtor. However, the Corporate Debtor failed to clear the invoices raised by the Operational Creditor after September, 2016.

5.4 Out of the total outstanding amount of Rs.1,41,389/-, the Corporate Debtor had only made a payment of Rs.22,313/- on 10 February, 2017 to the Operational Creditor, and assured to clear all the outstanding dues. Several reminders and request for payments were made by the Operational creditor to the Corporate Debtor.⁴

5.5 After receiving no response, the Operational Creditor sent a statutory notice dated 11 March, 2019 to the Corporate Debtor, under section 8 of the Code. The same was received by the Corporate Debtor on 13 March, 2019. Pursuant to the said notice, the Corporate Debtor issued a letter dated 10 April, 2019 to the Operational Creditor.

6. *Submissions of the learned Counsel appearing on behalf of the Corporate Debtor*

6.1 Out of friendly relation between Dr. Alok Roy, the Chairman of Medica Hospital Private Limited (*'Medica Hospital'*) and the director of the Corporate Debtor. Dr. Alok Roy proposed a plan to the director of the Corporate Debtor, Dr. Ashish Kumar Rakshit, to develop the business of the Corporate Debtor. Since, Dr. Ashish Kumar Rakshit is permanently settled in United States of America, he agreed to such proposal. Subsequently, a Franchisee Agreement (*'Franchisee Agreement'*) dated 26 July, 2016 was entered into between the parties. An Executive Board was also constituted with director of the Corporate Debtor, i.e., Dr. Ashish Kumar Rakshit as the Chairman.

³ Annexure – D of the Petition

⁴ Annexure – E of the Petition

- 6.2 Thereafter, an Operation and Management Agreement (***Management Agreement***) dated 29 July, 2016 was also entered into between the Corporate Debtor and Medica Hospitals. As per the agreement, Medica Hospital was assigned to carry out the commercial operation and management of the Corporate Debtor.
- 6.3 Medica Hospital had engaged various doctors, nurses, medical and paramedical staffs for the work relating to the Corporate Debtor, without the approval of the director of the Corporate Debtor, Dr. Ashish Kumar Rakshit. Various purchase orders were also issued by the Medica Hospital without obtaining proper and legal authorization from the director of the Corporate Debtor, Dr. Ashish Kumar Rakshit. Further, some of the items supplied by the Operational Creditor has been delivered to Medica Hospital
- 6.4 Further, the Operational Creditor has intentionally supplied sub-standard goods to the Corporate Debtor, and the same could not be used in Medica Hospital. The Operational Creditor along with Medica Hospital has defrauded the Corporate Debtor by supplying sub-standard goods. On various occasion the Corporate Debtor has requested the Operational Creditor to take back the items supplied, however, the same were never taken back.
- 6.5 All the invoices raised by the Operational Creditor are in the name of Ohio Heart Hospital and Medical Centre and all the purchase order were from Medica Hospital. The Operational Creditor has also deliberately suppressed the facts by not disclosing the existing dispute between the parties.
7. In rejoinder by the Operational Creditor, the Ld. Counsel submits that the items were delivered and bills were prepared as per the instructions given by the Corporate Debtor. Also, all the purchase orders were authorised and legally issued by the Corporate Debtor. Further, no disputes or objections were raised by the Corporate Debtor regarding the quality of items provided by the Operational Creditor.

Analysis and Findings

8. We have heard Ld. Counsel appearing on behalf of the Operational Creditor and Ld. Counsel appearing on behalf of the Corporate Debtor and perused the records.
9. Upon perusal of the purchase orders at page 18 – 27 of the Petition, it is noticed that the purchase orders were raised by Ohio Heart Hospital and Medical Centre, having the same address as mentioned in the challans issued by the Operational Creditor. Further, the website⁵ of the Ohio hospital clearly displays the line *i.e.*, ‘© 2017 All Rights Reserved Ohio Cardiology Pvt. Ltd.’. Hence, the contention raised by the Corporate Debtor with respect to disputes in the invoices does not sustain. The items were evidently delivered to the office address as mentioned in the purchase order and no purchase orders were raised by Medica Hospital.
10. With respect to the pre-existing disputes raised by the Corporate Debtor, it is pertinent to mention that none of the same were raised prior to the issuance of the statutory notice under section 8 of the Code. It was only after receiving the notice, the Corporate Debtor caught sight of the sub-standard goods/items rendered by the Operational Creditor. Hence, we are of the view that ‘***pre-existing dispute***’ is only spurious and do not really exist.
11. It is, accordingly, hereby ordered as follows:-
 - a. The application bearing *C.P. (IB) No. 1053/KB/2019* filed by Modern Surgical, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Ohio Cardiology Associates Private Limited, the Corporate Debtor, is ***admitted***.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order until this Adjudicating Authority approves the resolution plan under sub-section (1)

⁵ <https://www.ohiohospital.in/>

- of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Sumit Kumar Jain**, registration number **IBBI/IPA-001/IP-P-01725/2019-2020/12683**, email: **ipsumitjain@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated under sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of **₹1,00,000/- (Rupees One Lakh only)** with the IRP to meet initial expenses. These expenses are subject to approval by the Committee of Creditors (CoC), and shall be reimbursed to the Operational Creditor after they are approved by the CoC.

- i. In terms of section 7(5)(a) of the Code, the Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
 - j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
12. *CP (IB) No.1053/KB/2019* to come up on **25 July, 2022** for filing the progress report.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI** Digitally signed
by BALRAJ JOSHI
Date: 2022.05.05
18:22:01 +05'30'

Balraj Joshi
Member (Technical)

**Rajasekhar
V K** Digitally signed by
Rajasekhar V K
Date: 2022.05.05
17:23:46 +05'30'

Rajasekhar V.K.
Member (Judicial)

Order is pronounced on 05th day of May, 2022

SafuraA., LRA