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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.157/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B(AAA) Rules, 2016

In the matter of,

M/s.Meditek Systems
Through Mr.Sunil Bhayana,
S/o Krishan Kumar Bhayana,
Office at : 4/5, 2nd Floor, East Patel Nagar
New Delhi – 110 008

- Petitioner/Operational Creditor

Versus

M/s.Panacea Hospitals Pvt. Ltd
334, 3rd Stage, 4th Block,
Basaveshwara Nagar, Karnataka
Bangalore – 560 079.

- Respondent/Corporate Debtor

Date of Order: 17th October, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:


For the Petitioner : Ms.Prachi Johri
For the Respondent : Shri Sivaramakrishnan

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB) No.157/BB/2019 is filed by M/s.Meditek Systems (**Petitioner/Operational Creditor**) U/s 9 of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s.Panacea Hospitals Pvt. Ltd., (Respondent/Corporate Debtor)** on the




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ground that the Corporate Debtor committed a default in payment of Rs.41,83,564/- (Rupees Forty One Lakh Eighty Three Thousand Five Hundred and Sixty Four Only) along with interest @24% p.a till the date of actual payment to interest of Rs.27,79,802/- as on 20.02.2019.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- 1) M/s.Meditek Systems through Mr.Sunil Bhayana, (Petitioner/ Financial Creditor) a Company was incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4/5, 2nd Floor, East Patel Nagar, New Delhi – 110 008.
- 2) M/s.Panacea Hospitals Private Limited (Respondent/ Corporate Debtor) was incorporated on 01.11.2011 under the provisions of the Companies Act, 1956 and having registered address at: 334, 3rd Stage, 4th Block, Basaveshwara Nagar, Karnataka Bangalore – 560 079.
- 3) It is stated that even after service of the notice under Section 8 of the IBC on 28.01.2019, Dr.C.Jayanna of the Corporate Debtor had confirmed to Mr.Lovkesh Bhayana of the Operational Creditor that they would clear dues. This confirmation was given over phone by way of phone call made by Mr.Lovkesh Bhayana second week of March and first week of April and over text dated 14.03.2019. The Operational Creditor is in the business of supplying medical instruments and equipment including stents etc., to hospital and medical practitioners. In course of its business, the Operational Creditor supplied stents and other equipment to the Respondent and the invoices were raised for the same including name of patient and other details where the stents were used.
- 4) It is stated that the Operational Creditor maintained a running account where adjustments against part payment were made. The ledger of the Operational Creditor in respect of the Respondent shows that the last



payment were made by the Respondent on 13.02.2017. Hence, the present application under Section 9 of IBC, 2016 is within 3 years from the last payment and hence within limitation. The Operational Creditor got noticed dated 25.01.2019, from its advocate to the Respondent. However, no reply was received by the Operational Creditor. No dispute has ever been raised by the Respondent either. Even in reply to the present application, the Respondent has only raised the issue of limitation which is self-defeating given that the application is filed within 3 years from the last payment. The default occurred on each that the pending invoices were raised from 09.10.2015 to 08.11.2016 as per the bill wise details already attached. The present application is filed within 3 years from the last invoice in the running account. The default is a continuing one and is occurring every day that the payment remains outstanding and interest remains unpaid.

5) It is also stated that the Corporate Debtor has not filed its upto date balance sheet before the RoC/MCA to ascertain its current position. As per the information available with the Operational Creditor the hospital run by the Corporate Debtor is defunct. Last available Annual Returns in Form MGT-7 for FY 2016-17 filed by the Corporate Debtor. The Operational Creditor has filed its bank statement in compliance of Section (3)(c) and its affidavit in compliance of Section 9(3)(b). The Application is completed.

3. The Respondent has filed Statement of Preliminary Objection dated 01.08.2019, by inter alia contending, as follows:

- 1) It is alleged that the present Petition filed by the Petitioner is barred by law and thus not maintainable and the same be dismissed at this stage itself prior to admission.
- 2) It is alleged that the Petitioner is approaching this Tribunal without disclosing at any place in the petition that the alleged debt claimed by its stands barred by time, and thus the Petitioner as a whole



- requires to be dismissed. The Petitioner makes a passing reference to the fact that the Respondent has been paying the Petitioner from time to time without disclosing any details of such payment.
- 3) The admitted position as stated in the petition itself is that out of the 67 invoices that the Petitioner is claiming as outstanding, 52 invoices are beyond the period of limitation as on date of filing this statement of objections. As the present petition is not one for recovery of money, the mere filing of this Petition would not stop the clock of limitation. It is an admitted fact that the Petitioner has not instituted any civil suit for recovery of the alleged outstanding amount till date. The Petitioner, having slept over his rights till date, is now attempting to use this Tribunal to circumvent the well-established provisions of law.
- 4) It is stated that the Petitioner having slept his rights since 2016, when the last such allegedly invoice was issued, cannot be permitted to abuse the process of law by approaching this Tribunal. Therefore, that to the extent of the 52 invoices being time barred as on date of this Preliminary Statement of Objections, the same cannot be looked into by this Tribunal and the Petition ought to be dismissed for the relief being barred by law. As regards the remaining invoices, the Respondent states that even for those invoices, the Petition ought to be dismissed as law does not permit this Tribunal or any Court to partially reject a petition. It is the duty of the Petitioner to approach the courts with clean hands with only that relief that may be permissible under law and not include reliefs barred by law and taking advantage of this judicial process.
- 5) It is alleged that the Petitioner is further misleading the Tribunal by claiming interest at the rate of 24% p.a. This claim is laughable at its face value for multiple reasons. First, there is no mention of interest under any of the invoices provided by the Petitioner, and therefore claiming 24% is not warranted. Second, the present proceedings are



not recovery proceedings, for the Petitioner to make nay fancy claim before this Tribunal in the hopes of securing at least some of that amount. This Tribunal has been constituted and empowered to tackle the issue of insolvency in cases where debts are due and payable. In the absence of any agreement between the parties or the invoice reflecting the rate of 24% interest, there is no obligation upon the Respondent to pay any interest to the Petitioner under these proceedings. The Respondent has relied upon the following judgments in support of his case:

- *B.K.Educational Services (P) Ltd Vs. Parag Gupta and Associates, 2018 SCC Online SC 1921*
- *Kanthamma & ors. Vs.Ananda Kumar Reddy 7 Ors. RFA 1114/2016.*

4. Heard Ms. Prachi Johri, learned Counsel for Petitioner. We have carefully perused the pleadings of the parties and extant provisions of the Code and law on the issue.
5. The case was listed for admission on various dates viz. 03.05.2019, 29.05.2019, 20.06.2019, 10.07.2019, 18.07.2019, 01.08.2019, 14.08.2019, 29.08.2019, 19.09.2019, 24.09.2019 & 17.10.2019, it was adjourned on all these dates at the request of parties for one reasons or the other including for settlement of the issue. However, the Respondent is not able to resolve the issue in question despite affording ample opportunities for the same. Therefore, there is no other alternative for the Adjudicating Authority except to decide the case for admission as per merits.
6. Ms.Prachi Johri, learned Counsel for Petitioner, while pointing out various averments made in the Petition and Summary, as briefly stated supra, has further submitted that the debt and default in question are not in dispute, and the instant Company Petition is filed in accordance with law, and he has also suggested a qualified Resolution Professional, namely, Mr.K.N.Ravindra, with Regn.No. **IBBI/IPA-002/IP-N00559/2017-18/11702**, who has also filed written Consent in Form-2 dated 17.10.2019, by inter declaring that he is eligible to be appointed as a



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Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending against him with the Board or ICSI. Therefore, he urged the Adjudicating Authority to admit the case by initiating CIR as prayed for.

7. The above facts and circumstances of the case clearly shows that the Petitioner supplied medical instruments and equipment including stents etc. in the name of new patients and thus goods are utilised by the Respondent and thus admittedly, received the payment from the patients after receiving the payment, the Respondent failed to pay the outstanding amount as mentioned in the Company Petition. It is also admitted that the 52 invoices is pending but that are beyond the period of limitation. The ledger account maintained by the Operational Creditor in respect of Respondents shows that the last payment was made by the Respondent on 13.02.2017. Therefore, as rightly contended that the learned Counsel for Petitioner, the instant Company Petition is within a limitation period. Moreover, the demand notice has issued to the Respondent dated 25.01.2019, and no reply to the same was received by the Petitioner. No dispute has ever been raised by the Respondent. The Respondent has also not pleaded the Company is a solvent Company and there are no liabilities pending against it. On the contrary that the Petitioner has filed the balance sheet, uploaded to the MCA to show that the Corporate Debtor is not a solvent Company. The Adjudicating Authority has also given several opportunities in order to explore the possibility of settlement, if the Respondent is solvent Company. However, the Respondent has not come forward with any statement with regard to the financial position which claim made by the Petitioner. Therefore, the Respondent is deemed in an insolvent Company and it failed to pay the admit amount for the goods supplied by it. Therefore, the application cannot be rejected on question of limitation and laches as pleaded by the Respondent. Moreover, the instant Company Petition is filed in accordance with law and debt and default is



established and the Respondent failed to raise any tenable defense except more technicality grounds of limitation. Therefore, we are of the considered opinion that the Debt and default in question are not in dispute and thus it is a fit case to admit Petition by initiating CIRP in respect of Corporate Debtor with consequential orders/directions.

8. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, C.P. (IB) No.157/BB/2019 is hereby admitted with the following consequential directions:

(1) We hereby appointed Shri K.N.Ravindra Regn.No. **IBBI/IPA-002/IP-N000559/2017-18/11702**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s.Panacea Hospitals Pvt. Ltd., to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting 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 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.
- e. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Adjudicating Authority from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **22nd November, 2019.**

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL



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Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench

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