



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.4610/MB-IV/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

Erbe Medical India Private Limited

[CIN: U33119TN2007PTC062336]

...Operational Creditor/Applicant

V/s.

Arav Healthcare Infra Private Limited

[CIN: U85110MH2008PTC188988]

...Corporate Debtor/Respondent

Order pronounced on : 24.02.2022

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. K. Vasuvenkat, Advocate
For the Respondent : Mr. Dhruva Gandhi, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition being C.P./(IB)/No.4610/NCLT/MB/C-IV/2019 filed by M/s. Erbe Medical India Private Limited, the Operational Creditor, under section 9 of Insolvency & Bankruptcy Code, 2016 (I & B Code) on 13.12.2019 seeking initiation of Corporate Insolvency Resolution



Process (CIRP) against Arav Healthcare Infra Private Limited, the Corporate Debtor, claiming a total sum of Rs.89,04,924.60/- (out of which Rs.62,08,585.34 is the Principal amount and Rs.26,93,669.26 is interest @ 18% from due date till 28.11.2019) in default. It is stated in Clause-2 of Part IV of Form-V “*date of default-90 days from due date of each invoice.*” The invoices were raised from 24th February, 2017 till 25th April, 2018.

2. The Applicant/ Operational Creditor supplied the goods to the Corporate Debtor under 18 invoices for a total sum of Rs.1,04,76,023.46 and issued credit notes for sum of Rs.42,67,438.12.
3. The Applicant issued Demand Notice in Form-III on 21.06.2019 along with the copy of invoices asking the Corporate Debtor to pay the amount in default. The Applicant has also filed record of Financial Information with the Information Utility showing the amount overdue, however, the certificate of default has not been enclosed thereto.
4. The Corporate Debtor has responded to this Demand Notice vide Letter dated 04.07.2019 denying its liability to pay and submitted fully consideration of account with the dues claimed as pending. The Corporate Debtor also demanded E-1 Forms and Airway bills; reconciliation of account for resolution of ongoing disputes. The Corporate Debtor has not submitted any communication supporting its contention in the reply to the demand notice.
5. The Corporate Debtor has filed detailed reply dated 31.01.2020 and has submitted that all the 18 invoices claimed to be due in the Petition have been fully paid. In this connection, it has filed invoice wise payments made by it on various dates alongwith copy of NEFT advices containing relevant invoice number. Accordingly,



the Corporate Debtor has claimed that the payments were made with specific direction as to its appropriation against the invoice.

6. The Operational Creditor has also filed Rejoinder dated 11.02.2020 pleading that it *“followed ‘first in first out’ (FIFO) method while accounting for the payments made by the Respondent which is a standard accounting practice”*. It has filed statement account of the Corporate Debtor and appropriation of the payment made by Corporate Debtor according to such practice to support its contention. It has also filed a CA certificate confirming this practice. The Applicant has also filed an email dated 24.01.2019 from the Corporate Debtor annexing thereto the reconciliation statement of the account of Operational Creditor as per Corporate Debtor. The said reconciliation statement shows that the Corporate Debtor has confirmed a sum of Rs.13,39,882.31 as payable by the Corporate Debtor to the Applicant Operational Creditor.
7. We have heard both the Counsel and perused the pleadings available on records.
8. It is noted from the email dated 24.01.2019 filed by the Applicant Operational Creditor in its Rejoinder that the Corporate Debtor has admitted existence of a debt of Rs.13,39,882.31 due to the Applicant Operational Creditor. This email contradicts the submission of the Corporate Debtor made in the reply. On perusal of the NEFT advices filed with the affidavit in reply, it is noticed that, some of the advices does not contain specific direction for the appropriation. It occurs to this Bench that the plea taken in the reply to the Demand Notice as well as Affidavit in reply is not honest, as it contradicts Corporate Debtor’s own admission vide email dated 24.01.2019. In view of this, we are of the considered view that there existed a debt in excess of the



minimum threshold limit of Rs. 1 lakh as it was at the time of filing this Application and the Corporate Debtor has committed default in payment thereof. Since, this debt is established by the very own admission of the Corporate Debtor vide email, the question of prior dispute in relation thereto does not arise.

9. In view of above facts, this Tribunal is of the considered opinion that the present Company Petition is maintainable u/s 9 of the Insolvency and Bankruptcy Code, 2016 and deserve to be **admitted.**

ORDER

- a) The Company Petition bearing CP/(IB)/4610/MB-IV/2019 filed by Erbe Medical India Private Limited, the Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Arav Healthcare Infra Private Limited [CIN- U85110MH2008PTC188988], the Corporate Debtor, is **admitted.**
- b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI) Act, 2002;

- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- c) Notwithstanding the above, during the period of moratorium-
 - a. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - b. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) 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.
- e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f) **Mr. Pramodkumar Ramesh Ladda**, Registration No. IBBI/IPA-002/IPN00694/2018-2019/12148; Email: csladdaji@gmail.com; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.



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- g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) as advance with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

Prabhat Kumar
Member (Technical)

/Dubey/

Sd/-

Kishore Vemulapalli
Member (Judicial)