



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

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*CP No. (IB) 78/ALD/2020*

**IN THE MATTER OF:**

(An application under Section 9 of the Insolvency & Bankruptcy Code)

**IN THE MATTER OF:**

Dr. Ankush Garg

...Applicant /Operational Creditor

Vs.

Atlanta Mediworld Pvt. Ltd.

...Respondent/Corporate Debtor

Order reserved on 25.01.2023

Order pronounced on 17.02.2023

***CORAM:***

Sh. Praveen Gupta

: Member (Judicial)

Sh. Ashish Verma

: Member (Technical)

**Appearances (via Video Conference)**

Sh. Dushyant Kumar, Adv.

: For the Applicant/Operational Creditor

Respondent

: Ex-parte

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1. The present application has been filed by Operational Creditor, namely Dr. Ankush Garg under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against the Corporate Debtor namely Atlanta Mediworld Pvt. Ltd.
2. The Operational Creditor herein is a doctor by profession engaged in the business of providing medical services as a consultant to hospitals. Therefore, the Operational Creditor approached the Corporate Debtor for providing his services to the Corporate Debtor.
3. The Corporate Debtor conducted walk-in interview for the post of consultant medicine and on the basis of the Interview, the Operational Creditor was appointed as consultant Internal Medicine in the Department of Medicine w.e.f from 27.09.2018. In this regard, the Corporate Debtor issued an appointment letter dated 26.09.2018 which is annexed as Annexure A-1 at pg No.19 of the present application.
4. It is stated that the Corporate Debtor made assurance to give fixed amount of Rs. 50,000/- every month along with variables like 80% of the total consultant fees in a month charged by the hospital from OPD patients which is attended by Operational Creditor, 100% of the total visiting fees in a month charged by the hospital from OPD patients and 100% of the total visiting fees charged by the Hospital from ECHS and CGHS patients.
5. It is further stated that as per the discussion made between the parties, the Corporate Debtor paid fixed amount and some of the variables from time to time till only October 2018, after which the payment is started getting delayed on the part of the Corporate Debtor. Thereafter, the Operational Creditor for the purpose of getting his dues cleared, waited till the end of

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May, 2019 but the management of the Corporate Debtor did not pay any heed to his contentions. Therefore, the Operational Creditor wrote his resignation letter dated 01.06.2019 and informed the Corporate Debtor about his intention to relinquish the post of Consultant Medicine after serving the advanced notice of one month i.e. till 30<sup>th</sup> June 2019. The resignation letter has been annexed as Annexure A-2 at page no.21.

6. It is averred in the present application that resignation of the Operational Creditor was accepted by the Management of the Corporate Debtor on 06.06.2019. However, the management requested him to work for a further period of one month i.e. till 31.07.2019 during which all his dues will be cleared, in spite of the promises made by the Management of the Corporate Debtor, the dues of the Operational Creditor were not paid. Therefore, the Operational Creditor has resigned from his post on 31.07.2019. The Experience cum Relieving Certificate issued by Corporate Debtor is annexed as Annexure A-3 at pg no.22 of the present Application.
7. The total sum of Rs. 8,42,158.35/- (for fixed IPD and OPD variable) and sum of Rs. 5,00,000/- for (ECHS & CGHS) variable was held due and payable to the Operational Creditor out of which, the total sum of Rs. 54,400/- was paid to the Operational Creditor in the month of August, 2019. Out of which thereby now 12,87,758/- is still due and payable. Copy of ledger account statement of Operational Creditor from 01.04.2018 to 31.03.2019 and ledger account statement of Operational Creditor from 1.04.2019 to 31.03.2019 is annexed as Annexure 4 and 5 at pg no.23-27 of the present Application.
8. It is stated that the Operational Creditor sent mail dated 06.12.2019 calling upon the Corporate Debtor to make the payment that fell due but till date no reply to the said email has been given by the Corporate Debtor. Copy

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of E-mail has been annexed as Annexure A-8 at pg no 40 of the present Application.

9. Thereafter, the Operational Creditor sent a demand notice dated 10.12.2019, which was duly received by Corporate Debtor on 16.12.2019. It is stated that the Corporate Debtor did not reply to the said Demand Notice. The Demand Notice Dated 10.12.2019 is annexed as Annexure A-9 at pg no 41-50 of the present Application.

We have considered the submission made on behalf of the Operational Creditor and perused the record.

10. This tribunal vide its order dated 17.02.2020 issued notice to the Respondent. Subsequently, this tribunal in its order dated 17.07.2021 recorded that the affidavit of service has been filed by the Applicant/Petitioner whereby the Respondent have been noticed by paper publication, the said paper publication has been made by the Applicant/Operational Creditor in Statesman In English and Rashtriya Sahara in Hindi on 25.03.2021. However, none has put appearance on behalf of the Respondent, Subsequently, this tribunal vide order dated 26.10.2021 directed for proceeding against Corporate Debtor as Ex-parte.
11. It is seen from the records that notice of default under section 8 has been sent and the Corporate Debtor did not reply to the said Demand Notice and affidavit under Section 9 (3) (b) of IBC has been filed by the Operational Creditor, wherein it is stated that there does not exist any dispute within the meaning of provision of Section 8 & 9 of IBC, 2016. The affidavit is annexed at pg no. 56-57 of the present Application.

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12. It is stated that the total amount of default is Rs.12,87,758/- which is more than the threshold limit of Rs.1,00,000/- (Rupees One lakh only) as prevailing at the relevant time.
13. We also consider that the period of limitation for filing a petition under section 9 of the Insolvency and Bankruptcy Code, 2016 is 3 years from the date of default. The debt fell due from September, 2018 to 16.08.2019 and this application has been filed on 10.02.2020. Therefore, the application is found well within the limitation.
14. It is noted that the application filed under Section 9 is complete and complies with the requirements of the relevant provision of IBC, 2016 r/w Rules and Regulations made thereunder.
15. Thus, the present application on the face of it is liable to be admitted.
16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal namely Sh. Sarvesh Shukla has checked the credentials of Ms. Babita Jain and there is nothing adverse against her. In view of the above, we appoint Ms. Babita Jain, Registration No. IBBI/IPA-002/IP-N00321/2017-2018/10926  
E-mail: jainbabita06@gmail.com, Mobile No.+91-9335115227, as the Interim Resolution Professional.
17. Accordingly, this application is admitted under the following terms and conditions.
- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor is hereby admitted.

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- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) This Adjudicating Authority hereby appoint Ms. Babita Jain No. IBBI/IPA-002/IP-N00321/2017-2018/10926, having address at 35B/6 Ram Mohan Plaza, Madho Kunj Master Zahurul Hasan Road, Allahabad, Uttar Pradesh ,211002, E-mail: jainbabita06@gmail.com to act as the IRP under Section 13(1)(c) of the Code.
- iv) The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
  - 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

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property including any action under the Securitization 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.
- vi)** The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii)** The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii)** The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.
- ix)** Provided that where at any time during the Corporate Insolvency Resolution Process period if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- x)** The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall

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identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

- xi)** The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- (One Lakh Only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.
- xii)** Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii)** List the matter on 10.04.2023 for filing of the progress report.
- xiv)** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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**(Ashish Verma)**  
**Member (Technical)**

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**(Praveen Gupta)**  
**Member (Judicial)**