



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 149/Chd/Pb/2020

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Shreeji Enterprise

E/102, Shukan Residency,
Vandemataram City Road,
Gota, Ahmedabad

...Petitioner-Operational Creditor

Vs.

M/s Cygnus Healthstreet Hospitals Private Limited

(earlier known as Healthstreet Hospitals Private Limited)
2090-B, The Mall,
Bhatinda, Punjab-151001

Also at:

Ground Floor, Enkay Center,
Vanijya Nikunj Commercial Complex,
Udyog Vihar, Phase-5
Gurgaon-122016, Haryana
CIN No.U85110PB2012PTC036430

...Respondent-Corporate Debtor

Judgement delivered on: 27.02.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-

Operational Creditor : Mr. Saurav Tyagi, Advocate, proxy counsel
for Mr. Abhishek Saxena, Advocate

For the Respondent-

Corporate Debtor : Proceeded *ex parte* vide order dated 22.12.2021.



Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by M/s Shreeji Enterprise, (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Cygnus Healthstreet Hospitals Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, M/s Cygnus Healthstreet Hospitals Private Limited is a Company incorporated on 06.07.2012 under the provisions of the Companies Act, 1956 with CIN No. U85110PB2012PTC036430 with its registered office at 2090-B, The Mall, Bathinda, Punjab-151001 Also at: Ground Floor, Enkay Center, Vanijya Nikunj Commercial Complex, Udyog Vihar, Phase-5 Gurgaon-122016. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-4.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is engaged in the business of supply implants, instruments and consumables required in operation theater for knee replacement surgery. The corporate debtor is a hospital providing, healthcare services having equipped operational theaters to perform surgeries. For the carrying out operations, the corporate debtor purchased these materials from operational creditor during March 2014 to October 2015. The corporate debtor accepted these goods without any dispute and



The operational creditor raised more than 50 invoices. The corporate debtor lost its substratum and was unable to repay the outstanding amount of Rs.33,93,540/- (Rupees Thirty Three Lakhs Ninety Three Thousand Five Hundred Fourty Only). The petitioner time and again reminded the respondent company to release the dues, the debtor company failed to release the outstanding payment.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 58,87,791/- (Rupees Fifty Eight Lakhs Eighty Seven Thousand Seven Hundred Ninety-One Only). The default occurred on 31.10.2015, i.e., the last credit note as ledger account for Rs.57,240/-. Copy of Computation of amount in tabular form (Annexure A-2), Certificate of VAT registration (Annexure A5), Ledger account (Annexure A6) and Invoices from 2014 to October 2015(Annexure A7) are attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 29.11.2019 through speed post and the same has been delivered to the corporate debtor through speed and proof of service is annexed as Annexure A-8 and through email on 30.11.2019, the corporate debtor had not replied to demand notice till date nor any objection were received by operational creditor against said notice.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavits of service were filed vide Diary Nos. 00295/2 dated 15.02.2021 and 00295/3 dated 17.12.2021. However, none appeared on behalf of the corporate debtor nor any reply was filed. Vide order dated 22.12.2021 respondent-corporate



debtor was set *ex parte*. The short written submissions were filed by the petitioner vide Diary No. 00295/5 dated 12.12.2022.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 dated 29.11.2019 was properly served. The demand notice was served upon the respondent-corporate debtor through speed post and proof of service is annexed at Annexure A8 of the petition and through email on 30.11.2019. However, the corporate debtor had not replied to the said demand notice till date.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by the petitioner that there was no notice of dispute communicated by the corporate debtor for the unpaid debt and no payment had been received. No reply was received to the demand notice within the stipulated 10 days time from the date of receipt of demand notice. Further, it is deposed that there is no pre-existing dispute between the parties at all with regard to the unpaid operational debt. Therefore, there is no pre-existing dispute between the parties.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 29.11.2019 in Form 3 was duly served on the corporate debtor through registered post. However, the period of limitation would begin from the date of default i.e. 31.10.2015 i.e. when last credit note as per the ledger account for Rs. 57,240/- was raised. This application was filed on 24.12.2019 vide Diary No. 7379 and was refiled



on 17.02.2020. Reliance can be placed upon the decision of the **Hon'ble Supreme Court in the case of B.K. Educational Services Private Limited v. Parag Gupta and Associates Civil Appeal No.23988 Of 2017 And 439/2018, 436/2018, 3137/2018, 4979/2018, 5819/2018, 7286/2018**, wherein it was held that the limitation period for the application under the IBC shall start from the date of default. Therefore, if an application under the IBC is filed after three years from the date of default, the same shall not be accepted. In the present petition the date of default is 31.10.2015 i.e. when the last credit note as per the ledger account for Rs. 57,240/- was raised. The learned counsel for the petitioner has failed to explain as to how the present petition is within limitation. Even there is no evidence on record that there was subsequent acknowledgment of debt by respondent/corporate debtor. The present petition was filed on 24.12.2019 vide Diary No. 7379 and was refiled on 17.02.2020. Therefore, it is beyond the limitation period of three years. Consequently, the present petition is time-barred.

11. In the given facts and circumstances, the petition is liable to be rejected, being time barred under Section 9 of IBC, 2016. Therefore, the claim of the petitioner is rejected and the petition stands dismissed, however, without any order as to the costs.

Sd/-

**(Subrata Kumar Dash)
Member (Technical)**

Sd/-

**(Harnam Singh Thakur)
Member (Judicial)**

February 27, 2023

SD/TB