
(2019) 02 NCLT CK 0025

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Petition No. IB-1184/ND Of 2018

Dr. Vikram Goyal

APPELLANT

Vs

M/S Metro Mas Hospital Private Limited

RESPONDENT

Date of Decision : 11-02-2019

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6

Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(3)(c), 9(5), 14(1), 14(2), 14(3), 15, 17, 18, 20, 21, 31(1), 33

Citation : (2019) 02 NCLT CK 0025

Hon'ble Judges : Dr. Deepti Mukesh, J

Bench : Single Bench

Advocate : Javed Khan

Judgement

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity "IBC, 2016") read with Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity "the Rules") by Dr. Vikram Goyal (for brevity

"Applicant") with a prayer to initiate the Corporate Insolvency process against M/s Metro Mas Hospital Private Limited (for brevity "The

Company").

2. The Applicant, the Operational Creditor namely Dr. Vikram Goyal is a renowned Doctor and a Cardiac Surgeon.

3. The residence address of the Operational creditor is at Tonk Road, Sayeed ka Gatta, Near Murli Pan Bhandar, Opp. City Honda Showroom,

Jaipur- 302018.

4. The Respondent, the Corporate Debtor namely M/s Metro Mas Hospital Private

Limited is a company incorporated on 10.06.2011 under the provisions of Companies Act, 1956 with CIN No. U85100DL2011PTC220686.

5. The company is having its registered office at 21, Community Centre, Preet Vihar, New Delhi-110092.

6. The Authorised Share Capital of the respondent company is Rs. 10,00,00,000/- and Paid Up Share Capital of the company is Rs. 3,49,57,000/- as per Master Data of the company.

7. It is the case of the applicant that the Corporate debtor had appointed the applicant as Director- Cardiac Sciences and Chief Cardiac Thoracic and

Vascular Surgeon vide contract of service dated 23.01.2017.

8. It is further submitted by the applicant that since the appointment of applicant on the aforesaid post, he was not receiving his dues/ professional fee

in time. Further the belated payments were also short of the amount actually due to the applicant. The Corporate debtor had failed to make payments

to the Operational creditor for the months of January 2018 i.e. Rs. 12,49,801/- and February 2018 i.e. Rs.7,51,507/-. Further, it is submitted that

wrongful deductions have been made from the payments received by the applicant. Apart from this, other difficulties were also faced by the applicant

due to which, he resigned on 24.02.2018, however the Corporate debtor did not accept the resignation of the applicant and vide letter dated 26.02.2018

informed that the applicant has to work for some more time and that the resignation letter will be treated as advance notice for termination of

contractual relationship.

9. In spite of various requests made and reminders sent to the Corporate Debtor by the Applicant vide e-mails dated 11.06.2018 and 19.06.2018, the

Company has not paid the dues to the applicant.

10. On failure of the Corporate debtor to pay the outstanding dues, the applicant sent a demand notice dated 22.06.2018 under Section 8 of the

Insolvency and Bankruptcy Code, 2016 to the respondent company asking them to make the outstanding payments of Rs. 38,96,755/- within 10 days

from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Corporate Debtor. The

Corporate Debtor replied to the said notice on 06.07.2018 wherein Corporate Debtor stated that the applicant's abrupt resignation had put hospital

and several patients to undue hardships. It is further submitted by the corporate debtor that as per the terms of Contract of service, termination of the contract by either party can be via two modes only, firstly by giving one-month prior notice or by paying Rs. 6,00,000/-. Since applicant had abruptly resigned without giving any prior notice hence applicant is liable to pay Rs. 6,00,000/- in lieu of one-month notice.

It is further submitted by the Corporate debtor that applicant had made false allegation of wrongful deductions from his fees, as Hospital Revenue is calculated only after deduction of concession fee payable to the SMS College for the purpose of calculation of Doctor's Revenue which was entered between the Government of State of Rajasthan, M/s Metro MAS Hospital Private Limited and M/s Metro Institutes of Medical Sciences Private Limited vide Concession Agreement dated 07.12.2011.

11. No evidence or mention was referred by the Corporate debtor while replying their Section -8 notice but for the first time they have raised certain points with respect to the payments to be made to the applicant, though not denying the debt in its entirety. Until the issuance of the demand notice, no dispute had ever been raised by the Corporate Debtor. After giving various opportunities to file the reply in the present application, Corporate debtor chose not to represent itself. Thus, it proves that the points raised in the reply does not have genuity.

12. Despite the demand notice sent under Section 8 of the Code, the Corporate Debtor has failed to pay the amount demanded, hence this application, seeking to unfold the process of CIRP.

13. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 38,96,755/- which includes professional fees for the month of January and February along with interest @18% p.a. and also includes refund of wrongful deductions made from the professional fees in the name of Government concession interest including interest @18% p.a.

14. This Tribunal is constrained to proceed with the matter *ex parte* as per order dated 24.01.2019 in relation to the Corporate Debtor since Corporate Debtor has not appeared though Section 8 notice and the present application were duly served on the Corporate Debtor and proof of service is filed by the applicant. The applicant has filed an affidavit under Section 9(3)(b) stating

that no notice of dispute from Corporate Debtor is received.

15. The applicant has attached the copy of bank statement of Punjab National Bank for the period of 01.01.2017 to 31.03.2018 in compliance with the requirement of Section 9(3)(c) of the IBC 2016.

16. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

17. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of 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 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.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) 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.

(3) The provisions of sub-section (1) shall not apply to—

- a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(4) The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, 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 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.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

19. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Sanjay

Kumar Jha having registration no. IBBI/IPA-002/IP-N00684/2018-2019/12031 and email address sanjayjhafcs@gmail.com, contact number is

9811579790 as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in

terms of Sections 15,17,18,20 and 21 of the Code.

20. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. Further the IRP

above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for

its records.