

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-IV

Company Petition No. (IB) 60(ND)2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

Bright Lifecare Private Limited

...Applicant/Operational Creditor

Versus

Aquamarine Healthcare Private Limited

... Respondent/Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 10.09.2024

PRESENT:

**For the Applicant : Mr. Ankur Khandelwal,
 Ms. Sanya, Advs.**

For the Respondent : Mr. Ashkrit Tiwari, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. This instant application was filed by Bright Lifecare Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor'), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of **Aquamarine Healthcare Private Limited** (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 45,28,52,154/- (Forty-Five Crore, Twenty-Eight Lakhs, Fifty-Two Thousand One Hundred Fifty-Four Rupees Only)
2. The Respondent M/s. Aquamarine Healthcare Private Limited having CIN: U52100DL2011PTC222458 was incorporated on 18.07.2011 under the provisions of the Companies Act, 1956 having its registered office situated at 1012, 10th Floor, D Mall, Netaji Subhash Place, Wazirpur District Centre. New Delhi- 110034. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.

3. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**

- i. The Operational Creditor and the Corporate Debtor entered into various agreements, including supply agreements and license agreements, under which the Corporate Debtor was to make the payment to the Operational Creditor for supply of goods and various services provided by the Operational Creditor. The Operational Creditor is a pioneer in the field of manufacturing and sale of health/ sports supplements, nutraceuticals, vitamins, and beauty and wellness related products across India through online and offline channels under different brand names.
- ii. The Applicant submitted that the Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 1012, 10th Floor, D Mall, Netaji Subhash Place, Wazirpur District Centre, New Delhi- 110034. The Corporate Debtor is engaged, inter alia, in the business of sale of health supplements, nutritional, wellness other products of various brands.
- iii. The applicant submitted that between 2011-12 and 2015-16, the Operational Creditor and the Corporate Debtor entered into several supply and license agreements under which the Operational Creditor agreed to provide various goods and services to the Corporate Debtor in exchange of stipulated fee payments.
- iv. The Applicant submitted that both the parties entered into several

supply and license agreements under which the Operational Creditor agreed to provide various goods and services to the Corporate Debtor in exchange of stipulated fee payments. The following agreements were entered between the parties:

- a) Facilitation Agreement (**“Facilitation Agreement-I”**) dated 01.06.2016, under which Operational Creditor onboarded the Corporate Debtor as a “retailer” on its Platform in exchange of stipulated facilitation Fees.
- b) Branding and Signage Agreement dated 01.09.2016 under which the Corporate Debtor permitted the Operational Creditor to keep its signage, banner, standing, hoarding, etc. for the promotion of its brands in the retail stores operated by the Corporate Debtor in lieu of a monthly fee of INR 20,000/- (Indian National Rupees Twenty Thousand Only) per store.
- c) Warehouse Service Agreement (**“Warehouse Agreement”**) dated 01.12.2017 under which the Operational Creditor agreed to provide various services pertaining to the warehouse facility to the Corporate Debtor at its warehouse, for a monthly fee of INR 7,50,000/- (Indian National Rupees Seven Lakhs, Fifty Thousand Only).
- d) Vendor Agreement dated 07.01.2019, under which the Operational Creditor provided various services including providing infrastructural and information technology support services, advisory and assistance, etc., in exchange for a

facilitation fee amounting to 11% (Eleven percent) of the total sales made by it at the stores of the Operational Creditor.

- e) A Second Facilitation Agreement dated 03.06.2020 whereunder The operational creditor agreed to onboard the CD as a "Seller" on its platform, i.e., for the sale of health supplement against the payment of Facilitation Fee.
- v. The Applicant submitted that the parties maintained a running account with respect to transactions under the aforesaid agreements, which was settled on a "*first-in first out*" basis. Payments were made by the Corporate Debtor from time to time, and all dues were periodically reconciled between the Corporate Debtor and the Operational Creditor by way of Reconciliation Meetings held annually.
- vi. The Operational Creditor issued a letter to Corporate Debtor dated 02.05.2018 stating that dues for the Financial Year 2016-17 were still unpaid. In response, the Corporate Debtor vide letter dated 10.07.2018 acknowledged the outstanding dues and promised to make regular payments. Further, the Operational Creditor demanded payment of Rs. 58.84 Crores through letter dated 12.11.2018. A reminder letter dated 07.12.2018 was sent by the Operational Creditor, reiterating the demand for payment of Rs. 58.84 Crores. The Corporate Debtor vide letter dated 19.12.2018 requested a meeting to discuss the payment timeline.
- vii. Vide Meeting dated **10.01.2019**, Corporate Debtor unconditionally acknowledged its liability to pay Rs. 58.84 crore to the Operational

Creditor. Subsequently, the Corporate Debtor requested an extension until **31.03.2019** to make the payment and committed to making excess payments against its yearly liability moving forward.

- viii. The Applicant submitted by the end of F.Y. 2017-2018, the Corporate Debtor had cleared all invoices raised by the Operational Creditor till the end of Financial Year 2015-16, as mutually agreed in the annual reconciliations.
- ix. The Operational Creditor issued a letter dated 18.04.2019 reminding the Corporate Debtor that dues were still unpaid despite previous meetings. The Corporate Debtor vide letter dated 03.06.2019 requested a final extension to clear the dues by December 2019. After repeated failures to pay, the Operational Creditor vide letter dated 03.03.2020 demanded payment of Rs. 58.84 Crore within 30 days.
- x. Further, the Corporate Debtor vide letter dated 15.05.2020 cited COVID-19 and lockdowns as reasons for non-payment and requested 12 more months to settle the dues. Meanwhile a Facilitation Agreement dated 03.06.2020 was signed, allowing the Corporate Debtor to sell products on the Operational Creditor's platform against a fee. The Operational Creditor issued another demand vide letter dated 27.05.2021 for payment of INR 58.84 crore. Thereafter, again vide letter dated 27.05.2021 the Corporate Debtor requested another 9 months to pay, citing the pandemic.

- xi. After numerous acknowledgments and communications, the Corporate Debtor defaulted on its debt as defined under Section 3(12) of the Insolvency and Bankruptcy Code (IBC). Consequently, the Operational Creditor issued a demand notice dated 20.10.2023 under Section 8 of the Code, demanding the payment of net outstanding dues amounting to Rs. 45.28 crore.
- xii. On the basis of the annual financial reconciliation meeting, the following amounts are admitted by the Corporate Debtor as due and payable to the Operational Creditor:

Date of Reconciliation Meeting	End of Financial Year	Outstanding Dues payable by Corporate Debtor to Operational Creditor (INR) (non-cumulative)
28.04.2017	2016-17	INR 57,73,87,537
20.06.2018	2017-18	INR 57,78,90,182
02.05.2019	2018-19	INR 58,85,16,355
10.12.2020	2019-20	INR 58,85,16,355
20.09.2021	2020-21	INR 58,85,16,355
25.04.2022	2021-22	INR 55,35,16,355
12.06.2023	2022-23	INR 46,96,61,798

The Applicant submitted that Total amount of debt is Rs. 45,28,52,154/- (Forty-Five Crore, Twenty-Eight Lakhs, Fifty-Two Thousand, One Hundred Fifty-Four Rupees Only) as on 20.10.2023.

4. The matter was first taken-up on 08.02.2024 and this adjudicating authority issued notice to the respondent and directed them to file a reply within a week, on receipt of notice. On the next date of hearing dated 22.02.2024 the Learned Counsel for Respondent sought some time to file Vakalatnama and reply. Accordingly, this Adjudicating Authority granted ten days time to file Vakalatnama and reply. On the next date of hearing dated 20.03.2024 the Learned Counsel for Respondent submitted that they have filed Vakalatnama and reply on 15.03.2024, however, the same was not available on e-portal of this Adjudicating Authority. Accordingly, Learned Counsel for respondent was directed to approach the Registry and take necessary steps to cure the defects within three working days, if any, and get the same listed on the e-portal of this Adjudicating Authority.
5. The Respondent filed an IA/1653/ND/2024 an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking condonation of 11 days' delay in filing Reply on behalf of the Corporate Debtor – Aquamarine Healthcare Private Limited. Accordingly, this Adjudicating Authority considering the facts and circumstances and prayers mentioned as well as submissions made by Learned Counsel for the Corporate Debtor – Aquamarine Healthcare Private Limited, allowed the IA/1653/ND/2024 vide order dated 29.05.2024 and condoned the delay in filing reply subject to payment of costs of Rs. 15,000/- to be deposited in Prime Minister's National Relief Fund. Subsequently, the Respondent filed an Affidavit dated 11.06.2024

regarding proof of payment of costs of Rs. 15,000/- in compliance with the Order dated 29.05.2024.

6. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- i. Respondent/Corporate Debtor appeared through its counsel and in its Reply denied various averments made in the Application. Further it stated that by end of financial year 2017-18, the Respondent Company had cleared all the invoices raised by the Applicant Company for the period till the end of financial year 2015-16 towards discharge of obligations casted upon the Respondent Company. Further, the said payments were made by the Respondent Company as per the invoices and also considering their mutual agreements.
- ii. The Corporate Debtor further submitted that from the year 2016 onwards, Respondent/Corporate Debtor and the Applicant devised a methodology and started with conducting meetings on yearly basis and the same were termed as Annual Reconciliation Meetings. The said meetings were objected towards maintaining the reconciled accounts of both the Companies. The only limited purpose of such reconciliation meetings was only for business purposes and not for admission of liability. It further stated that the said Annual Reconciliation Meetings were only for facilitation of business between the Applicant and the Respondent.
- iii. The Respondent submitted that that the Annual Reconciliation Meeting held on the following dates- 28.04.2017, 20.06.2018,

02.05.2019, 10.12.2020, 20.09.2021, 25.04.2022 and 12.06.2023 cannot be construed as categorical admission of liabilities. It is relevant to note that, evidently, as shown in the said Annual Reconciliations, liabilities of both the parties viz. Applicant Company and the Respondent Company were determined and decided and the same were acknowledged by both the parties, however, in the present Petition, Applicant only seeks to enforce the said Reconciliations partially to the extent of Respondent's liability towards the Applicant Company and discards the remaining part of the Reconciliations.

- iv. Further, the respondent submitted that the only limited purpose of such reconciliation was that of running and operating the business rather than to be used as a tool for institution of legal proceedings. It is submitted that if the Respondent Company was aware that the reconciliation sheets may be used for institution of proceedings, it would not even have agreed for the said meetings.

ANALYSIS AND FINDINGS

7. We have heard the Ld. Counsel on behalf of the Applicant/Operational Creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, and written submission presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate

Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

8. From the perusal of the material available on record, it transpires that the 'Operational Creditor'/ 'Applicant' had sent a demand notice dated 20.10.2023 to the 'Corporate Debtor' under Section 8 of the Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 45,28,52,154 (Forty-Five Crore Twenty-Eight Lakh Fifty-Two Thousand One Hundred Fifty Four Rupees). We observe that this demand notice dated 20.10.2023 under Section 8 was served to the Opposite party and was accordingly received by the Corporate Debtor. Further, the Respondent has not replied to this demand notice and further no notice of existence of dispute has been raised by the Corporate Debtor.
9. In order to determine the admissibility of petition for initiating CIRP under section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353**, is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding the threshold limit as defined under Section 4 of the IBC?

- b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
10. The first instance, to determine whether the impugned amount claimed by the Operational Creditor would fall under the ambit of Operational Debt, it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under the said section, 'Operational Debt' is defined as:
- “A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.
11. While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the Operational Creditor and Corporate Debtor have a longstanding business association and from time to time have executed various agreements/arrangements. The Operational Creditor is a pioneer in the field of manufacturing and sale of health/ sports supplements, nutraceuticals, vitamins, and beauty and wellness related products across India through online and offline channels under different brand names and the Corporate Debtor is engaged, inter alia, in the business of sale of health supplements, nutritional, wellness other products of various brands.

12. That between 2011-12 and 2015-16, the Operational Creditor and the Corporate Debtor entered into several supply and license agreements under which the Operational Creditor agreed to provide various goods and services to the Corporate Debtor in exchange of stipulated fee payments. The Corporate Debtor was responsible for making periodic payments to the Operational Creditor for supplies and services provided under the Agreements. The Operational Creditor issued invoices regularly under these Agreements, but the Corporate Debtor failed to make the required payments.
13. We also note that in view of the non-payments by the Corporate Debtor, multiple discussions were held between the Corporate Debtor and the Operational Creditor; and various communications were exchanged wherein the Corporate Debtor had undertaken to make the necessary payment to the Operational Creditor. Further we observe that Annual Reconciliation Meetings were held between both parties, and while the Respondent argues that these meetings were solely for business purposes and not for the admission of liability, we find this reasoning unconvincing. The respondent contends that the purpose of these reconciliations was merely to facilitate the operation of the business and not to serve as grounds for legal action. However, we believe that these meetings provided sufficient evidence of the Respondent's knowledge and acknowledgment of the outstanding debt, indicating a clear admission of liability. Also, In the present matter, the Corporate Debtor has failed to substantiate any pre-existing dispute regarding claim of the operational creditor.

14. In the present case, the Applicant has placed sufficient documents to show that the debt is due and that there has been default in payment. Therefore, we are of the opinion that the claim of the Applicant is arising out of the provisions of services rendered, hence, it is an operational debt and there is no pre-existing dispute between the parties. This leaves no doubt that the default has occurred for the payment of the operational debt to the Applicant.

15. In view of the above facts and circumstances, we are of the considered view that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petitioner has established that the Corporate Debtor is in default of a debt due arising out of services rendered by the operational creditor and the same is payable. Further, that the default amount is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows:

I. The application bearing C.P. No. (IB) 60 OF 2024 filed by Bright Lifecare Private Limited, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Aquamarine Healthcare Private Limited, the Corporate Debtor, is hereby admitted.

II. The Applicant in Part-III of the application has proposed the name of Mr. Ashok Kumar having Registration Number IBBI/IPA-001/IP-P00847/2017-2018/11430, email

[:gargashokca@gmail.com](mailto:gargashokca@gmail.com) . Mr. Ashok Kumar is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within five working days (5) of pronouncement of this order.

- III. We direct the applicant to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional, namely Mr. Ashok Kumar, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- IV. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(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, Adjudicating Authority, 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 IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

V. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

VI. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost

dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

- VII. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- VIII. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- IX. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

X. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **IB/60(ND)/2024** stands admitted.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)