



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-93/(ND)/2024

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

In the matter of -

MR. RITESH KUMAR (HUF)

THROUGH ITS KARTA MR. RITESH KUMAR

R/O OF 27 /3, VRINDAVAN GARDEN, SAHIBADBAD, GHAZIBAD,

UTTAR PRADESH- 201005

EMAIL AT - anshassociates25@yahoo.com

...Petitioner/Operational Creditor

Versus

DALMIA LIFE CARE PRIVATE LIMITED

97-B S/F AMRITPURI, GARHI SOUTH DELHI

NEW DELHI-110065

E-MAIL AT- info@dalmialifecares@gmail.com

...Respondent/Corporate Debtor

ALSO AT

PLOT NO. 1D, DALMIA LIFE CARE PRIVATE LIMITED

SECTOR-126, NOIDA, GAUTAM BUDHHA NAGAR

UTTAR PRADESH- 201301



CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Petitioner/OC : Ms. Parul Khurana and Mr. Pooran Chand Roy,
Advs.

ORDER

PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date: 12.09.2024

1. The present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 9 of Insolvency & Bankruptcy Code, 2016 for the alleged default on the part of the Respondent in clearing the debt of INR 2,23,02,000/- (Rupees Two Crore Twenty-Three Lakh and Two Thousand Only)/-
2. The Applicant, being aggrieved by the act of the Corporate Debtor of not making payment of the outstanding debt despite a clear and unequivocal admission of its liability to repay the same, is constrained to approach this Hon'ble Tribunal.
3. The Operational Creditor is a registered Hindu Undivided Family ("HUF"), incorporated on 20.08.2019. The Operational Creditor has been in business for more than a decade with considerable market presence and goodwill. The Corporate Debtor / Dalmia Life Care Private Limited was incorporated



and is broadly engaged in a wide variety of business areas ranging from industrial chemicals to healthcare, to medical services to IT-enabled services. That the Operational Creditor is a joint owner of processing and packaging plant machinery and equipment with one namely Signtech Construction Private Limited ("Signtech") in the proportion of 50 % -50 %. The Corporate Debtor being desirous of taking lease rights on the plant and machinery approached the Operational Creditor and requested the Operational Creditor to give on lease its Plant and Machinery ("Equipment") for the business requirements. Thereafter, on 05.09.2019, the Operational Creditor and Signtech (both being the joint owners of Plant and Machinery) entered into a Tripartite Lease Agreement ("lease agreement") with the Corporate Debtor. Both the Operational Creditor and Signtech were entitled to receive the monthly rent of Rs. 14, 50,000/ (Rupees Fourteen Lakhs and Fifty Thousand Rupees Only). That out of Rs. 14,50,000/- (Rupees Fourteen Lakhs and Fifty Thousand Rupees Only) the Operational Creditors were entitled to get 50 % of the total amount i.e., Rs. 7,25,000/- (Rupees Seven Lakhs and Twenty Five Thousand Only). The present proceeding is limited to the share of Operational Creditor only. That after the execution of the lease agreement the Corporate Debtor started making irregular payments of monthly rents. The Operational Creditor thereafter made repeated follow-ups and demanded the payment of pending dues from the Corporate Debtor, however, the Corporate Debtor kept on buying time on one pretext or another including the Covid-19 pandemic. Thus, default occurred on each



occasion the Corporate Debtor failed to make payments of the monthly rent. As barred by virtue of Section 10-A of the Code, the Operational Creditor is not pressing on the claim that arose between the time period i.e., 01.04.2020 - 31.03.2021. Hence, the default for the purpose of the present Petition shall commence from 01.04.2021. Thereafter the default occurred on every 1st day of a month. Being aggrieved by the conduct and the capacity of the Corporate Debtor to make good the due amount the Operational Creditor issued a Statutory Demand Notice under Section 8 of the Code. Due to continued non-payment and consequent default, the total amount of debt stands at Rs. 2,23,02,000/- inclusive of interest for delayed payments of @12 % per annum (up to 30.06.2023), along with the further interest @12% per annum for delayed payments till realization of unpaid Operational Debt.

4. None appeared on behalf of the Corporate Debtor despite service thereon and neither any reply has been filed despite ample opportunity being given. Therefore, Respondent was set *ex parte* vide order dated 07.08.2024.

5. **ANALYSIS AND FINDINGS**

- (i) We have heard the submissions of Ld. Counsel for the Operational Creditor and we have perused the record. The Operational Creditor has claimed the default of Rs. 2,23,02,000/- (inclusive of interest for delayed period of 12% per annum) from the Corporate Debtor. The case of the Operational Creditor is that the Corporate Debtor has failed to make payments against monthly rentals from 01.04.2020 onwards and that as per the Lease



Agreement default took place on the first of each month when the Corporate Debtor failed to make payments against the monthly rentals. The Operational Creditor has also submitted that since the claim of the period from 01.04.2020 to 31.03.2021 is barred by virtue of Section 10 A, the Operational Creditor has not included the claim falling in the said period for the purpose of threshold limit.

- (ii) The working sheet/calculation sheet as on 30.06.2023 submitted by the Applicant shows a due of Principal amount from March 2021 to May 2023 of Rs. 1,95,75,000/- and in interest amount calculated at the rate of 12% as Rs. 27,27,432/-. Hence a total of Rs. 2,23,02,432/- is due. The calculation sheet is reproduced below:-

WORKING SHEET/ CALCULATION OF INTEREST [AS ON 30.06.2023]

MONTH	DUE DATE	PRINCIPLE AMOUNT	INTEREST @12% [As on 30.06.2023]
Mar-21	01.04.2021	725000	195266
Apr-21	01.05.2021	725000	188016
May-21	01.06.2021	725000	180766
Jun-21	01.07.2021	725000	173516
Jul-21	01.08.2021	725000	166266
Aug-21	01.09.2021	725000	159016
Sep-21	01.10.2021	725000	151766
Oct-21	01.11.2021	725000	144516
Nov-21	01.12.2021	725000	137266
Dec-21	01.01.2022	725000	130016
Jan-22	01.02.2022	725000	122766
Feb-22	01.03.2022	725000	115516
Mar-22	01.04.2022	725000	108266
Apr-22	01.05.2022	725000	101016



May-22	01.06.2022	725000	93766
Jun-22	01.07.2022	725000	86516
Jul-22	01.08.2022	725000	79266
Aug-22	01.09.2022	725000	72016
Sep-22	01.10.2022	725000	64766
Oct-22	01.11.2022	725000	57516
Nov-22	01.12.2022	725000	50266
Dec-22	01.01.2023	725000	43016
Jan-23	01.02.2023	725000	35766
Feb-23	01.03.2023	725000	28516
Mar-23	01.04.2023	725000	21266
Apr-23	01.05.2023	725000	14016
May-23	01.06.2023	725000	6766
		TOTAL= 19575000	TOTAL= 2727432

GRAND TOTAL= 22302432
(Approx.) - 22302000

- (iii) On a perusal of the tripartite Lease Agreement Dated 05.09.2019 signed by the Operational Creditor and Sintech (both being the joint owners of the Plant & Machinery) with the Corporate Debtor, it appears that there was no specific provision for interest to be charged on delayed payment of rental by the Corporate Debtor. However, from the Calculation Sheet the principal amount of debt being Rs. 1,95,75,000/- still is above the threshold requirement.
- (iv) It also transpires that Corporate Debtor had complied with the payment schedule making monthly rental payment until 01.04.2020 as evidenced by the Bank Account statement annexed. However, the Corporate Debtor subsequently defaulted to make the monthly rental payments.



- (v) It has also been submitted that default is registered with the NeSL.
- (vi) At this juncture it would be appropriate to mention that Hon'ble NCLAT in "**Jaipur Trade Expocentre Pvt. Ltd. vs. M/s. Metro Jet Airways Training Pvt. Ltd., Company Appeal (AT) (Ins.) No. 423/2021**" has held that rental dues are considered as operational debt.
- (vii) The Operational Creditor has also relied upon the judgment of the Hon'ble NCLAT in "**Sunil Sanghvi Vs. State Bank of India, Company Appeal (AT) (Ins.) No. 487 of 2020**" wherein Hon'ble NCLAT upheld *ex parte order* of admission of the Corporate Debtor into CIRP.
- (viii) In the light of the above we are of the view that the requirement under Section 9 of IBC have been met and there is an operational debt and default of the same by the Corporate Debtor which is above the threshold limit of Rs. 1 crore. This Adjudicating Authority therefore, **admits** this petition and initiates Corporate Insolvency Resolution Process against the Corporate Debtor.
6. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -
- I. The Application bearing IB-93/ND/2024, filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby admitted.
 - II. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the



provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor. [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be



suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]”

- III. 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.
- IV. The Operational Creditor has not proposed any name for the Interim Resolution Professional (“IRP”) and requested this Adjudicating Authority to appoint an IRP. Therefore, we appoint Mr. Rakesh Kumar as Interim Resolution Professional (“IRP”) , from the Panel of Insolvency Professional via reference letter IP-12011/1/2020-IBBI/343/351 received from Insolvency and Bankruptcy Board of India for the period 1st July - 31st December 2024. His Email id is rkattorney@gmail.com and Contact No. is 99299-04888. His registration number is IBBI/IPA-001/IP-P-02355/2020-2021/13448.



The IRP is directed to file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- V. In pursuance of Section 13(2) of the Code, we direct the IRP, to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VI. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- VII. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- VIII. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of the 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 IRP, and shall be paid back to the Operational Creditor.

- IX. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.
- X. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record, and email to the appointed Resolution Professional for the information.
- XI. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)