

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV

C.P. (IB) No. 357/MB/2024

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Labindia Instruments Private Limited

...Operational Creditor

v/s.

Karkinos Healthcare Private Limited

(CIN: U93090MH2020PTC342527)

...Corporate Debtor

Order passed on: **21.05.2024**

Coram:

Mr. Anil Raj Chellan
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner : Adv. Ankit Lohia a/w Adv. Munaf
Virjee, Adv. Akash Agarwal and Adv.
Rushabh Parekh i/b AMR Law.

For the Respondent : Mr. Gaurav Joshi, Ld. Sr. Counsel
a/w Adv. Vishnu Shriram and Adv.
Srishti Kapoor.

ORDER

1. The Operational Creditor *viz.* **Labindia Instruments Private Limited** has filed the captioned petition on 23.04.2024, seeking admission of the Corporate Debtor *viz.* **Karkinos Healthcare Private Limited** into Corporate Insolvency Resolution Process for non-payment of an amount of INR 5,22,00,385/- (Indian Rupees Five crores, twenty-two lakhs, three hundred and eighty-five only).
2. The Operational Creditor is in the business of manufacturing, supply and installation of lab equipments and setting up of labs. The Operational Creditor submitted that the Corporate Debtor submitted five purchase orders dated 17.10.2022, 27.12.2022, 06.03.2023, 17.11.2023 and 05.01.2024. As against the said purchase order(s), the Operational Creditor supplied the lab equipments and raised invoices pursuant to the same. The Operational Creditor however submits it did not receive payments due under invoices dated 01.02.2023, 28.03.2023, 20.11.2023, 07.12.2023, 17.12.2023, 15.02.2024 and 12.03.2024 and thus contends that the same constitutes 'default'.
3. Pursuant to the same, the Operational Creditor sent a Demand Notice *dated* 01.04.2024 to the Corporate Debtor, which was replied by the Corporate Debtor through latter dated 08.04.2024 whereby, the Corporate Debtor cited its inability to settle the same on account of financial stress on its part and sought an extension of time to close the matter with respect to the pending dues.
4. The Ld. Counsel for the Corporate Debtor, vide its Reply dated 18.05.2024, submits that five purchase orders were issued by the Operational Creditor in between October 2022 to January 2024 for supply and installation of the lab equipments at different laboratories of the Corporate Debtor located across India. Pursuant to the said purchase orders, lab equipments for supplied by

the Operational Creditor to the Corporate Debtor at different location as stated in the purchase orders. Pursuant to delivery of the equipment(s), the Operational Creditor herein raised invoices upon the Corporate Debtor, and the Corporate Debtor has admittedly failed to make full payment of the amount outstanding as against the invoices thereto.

5. We have heard the Ld. Counsels of the Operational Creditor and Corporate Debtor and have duly perused the materials on record. We note that the Corporate Debtor has admitted the 'debt' and 'default' in relation to the same vide its reply to the demand notice in addition to the reply filed in the captioned petition. Further, the Corporate Debtor has not raised any pre-existing disputes. We are of the considered view that the captioned petition has been filed within limitation period, the pending dues are higher than the threshold amount as warranted for by the Code, the Demand Notice has been duly addressed and served, and the Corporate Debtor's inability to settle the dues thereunder clearly constitutes 'default'. Thus, in our opinion both the essential ingredients required for admission under Section 9 of the Code *i.e.*, the existence of "debt" and "default" in the matter-at-hand are proved. We thereby deem it appropriate to admit the corporate Debtor into CIRP.

6. The Operational Creditor has proposed the name of **Mr. Rajesh Sureshchandra Seth**, having Registration No. IBBI/IPA-002/IP-NO1021/2020-2021/13298, Resident of B-55, Shatdal Society, 7th Floor, Azad Lane, off S.V. Road, Andheri West, Near shoppers Stop, Mumbai City, Maharashtra-400058 (E-Mail: rajeshshethsbi@gmail.com) as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form-2 *dated* 15.04.2024 as required under rule 9(1) of the *Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016* along with a copy of his Authorisation for Assignment. The same is found to be in order, and we hereby appoint Mr. Rajesh Sureshchandra

Seth as the Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

7. The present Company Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable; therefore, there is no reason to deny the admission of the captioned Petition. In view of the same, this Adjudicating Authority admits the present Company Petition and orders initiation of CIRP against the Corporate Debtor.

ORDER

8. It is accordingly hereby ordered as follows:

(a) The above **Company Petition No. (IB) 357/2024** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Karkinos Healthcare Private Limited*.

(b) This Bench hereby appoints **Mr. Rajesh Sureshchandra Seth**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-NO1021/2020-2021/13298 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC, 2016. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (d) The Operational Creditor shall deposit a sum of INR 5,00,000/- (Rupees Five-lakhs only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (e) In view of the submission of the Operational Creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (f) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(g) Notwithstanding the above, during the period of moratorium:

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(h) The moratorium shall have effect from the date of receipt of order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
