

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 479 of 2019

IN THE MATTER OF:

Mr. Yogesh Baliram Vargantwar **...Appellant**

Vs.

M/s. Vighnaharta Health Visionaries Pvt. Ltd. **...Respondent**

Present: For Appellant: - Mr. Virender Ganda, Senior Advocate with Mr. P.K. Mittal, Mr. Ayandeb Mitra, Mr. Anand Singh and Ms. Shruti Choudhary, Advocates.

For Respondent: - Mr. Rahul Totala and Mr. Rohit Rathi, Advocates.

O R D E R

14.11.2019— The Appellant- Dr. Yogesh Baliram Vargantwar ('Operational Creditor') filed an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Vighnaharta Health Visionaries Private Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 29th March, 2019 rejected the Application with following observations:

"19. Given the Operational Creditor's averment in the rejoinder that the Corporate Debtor has acknowledged the due amount of Rs.94.41 lakhs in

the balance sheet as on 31.3.2017, in the absence of any document crystallising the dues of the Operational Creditor, the existence of dispute before the issuance of demand notice and the MoU being under challenge, the issue in hand requires further investigation which the Adjudicating Authority is not empowered to do.

20. Since the petition is filed on the basis of pre-existing dispute and the operational creditor has also failed to prove that there remains an operational debt due on the corporate debtor, which was not paid despite service of demand notice, therefore, petition filed U/S 9 of the I&B Code deserves to be dismissed.”

2. The Learned counsel appearing on behalf of the Appellant submits that both the grounds taken by the Adjudicating Authority are misconceived. There is no document to suggest pre-existing dispute with regard to the ‘operational debt’. Further, according to him, the ‘Corporate Debtor’ having acknowledged the due amount of Rs. 94.41 Lakhs in the Balance Sheet as on 31st March, 2017, no other document was required to hold that dues have crystallised.

3. Learned counsel appearing on behalf of the Respondent- 'Corporate Debtor' relied on e-mail dated 22nd February, 2018 to suggest pre-existing dispute, which is extracted below:



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Apart from us all Share holders and Directors of company are aware of and agreed for above mentioned settlement of rent.

Both of you, Dr Yogesh Vargantwar and yourself agreed to this on the condition that a separate account should be created and entire collection of neurosurgery should be deposited in that account and Dr Yogesh should be the sole operator of that account. In accordance to this agreement an account was opened in Davgiri Nagari Sahakari Bank. Since then his entire monthly collection has been deposited in that account and he also has withdrawn money. On the contrary the TDS on this total amount has been paid by the hospital which he needs to pay to the hospital.

5) Please note that we have informed you in presence of all the 5 persons mentioned above, in the same meeting that we will be vacating the premises mostly on 31st march 2018 or Maximum for sure by 30 April 2018.

6) It was also decided and communicated to you and Dr Yogesh Vargantwar in presence of our arbitrator Mr. Rajpal at his office N-3 Cidoo, Aurangabad, in September 2017 that we will be vacating your premises on 31 march 2018 OR maximum for sure 30 April 2018 for which you already agreed.

SO, YOUR CONTENTION THAT 6 MONTHS NOTICE HAS NOT BEEN GIVEN TO YOU BY US IS TOTALLY FALSE AND IS WITH MALAFIED INTENTION.

7) You and Dr.Yogesh Vargantwar also agreed that time that you will buy back your old equipment's and will pay to VHVPL for fixed furniture and assets of hospital, which we are leaving behind in your building, will pay losses as shareholder before leaving the company as per your share till 31st March 2017.

And agreed to adjust the amount of extra Rent paid by hospital to you till 31st March 2017.

And hospital will try to pay the remaining professional fees of Dr. Yogesh, which we are actually not supposed to pay right now, because the same period professional fees of other working consultants are remaining for all working consultants and shareholders / Directors of the company due to heavy losses in company.

Irrespective of all agreed discussions in past and so many favours to both of you now you are denying for agreed terms, that's why we are not able to move for final settlement.

We, as present Board of Directors, are still ready to do final settlement on agreed terms in past as discussed with the arbitrator ,

From: directors of VHVPL

Dr.Ajay Dande

Dr.Sachin Jhawar

Dr.Shoeb Hashmi

Dr.Rajiv Naik

CERTIFIED TO BE TRUE COPY

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4. From the record we find that the Appellant- Dr. Yogesh Baliram Vargantwar is the partner of a partnership firm who is the Landlord as well as a Professional Doctor working in the Neurosurgery Department of the Respondent- 'M/s. Vighnaharta Health Visionaries Private Limited'- ('Corporate Debtor'). Part-IV of Form-5, which is the application under Section 9, shows that the claim related to 'Professional Fee' as due to the Appellant and not paid is much more than Rupees One Lakh. The amount

receivable from the 'Corporate Debtor' against professional charges for routine patient till November, 2017 has been shown in Annexure enclosed to Form-5, which reads as follows:

**AMOUNT RECEIVABLE FROM CORPORATE DEBTOR
AGAINST PROFESSIONAL CHARGES OF ROUTINE
PATIENTS - (TILL 30 NOV 2017)**

SR.NO.	MONTH	AMOUNT RECEIVABLE FROM CORPORATE DEBTOR	AMOUNT RECEIVED IN CASH	AMOUNT RECEIVED BY CHEQUE*
1	Apr-17	1,095,937.00	505,000.00	1,280,000.00
2	May-17	1,234,191.00	480,000.00	1,190,000.00
3	June-17	1,275,256.00	180,000.00	2,600,000.00
4	July-17	1,174,792.00	168,000.00	2,234,000.00
5	Aug-17	1,299,617.00	310,000.00	900,000.00
6	SEPT-17	1,203,116.00	205,000.00	1,590,000.00
7	OCT-17	1,611,643.00	52,000.00	815,000.00
8	NOV-17	2,149,308.00	0.00	1,356,604.00
9	TDS AS PER 26AS PAID BY CORPORATE DEBTOR UPTO 09.02.2018		0.00	1,328,778.00
		₹ 11,043,860.00	1,920,000.00	13,293,382.00
			Total amount received	15,213,352.00

* These payments included payment towards old dues

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5. The fee for November, 2017 is more than Rs.21,49,308/-, apart from fee of the other month as shown therein. This is not disputed by the 'Corporate Debtor'.

6. E-mail dated 22nd February, 2018, as referred and extracted above, shows that the matter relates to payment of rent, which is not the subject matter of the application under Section 9.

7. In so far as the payment of professional charges is concerned, no dispute about the charges has been raised, but mere stand has been taken that the account has not been opened. There is nothing on the record to suggest that the amount has been paid.

8. In the aforesaid documents and in the account of the 'Corporate Debtor' dues having shown more than Rs. 94 lakhs, it was not open to the Adjudicating Authority to reject the application on the ground that it has not been crystalized. In fact, if the amount is not claimed at this stage and later on 'Corporate Debtor' may take a plea of limitation. This apart, in absence of any evidence relating to professional charges raised by the 'Corporate Debtor' prior to the Demand Notice under Section 8(1) dated 28th February, 2018, we hold that it is a fit case for 'Admission'.

9. For the reasons aforesaid, we set aside the impugned order dated 29th March, 2019 and remit the case to the Adjudicating Authority to admit the application under Section 9 after notice to the Respondent, so that the Respondent- 'Corporate Debtor' may get an opportunity to settle the matter prior to the admission of the application.

The appeal is allowed with aforesaid observations and directions. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Venugopal M)
Member(Judicial)

Ar/g