

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 414 of 2019

IN THE MATTER OF:

M/s. Citicare Super Specialty Hospital **...Appellant**

Vs.

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

Present: For Appellant: - Mr. Pradeep K. Mittal and Ms. Shruti Choudhary, Advocates.

For Respondent: - Mr. Rohit Rathi, Advocate.

O R D E R

18.10.2019— The Appellant- 'M/s. Citicare Super Specialty Hospital'- ('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 Pvt. Ltd.'- ('Corporate Debtor'). It having been rejected by the impugned order dated 11th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, the present appeal has been preferred.

2. Learned counsel for the Appellant submits that the Respondent has admitted the rent of certain periods to be due and that other dues have not been paid and they are also reflected in the Books of Accounts.

3. On the other hand, according to learned counsel for the Respondent, there is an 'existence of dispute'.

4. From the record, we find that the Demand Notice was issued by the Appellant on 28th February, 2018. Prior to the issuance of the Demand Notice, the Respondent sent e-mail to the Appellant on 22nd February, 2018, which is as follows:

----- Forwarded message -----
 From: Rajesh Vargantwar <vargantwar@gmail.com>
 To: Ajay Dande <drdande@yahoo.com>
 Cc: Sachin Jhavar <sachinjhavar@gmail.com>; Dr. Shoeb Hashmi <drshoebhashmi@gmail.com>; Dr. MANJIRI RAJIV NAIK <drrajivnaik@gmail.com>
 Sent: Tuesday, 6 March, 2018, 1:26:36 PM IST
 Subject: Re: Fw: your e mail dated

Sir,

We deny all the contents of your email dated 22.02.2018.

Regards,
 Rajesh Vargantwar

From: Ajay Dande <drdande@yahoo.com>
 To: Rajesh Vargantwar <vargantwar@gmail.com>
 Cc: Sachin Jhavar <sachinjhavar@gmail.com>; Dr. Shoeb Hashmi <drshoebhashmi@gmail.com>; Dr. MANJIRI RAJIV NAIK <drrajivnaik@gmail.com>
 Sent: Thursday, 22 February, 2018, 11:39:51 AM IST
 Subject: Fw: your e mail dated

this is in reply to your mail dated.....

Please note the following :

- 1) VHVPL has paid all the rent to you till 31/03/2017.
- 2) You send us the legal notice but then you only introduced Mr. Rajpal as an arbitrator and in our meeting with him you and we mutually agreed in presence of Dr Yogesh Vargantwar, Dr Shoeb Hashmi, Dr Sachin Jhavar and me , that you do not wish to pursue legal course of action. So as a respect to the arbitrator, and as agreed in that meeting, we have not given any reply to the legal notice sent to us by you.
- 3) As we have mutually agreed both the concerned parties do not wish to take the matter to court.

Please do not force us to take this matter to the courtroom.

- 4) In our meeting dated 31/03/2017 we have mutually agreed that rent of Feb, March and January half month 2017 was remaining and will be adjusted against the 40 lacs Rupees deposit you have with you and some other dues like Electricity bill etc... which we paid on your behalf for some reasons.

Please also note that building rent till 31st December 2016 already paid.

4) We also have agreed in presence of Dr Yogesh Vargantwar, Dr Shoeb Hashmi , Dr Sachin Jhavar, Dr. Rajiv Naik myself and you that from the date of 01/04/2017 the entire business / collection of neurosurgery department will be kept by Dr Yogesh Vargantwar (except for the Intensivist half pay and deductions as per hospital policy), the deduction of 40 percent which was supposed to be done for hospital will not be done by the hospital and this amount should be considered as rent of the property from 1st April 2017 till we vacant the building, and hospital will provide you all supporting services including manpower, electricity, phone service.

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 Devgiri 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 Cidco 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 arbitarator ,

From: directors of VHVPL

Dr.Ajay Dande

Dr.Sachin Jhawar

Dr.Shoeb Hashmi

Dr.Rajiv Naik

5. From the aforesaid e-mail, we find that both the parties in the meeting held on 31st March, 2017 have mutually agreed that the remaining rent will be adjusted against Rs.40 lacs deposited with the Appellant and some other dues like electricity bill etc. to be adjusted which was paid by the 'Corporate Debtor'. It further stated that they have discussed for a Settlement through an Arbitrator.

6. In view of the aforesaid fact, even if it is argued that there are admitted dues, the application under Section 9 cannot be entertained,

there being an existence of dispute relating to amount which is to be adjusted from the amount payable by the Appellant with the Respondent.

In absence of any merit, the appeal is accordingly, dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

Ar/g