

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 147/Chd/Hry/2018
Under Section 9 of Insolvency
and Bankruptcy Code, 2016**

In the matter of :

Mistcold Sales & Services Private Limited

having its registered office at 721,
Hemkunt Chambers, 89, Nehru Place,
New Delhi-110010

...Petitioner/Operational Creditor

Versus

Nayati Healthcare & Research Private Limited

having its registered office at
808, Tower B4, Spaze I-Tech Park, Sector-49 Sohna Road
Gurgaon HR 122002 India
CIN No. U85100HR2013PTC048389

...Respondent/Corporate Debtor

Judgement delivered on: 22.12.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. L.N. Gupta, Member (Technical)**

For the petitioner-operational creditor : Mr. Balwinder S. Kalsi, Advocate

For the respondent-corporate debtor : Mr. Rahul Makkar, Advocate

Per: Mr. Harnam Singh Thakur, Member (Judicial)

JUDGEMENT

It may be noted that, vide order dated 16.09.2019 of this
Adjudicating Authority wherein the petition was dismissed on ground of

pre-existing dispute. The order of this Adjudicating Authority went into appeal before the Hon'ble NCLAT, New Delhi. The Hon'ble National Company Law Appellate Tribunal vide its order dated 17.10.2023 in Comp. App. (AT) (Ins) No. 1230 of 2019 held the following:-

"8. The basic facts of this case are that as against the total dues of the Appellant of Rs. 7,37,43,278/-, the Respondent allegedly paid Rs. 6,86,18,779/- and there was a difference of amount of Rs. 57,24,195/-. The Appellant claimed this amount with interest of Rs. 19,04,390/- and thus a total sum of Rs. 76,28,585/- was sought to be resolved through this application. There is no dispute that the Respondent never raised any dispute in regard to the performance of the Appellant rather issued a completion certificate on 27.12.2017 which read as under:-

To Whom So Ever It May Concern

This is to certify that M/s Mistcold Sales & Services pvt. Ltd., K112, UPSIDC, Site-4, Greater Noida – 201103, has successfully completed and commissioned the HVAC works for 351 bed hospital (Nayati Healthcare & Research Pvt. Ltd.) at Mathura for an amount of approximately Rs. 7 Crores to our entire satisfaction.

Your Faithfully

For Nayati Healthcare and Research Pvt. Ltd. Authorised signatory

9. According to the Respondent, the Appellant has completed and commissioned the HVAC works for an amount of Rs. 7 Crores to their entire satisfaction. It is argued that if the Appellant has performed his part of the contract to the entire satisfaction of the Respondent as per the completion certificate even of a sum of Rs. 7 Crores then having been paid Rs. 6,86,18,779/- by the Respondent a sum of Rs. 13,81,229/- with interest is still due which has not been paid by the Respondent, therefore, the observation made by the Adjudicating Authority that the Appellant has not led evidence that after the issuance of completion certificate, the Corporate Debtor has confirmed that any amount remains due to the Operational Creditor is patently erroneous. The law is well settled that the Applicant has to show the debt and default for the purpose of initiation of CIRP and for the purpose of holding that there is a pre-existing dispute, the Respondent has to lead evidence that it had ever raised a dispute before replying to the demand notice. The fact remains that the Respondent has issued certificate dated 27.12.2017 that the Appellant has successfully completed and commissioned the HVAC Work to the entire satisfaction would speak volumes towards the fact that there was no pre-existing dispute between the parties and it has been reked up only when the application has been filed. In such circumstances, the cause

shown by the Appellant in this appeal is genuine and logical and thus the impugned order is set aside while allowing the appeal. Since, declaration u/s 14 of the Code and the appointment of the IRP is to be done by the Adjudicating Authority, therefore, the case is remanded back to the Adjudicating Authority”.

2. After receiving the said order, date was requested by the Ld. counsel for the petitioner-financial creditor for proposing the name of the IRP and filing Form-2 along with his consent. IA No.2916/23 has been filed by the petitioner for proposing Interim Resolution Professional (IRP) and placing on record the consent letter by way of Form-2 dated 07.12.2023 with the AFA Certification valid upto 17.10.2024 alongwith IBBI Registration certificate. The IA was disposed of vide order dated 18.12.2023 of this Adjudicating Authority. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arvind Mittal and there is nothing adverse against him.

3. In the sequel and in terms of the order dated 17.10.2023 of Hon'ble National Company Law Appellate Tribunal in Comp. App. (AT) (Ins) No. 1230 of 2019, we hereby admit the application for initiation of Corporate Insolvency Resolution Process (CIRP) of corporate debtor, we appoint Mr. Arvind Mittal, RegistrationNo.IBBI/IPA-001/IP-P01358/2018-2019/12081, E-mail:arvindmittal81@yahoo.in, Mobile No. 9958061149, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Arvind Mittal shall be in accordance with the provisions of Section 16(5) of the Code.

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation

6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case

accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in

his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

4. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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, tribunal, 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 Operational 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.

5. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector

regulator and to a surety in a contract of guarantee to a corporate debtor.

6. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

7. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

8. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

9. This petition is accordingly admitted.

Sd/-
(L.N. Gupta)
Member (Technical)
December 22, 2023
TBG/TNV

Sd/-
(Harnam Singh Thakur)
Member (Judicial)