



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 649/MB/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Samruddhi Health Care,

Having its registered address at: 209, Mahadev Apartment, Pipeline Road, Ahmednagar - 414003

...Petitioner/Operational Creditor

Vs

Surabhi Hospital Private Limited,

Having its registered office at: Plot No. 1, Survey No. 87/A, Gulmohar Road, Savedi, Ahmednagar, Maharashtra, India – 414001

... Respondent/Corporate Debtor

Order Dated: 08.04.2025

Coram:

Sh. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)
Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the Petitioner:	Adv. Manoj Mishra (PH)
For the Corporate Debtor:	Adv. Nishant Barolia (PH)



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ORDER

I. This Company Petition is filed by **Samruddhi Health Care** (hereinafter referred as “**Petitioner/Operational Creditor**”) on 14.05.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Surabhi Hospital Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 1,70,19,439/-** and the date of default being **07.05.2023**.

II. **Facts in brief, as per the Petition and submissions of the Operational Creditor-**

1. The Operational Creditor / Petitioner is a Patnership Firm engaged in the business of Health Care and other related activities. It is stated that the Corporate Debtor and Operational Creditor entered into a Memorandum of Understanding (“MoU”) on 18.06.2019, whereby the Corporate Debtor hired the Operational Creditor to provide pathology services to patients requiring the said service on reference by the Corporate Debtor.
2. Thereafter, vide Work Assignment Letters dated 18.06.2019, the Operational Creditor assigned work to 2 suppliers namely, Lifeguard Medicos and Om Surgicals for supplying pharmaceutical and medical goods to the Corporate Debtor. Further, in view of the MoU dated 18.06.2019 and Work Assignment Leters dated 18.06.2019, the aforementioned suppliers (Lifeguard Medicos and Om Surgicals) have been supplying numerous goods to the Corporate Debtor.
3. Lifeguard Medicos has supplied medicines to the hospital and medical stores of the Corporate Debtor, against which numerous invoices were raised. The receivables dues to Lifeguard Medicos is provided as under-



Sr. No.	Particulars	Amount (In INR)
1.	Receivables from Surabhi Hospital, Ahmednagar	10,129/-
2.	Receivables from Surabhi Medical Stores, Ahmednagar	
	a) Total Amount payable to Lifeguard Medicos	1,08,46,715/-
	b) Payments made to Lifeguard Medicos	61,15,967/-
	Sub-Total (2) = (a-b)	47,30,748/-
1+2	TOTAL AMOUNT	47,40,877/-

4. The Corporate Debtor has acknowledged the existing liability of Rs. 47,40,877/- owed to Lifeguard Medicos. The same is substantiated by the ledger statement of the Corporate Debtor, wherein an outstanding amount of Rs. 47,40,877/- due to Lifeguard Medicos is reflected as under-
 - a. Ledger Account of Lifeguard Medicos in the books of the Corporate Debtor for dues of Rs. 10,129/-.
 - b. Ledger Account of Lifeguard Medicos in the books of the Corporate Debtor for the dues of Rs. 47,30,748/-.
5. Further, the Corporate Debtor failed to make payment of the outstanding amount of Rs. 47,40,877/-, Lifeguard Medicos sent a reminder letter dated 28.04.2023 to the Corporate Debtor and the same was duly acknowledged by the Corporate Debtor.
6. Furthermore, the Operational Creditor states that Om Surgicals has supplied surgical material to the hospital and medical stores of the Corporate Debtor, against which numerous invoices were raised. The receivables dues to Om Surgicals is provided as under-



Sr. No.	Particulars	Amount (In INR)
1.	Receivables from Surabhi Hospital, Ahmednagar	23,89,796/-
2.	Receivables from Surabhi Medical Store, Ahmednagar	
	a) Total Amount payable to Om Surgicals	67,99,341/-
	b) Payments made to Om Surgicals	44,97,021/-
	Sub-Total (2) = (a-b)	23,02,320/-
3.	Receivables from Surabhi Hospital, Nagapur	21,376/-
4.	Receivables from Surabhi Hospital, Cathlab, Ahmednagar	1,39,678/-
1+2+3+4	TOTAL AMOUNT	48,53,170/-

7. The Corporate Debtor has acknowledged the existing liability of Rs. 48,53,170/- owed to Om Surgicals. The same is substantiated by the ledger statement of the Corporate Debtor, wherein an outstanding amount of Rs. 48,53,170/- due to Om Surgicals is reflected as under-
 - a. Ledger Account of Om Surgicals (to medical store) in the books of the Corporate Debtor.
 - b. Ledger Account of Om Surgicals (Hospital) in the books of the Corporate Debtor.
8. It is further submitted that as the Corporate Debtor failed to make payment of the outstanding amount of Rs. 48,53,170/-, Om Surgicals sent a reminder letter dated 28.04.2023 to the Corporate Debtor and the same was duly acknowledged by the Corporate Debtor.
9. It is submitted by the Operational Creditor that Om Surgicals has a receivable of Rs. 48,53,170/- and Lifeguard Medicos has a receivable of Rs. 47,40,877/- from the Corporate Debtor. Further, Om Surgicals being an MSME is entitled to receive compound interest with monthly interest, at 3 times of the bank rate notified by the RBI in accordance with Section



15, 16 & 17 of Micro, Small and Medium Enterprises Development Act, 2006.

- 10.** By virtue of Deed of Assignment dated 21.09.2023, Om Surgicals and Lifeguard Medicos, assigned their receivables amounting to Rs. 95,94,047/- along with the applicable interest and any other benefit solely to the Operational Creditor for the purpose of efficiency in the recovery at the terms and conditions as set out in the said deed.
- 11.** As contended further, the Operational Creditor has deposited an amount of Rs. 10,00,000/- with the Corporate Debtor towards performance of the contract i.e., MOU dated 18.06.2019. Thus, the said deposit of Rs. 10 Lakhs is payable by the Corporate Debtor in favor of the Operational Creditor. In this regard, reliance is placed on Note No. 7(a)(a)(f) on Page 33 of the Independent Auditor's Report of the Corporate Debtor as at 31.03.2022, wherein the said deposit has been reflected as "Trade Payable" by the Corporate Debtor in favour of the Operational Creditor. Furthermore, as submitted, the Corporate Debtor owes an amount of Rs. 64,25,392/- in favor of the Operational Creditor being the "Hospital Creditor" of the Corporate Debtor, in backdrop of the Petitioner holding 50% shares in lab turnout as per Clause 3 of the MOU dated 18.06.2019 titled "Remuneration to Samruddhi Health Care". Reliance is placed on Note No. 7(a)(a) at Page 27 to 29 of the Independent Auditor's Report of the Corporate Debtor as at 31.03.2022, wherein the Corporate Debtor has ex-facie acknowledged the existence of liability of Rs. 64,25,392/- in favor of the Operational Creditor.
- 12.** Therefore, it is submitted that including the receivables due to Lifeguard Medicos and Om Surgicals (receivables amounting to Rs. 95,94,047/- assigned to the Operational Creditor by virtue of Deed of Assignment dated 21.09.2023) and the aforementioned amount of Rs. 10,00,000/- and Rs. 64,25,392/- owed to the Operational Creditor, the Corporate Debtor owes a total amount of Rs. 1,70,19,439/- to the Operational Creditor.
- 13.** Further, despite repeated reminders by the Operational Creditor, the Corporate Debtor failed to repay the balance amount and thus, owing to



the delinquency on part of the Corporate Debtor the Operational Creditor sent a Demand Notice, as per Section 8 of the Code, dated 06.10.2023 to the registered office of the Corporate Debtor demanding unpaid operational debt amounting to Rs. 1,70,19,439/- along with further interest and the same was received by the Corporate Debtor. The said Demand Notice was also sent via email on 12.10.2023.

- 14.** The Operational Creditor submits that Corporate Debtor has neither made the payment nor did they raise any dispute regarding the due and payable amount claimed by the Petitioner prior to the issuance of Demand Notice. However, the Corporate Debtor sent a reply dated 02.11.2023 to the aforementioned Demand Notice, raising contentions to shirk away from paying the dues owed to the Operational Creditor. Furthermore, the reply to the Demand Notice is a violation of Section 8(2) of the Code whereby the Corporate Debtor was required to send its reply within 10 days of receipt of Demand Notice i.e., by 26.10.2023 (expiry of 10 days from 16.10.2023). However, the reply by the Corporate Debtor was dated 02.11.2023.
- 15.** Therefore, in view of the aforementioned facts and circumstances, the Operational Creditor preferred the present Petition before this Tribunal, seeking to invoke Section 9 of the Code for initiating CIRP against the Corporate Debtor.

III. Reply of the Corporate Debtor in brief-

- 1.** The Corporate Debtor is a company engaged in the business of providing hospital services. The Corporate Debtor, at the outset, denied all contentions of the Operational Creditor. The Corporate Debtor states that the present petition filed by the Operational Creditor has been filed in order to defame the Corporate Debtor and the Operational Creditor has suppressed material facts from this Tribunal.
- 2.** It is submitted that no dues are existing from the Corporate Debtor allegedly payable to the Operational Creditor. The Corporate Debtor denies knowledge of documents (Exhibits-A to L) allegedly signed by Directors Mr. Rakesh Gandhi and Mr. Ashish Bhandari, and contends



that these documents were executed by Mr. Rakesh Gandhi without following due process of law and are therefore not binding upon the Corporate Debtor.

3. Further, it is submitted that Mr. Rakesh Gandhi has withheld statutory documents of the Corporate Debtor. Consequently, an email was written to Mr. Rakesh Gandhi for returning the statutory documents of the company. Pursuant to this, a letter was also sent to the Superintendent of Police, Ahmednagar on 30.01.2024
4. The Operational Creditor has relied upon a Partnership deed dated 16.04.2019. The said partnership deed reflects that the said firm comprised of three (3) partners namely, Miss Samruddhi Vijay Nikam, Mrs. Rajashree Rakesh Gandhi, and Mrs. Aarti Bhandari. It is pertinent to note that one of the Director i.e. Mrs. Rajashree Rakesh Gandhi is the wife of Director Mr. Rakesh Gandhi, while Smt. Aarti Bhandari is the wife of Shri. Ashish Bhandari, Director of the Corporate Debtor and therefore, there is a conflict of interest.
5. The MOU has been allegedly signed between Corporate Debtor and Operational Creditor on 18.06.2019. This MOU has been signed by Mr. Rakesh Gandhi in his personal capacity as neither this issue was never discussed in the meeting of Board of Directors nor Mr. Rakesh Gandhi was authorized to sign on behalf of the Corporate Debtor to sign the MOU.
6. Furthermore, as contended, it is an admitted fact that Om Surgical, Lifeguard, and Samruddhi Health Care are companies promoted by the Nikam family in active connivance with the Directors Mr. Rakesh Gandhi and Mr. Ashish Bhandari.
7. Mr. Rakesh Gandhi had resigned on 14.02.2023 as a Medical Director. Thereafter, the resignation as a medical Director tendered by Mr. Rakesh Gandhi was placed in the meeting of Board of Directors dated 14.02.2023, whereby it was unanimously decided to accept the resignation given by Mr. Rakesh Gandhi. Therefore, he had no right to



sign any document on behalf of the Corporate Debtor after this date. Documents (Exhibit-K, Exhibit-L, Exhibit-M) allegedly signed by him afterward are considered illegal, improper, and not binding upon the Corporate Debtor.

8. The corporate debtor company has got its In-house laboratory whereby the pathological samples were tested in-house. Therefore, on a given point of time, there was no need to out-source the work of pathological examination to the third party.
9. The alleged amount due and payable to Samruddhi Health Care to the tune of Rs.74,25,392/- is a bogus liability created by Mr. Rakesh Gandhi & Mr. Ashish Bhandari as both the wife of Mr. Rakesh Gandhi and Mr. Ashish Bhandari are partners of Samuddhi Healthcare.
10. Mr. Rakesh Gandhi appears to have executed some fabricated documents in favour of few Vendors (in those firms, the wife of Mr. Rakesh Gandhi & wife of Mr. Ashish Bhandari was active partner) thereby causing wrongful loss to the Corporate Debtor and wrongful gain to himself and other partners of the partnership firm.
11. Mr. Rakesh Gandhi had inflated the rates of the items which are allegedly supplied to the Corporate Debtor and he has not carried out any competitive tendering process in order to procure material. The Corporate Debtor had decided to carry out inspection of the transactions allegedly carried out by Mr. Rakesh Gandhi, wherein, it was discovered that the companies of Nikam and Gandhi had quoted exorbitant prices of the medical items, which were way higher than the market prices of those items.
12. A FIR bearing No. 556/2024 has been registered with the Kotwali Police station, Ahmednagar against Mr. Rakesh Gandhi and Mr. Ashish Bhandari under the provisions of Section 406, 467, 468 r/w Section 34 of the Indian Penal Code, 1860. The Corporate Debtor further states that in connection with the said FIR Mr. Rakesh Gandhi had approached to the Hon'ble High Court, Bench Aurangabad, by way of an Anticipatory



Bail Application No. 893 of 2024. The said application came to be rejected by the Hon'ble court by way of a reasoned order dated 21.08.2024.

- 13.** Moreover, as contended, the transactions carried out by the Operational Creditor are out of the ambit of Section 9 of the code and thus, no relief can be granted in the present matter. Therefore, in light of the abovementioned submissions, the Corporate Debtor prayed for the dismissal of the present Petition.

IV. Findings-

- 1.** After having heard the Ld. Counsel for the parties and perusing the documents on record, it becomes clear that the case of the Petitioner is with respect to the amounts due from the Corporate Debtor based on a MoU dated 18.06.2019. Under the said MoU, the Corporate Debtor hired the Operational Creditor to provide pathology services to patients on reference by the Corporate Debtor. The Operational Creditor has placed on record Work Assignment Letters dated 18.06.2019, whereby the Operational Creditor assigned work to two suppliers namely, Lifeguard Medicos and Om Surgicals for supplying pharmaceutical and medical goods to the Corporate Debtor. The Operational Creditor claims a total amount of Rs. 1,70,19,439/- with the date of default being 07.05.2023.
- 2.** As per the Operational Creditor's submission, Lifeguard Medicos has supplied medical goods to the hospital and medical stores of the Corporate Debtor, against which numerous invoices were raised. The receivables due to Lifeguard Medicos amount to Rs. 47,40,877/-. Similarly, Om Surgicals has supplied surgical material to the hospital and medical stores of the Corporate Debtor, against which numerous invoices were raised. The receivables due to Om Surgicals amount to Rs. 48,53,170/-.
- 3.** The Operational Creditor has submitted that by virtue of Deed of Assignment dated 21.09.2023, Om Surgicals and Lifeguard Medicos have assigned their receivables amounting to Rs. 95,94,047/- along with applicable interest to the Operational Creditor. Additionally, the Operational Creditor claims a deposit of Rs. 10,00,000/- payable by the



Corporate Debtor and further claims an amount of Rs. 64,25,392/- being the "Hospital Creditor" of the Corporate Debtor, in backdrop of the Petitioner holding 50% shares in lab turnout as per Clause 3 of the MoU dated 18.06.2019.

4. On the other hand, the Corporate Debtor has vehemently denied the liability, primarily on the grounds that the MoU and subsequent transactions were executed by Mr. Rakesh Gandhi without proper authorization from the company, thereby claiming that such documents are not binding upon the Corporate Debtor. It further alleges that Mr. Rakesh Gandhi and Mr. Ashish Bhandari (Directors of the Corporate Debtor) were acting in conflict of interest with the company as their wives were partners in the Operational Creditor firm.
5. On perusal of the ledger statements submitted by the Operational Creditor, it is observed that the Corporate Debtor has acknowledged the existing liability of Rs. 47,40,877/- owed to Lifeguard Medicos and Rs. 48,53,170/- owed to Om Surgicals in its own books of accounts. These ledger accounts constitute an admission of liability by the Corporate Debtor itself.
6. Further, as evident from Note No. 7(a)(a)(f) on Page 33 of the Independent Auditor's Report of the Corporate Debtor as at 31.03.2022, the deposit of Rs. 10,00,000/- has been reflected as "Trade Payable" by the Corporate Debtor in favor of the Operational Creditor. Similarly, Note No. 7(a)(a) at Page 27 to 29 of the same report shows that the Corporate Debtor has acknowledged the existence of liability of Rs. 64,25,392/- in favor of the Operational Creditor.
7. Further, this Tribunal observes that the Corporate Debtor has not placed on record any formal resolution of the Board of Directors revoking Mr. Rakesh Gandhi's authority to act on behalf of the company. Rather, a hand-written resolution has been placed on record. The Corporate Debtor claims that Mr. Rakesh Gandhi resigned on 14.02.2023 as Medical Director, which was allegedly accepted in a Board meeting on the same date. However, no such resignation letter has been placed on



record to substantiate this claim. Further, these issues would fall within the ambit of 'Indoor Management' of the Corporate Debtor.

- 8.** The contentions of the Corporate Debtor regarding Mr. Rakesh Gandhi acting without authorization are found to be an afterthought. If indeed Mr. Rakesh Gandhi was operating beyond his authority, the Corporate Debtor had ample opportunity to take corrective measures or raise these objections earlier. However, it appears that these contentions were raised only after the Demand Notice was issued by the Operational Creditor. Moreover, the reply to the Demand Notice was sent on 02.11.2023, which was beyond the statutory period of 10 days as prescribed under Section 8(2) of the Code.
- 9.** It is pertinent to note that the Corporate Debtor has not denied receiving the goods or services from Lifeguard Medicos and Om Surgicals. The Corporate Debtor has merely attempted to disown the liability on technical grounds rather than disputing the actual supply of goods or services.
- 10.** With regards to the Letter to the Superintendent of Police, Ahmednagar mentioned by the Corporate Debtor, it deserves to be appreciated that the same is dated 30.01.2024, which is much after the Demand Notice dated 06.10.2023 issued by the Operational Creditor under Section 8 of the Code.
- 11.** Furthermore, the Corporate Debtor has also contended that the Operational Creditor and its associated entities were charging exorbitant prices for medical items. However, it is noted that there is nothing available on record to substantiate that the issue with respect to the inflated prices of the medical goods or any other issue with respect to the quality of the goods and service rendered by the Operational Creditor was ever raised by the Corporate Debtor before the issuance of the Demand Notice by the Operational Creditor. Consequently, the same does not constitute a pre-existing dispute under the Code as per the settled law.
- 12.** As far as the Corporate Debtor's contention that the transactions fall outside the ambit of Section 9 of the Code, this Tribunal finds no merit in this argument. The Operational Creditor has clearly established that



it is entitled to receive payments for goods supplied and services rendered to the Corporate Debtor, which squarely falls within the definition of 'operational debt' under Section 5(21) of the Code.

13. Thus, keeping in view the totality of the circumstances of the present case and in view of the fact that there is a default on part of the Corporate Debtor and an outstanding amount is due to the Operational Creditor as evidenced by the Corporate Debtor's own ledger accounts and audited financial statements, and there is no pre-existing dispute between the parties. Further, in view of the fact that the amounts stated to be due in this case is above the threshold limit as stipulated under Section 4(1) of IBC and the Petition has been filed well within the period of limitation, this is a fit case for admission.

14. Hence, in view of the settled law wherein the Hon'ble Supreme Court has been pleased to hold in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*:

"28. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. Under sub-section (7), the Adjudicating Authority shall then communicate the order passed to the Financial Creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be."

The present petition is **admitted** to CIRP by passing the following order:

ORDER

- a. The above Company Petition No. 649/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Surabhi Hospitals Private Limited**.



- b. This Bench is hereby appointed **Mr. Ajay Amrutlal Mutha**, having registration No. **IBBI/IPA-001/IP-P-02152/2020-2021/13279**, having email Id: **caajaymutha@gmail.com** as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 649/IBC/MB/2024 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

/Jhanvi, LRA/

SD/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)