

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1517 of 2024

[Arising out of order dated 05.07.2024 passed by the National Company Law Tribunal, New Delhi, Court-IV in Company Petition No. (IB) 327(ND)/2023]

IN THE MATTER OF:

Satish Kumar Narula

...Appellant

Director of the suspended Board of Director
M/s. Nayati Healthcare and Research
Centre NCR Pvt. Ltd., Presently residing at
75-B, Pocket E, Gangotri Enclave,
Alaknanda, New Delhi-110019

Versus

M/s. Healthians Research Centre Pvt. Ltd.

...Respondent

Plot No. 518, Phase-III, Udyog Vihar,
Gurugram, Haryana-122016.

Present:

For Appellant : Mr Abhijeet Sinha, Sr. Advocate with Mr Giriraj Subramaniam, Mr Jaisal Baath, Adv. Malavika Chadramouli, Mr. Aditya Sarma, Advocates.

For Respondents : Mr. Atul Kharbanda, Advocate.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal is filed by the suspended director of M/s Nayati Healthcare & Research NCR Pvt. Ltd., the Corporate Debtor (hereinafter referred to as ‘**CD**’) against the impugned order dated 05.07.2024 passed by the Ld. NCLT, New Delhi in CP No.: IB 327(ND)/2023 wherein the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘**IBC, 2016**’) was admitted and Corporate Insolvency Resolution Process (hereinafter referred to as ‘**CIRP**’) has been initiated against the Corporate Debtor.

2. The brief facts of this case as noted in the impugned order are as under:

- i) Corporate Debtor was incorporated on 17.12.2007.
- ii) The Operational Creditor (hereinafter referred to as '**OC**'), M/s Healthians Research Centre Pvt. Ltd. had provided services in furtherance of the service agreement dated 07.04.2022 entered into by the OC and Vimhans Nayati Super Speciality Hospital (hereinafter referred to as '**Vimhans Niyati**'/'**Hospital**').
- iii) Over a period of time, numerous invoices were raised by the Operational Creditor. The initial payments were made by the Corporate Debtor. In the invoices raised the GSTN of the Corporate Debtor is shown.
- iv) There were defaults in payment. The Corporate Debtor issued 27 post-dated cheques totalling Rs. 1,80,44,000/- in favour of the Operational Creditor. However, all the cheques were returned dishonoured.
- v) On assurance of the Corporate Debtor, a closure service agreement dated 31.08.2022 was entered terminating the service agreement and cheques for settlement amount of Rs. 1,50,00,000/- were issued by the Corporate Debtor.
- vi) The closure agreement is also on letter head of the Corporate Debtor. Out of the 7 post-dated cheques, 5 cheques amounting to Rs. 1,25,00,000/- were dishonoured.
- vii) The Corporate Debtor had represented itself as the sister concern/connected entity of the Hospital.
- viii) The Corporate Debtor defaulted in honouring the closure agreement and the 5 cheques were dishonoured which led the Operational Creditor to **Company Appeal (AT) (Insolvency) No. 1517 of 2024**

filing of Section 9 application before the Ld. NCLT wherein the impugned order was passed.

ix) The Operational Creditor has also filed complaints under the Negotiable Instruments Act, 1881.

x) The Ld. NCLT in the impugned order dated 05.07.2024 has held as under:

“Finding & Analysis:

6. We have heard the Ld. Counsel for both the Operational Creditor and the Corporate Debtor and have carefully perused the documents submitted by them. Upon consideration of the submissions made and the documents placed on record, we observe that the invoices for the services rendered bear the GSTIN of the Corporate Debtor. Verification of this GSTIN on the GST portal corroborates that it pertains to the Corporate Debtor [Rejoinder Annexure R-4, Pg 110-114] It is crucial to note that the Corporate Debtor never refuted or even corrected the Invoices.

7. Further, two agreements were signed between the Operational Creditor and Vimhans Niyati namely Service Agreement dated 07.05.2022 and Closure Agreement dated 31.08.2022. As per the closure agreement dated 31.08.2022, the Corporate Debtor was to discharge a fiscal responsibility worth Rs. 1,35,00,000/- (Rupees One Crore Thirty Five Lakhs only) + TDS i.e total of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only). In this furtherance, cheques were issued by the Corporate Debtor.

8. Pertinently, in order to fulfill the settlement amount stipulated in the Closure Agreement, the Corporate Debtor issued seven cheques, of which five were dishonored. These dishonored cheques were dated 30.09.2022, 31.10.2022, 30.11.2022, 31.12.2022, and 31.01.2023 [Petition, Annexure G, Pgs 65-69], with their corresponding return memos dated 06.10.2022, 02.11.2022, 19.12.2022, 16.01.2023, and 14.02.2023 [Petition, Annexure H, Pgs 70-74]. It is noteworthy that all these cheques were drawn in the name of ‘Nayati Healthcare Research NCR Private Limited’, the Corporate Debtor.

9. The question that now arises is that ‘Whether the payment by cheque which is dishonoured amounts to acknowledgement of a debt and a liability?’. We are supported by the Judgment passed

by the Hon'ble Gujrat High Court in the matter of **Hindustan Apparel Industries v Fair Deal Corporation, New Delhi AIR 2000 Guj 261**. The relevant paragraph is extracted below:

'7. [...] In this view of the position of law reflecting upon issuance of a cheque, it has to be stated that a cheque would prima facie amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque. Such an admission of payment of debt is to be determined with reference to the point of time at which the purported admission was made, that is to say, when the cheque was issued. Merely because subsequently such a cheque is dishonoured and the admission is retracted the admission or the acknowledgement can hardly be said to cease as an admission/acknowledgement of liability. To hold otherwise would be contrary to fair play between the parties, and justice and equity. With profound respect to the Bench in Chintaman's case (AIR 1956 Bom 553) (supra), we are unable to endorse the view expressed on the question in the said decision. We endorse the view expressed by the Patna High Court in Rajpatiprasad's case (AIR 1981 Patna 187) (supra), which is recent in point of time in so far as decisions referred to on behalf of the plaintiff are concerned. The view expressed by the learned single Judge in the referring judgment also merits acceptance.'

10. Further in the case of **Hotel Diplomat v. Folio Holdings India (P) Ltd., 2012 SCC OnLine Del 4436**, the aforementioned stance was re-iterated which stated:

'14. It is by now settled proposition of law that a dishonoured cheque constitutes acknowledgement within the meaning of Section 18 of Limitation Act. Reference in this regard can be made to the decision of this Court in Rajesh Kumari v. Prem Chand Jain AIR 1980 Del 80, where it was held that a cheque constitutes acknowledgement and whether it was dishonoured or encashed would be immaterial. It was further held by this Court that where a cheque was dishonoured a fresh period of limitation would start from the date of the cheque. Similar view was also taken in S.C. Gupta v. Allied Beverages Co. Pvt. Ltd. (2009) 163 DLT 495 & also by Full Bench of High Court of Gujarat in Hindustan Apparel industries v. Fair Deal Corporation AIR 2000 Guj 261'

11. In light of the above quoted Judgments, we are of the view that issuance of cheques amounts to acknowledgment of debt. It is a deemed acceptance of the liability on the part of the Corporate

Debtor. This shows that there is a debt as well as a default qua the Corporate Debtor.

12. Further, it is the plea of the Corporate Debtor that the Operational Creditor has filed a case under Section 138 of the Negotiable Instrument Act, 1881 and should pursue that only. Here the question that arises is that ‘Whether the Operational Creditor can simultaneously pursue proceedings under the Insolvency and Bankruptcy Code (IBC) and Section 138 of the Negotiable Instruments Act, 1881?’ While dealing with a similar question, a Three Judge Bench of the Hon’ble Supreme Court in **Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation Of India Ltd: 2023 LiveLaw (SC) 195**, has held as under:

“16. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. In fact, a bare reading of Section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act. We are unable to appreciate the plea of the learned counsel for the Appellant that because Section 138 of the N.I. Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the N.I. Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the N.I. Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.”

13. Thus, deriving from the jurisprudence established by the Hon’ble Supreme Court, it is evident that while recovery proceedings, which are barred under Section 14 of the Insolvency and Bankruptcy Code (IBC), are primarily civil in nature, proceedings under Section 138 of the Negotiable Instrument Act, 1881, are criminal in nature. These two types of proceedings serve distinct purposes and are governed by different legal principles. As such, there is no inherent conflict in pursuing both sets of proceedings concurrently. This legal distinction underscores that an Operational Creditor is entitled to simultaneously seek recourse under the IBC for insolvency proceedings, while also pursuing penal action under Section 138 of the Negotiable

Instrument Act, 1881, without contravening the legal framework of either statute.

14. The subsequent question that necessitates our consideration is ‘Whether a case filed under Section 138 of the Negotiable Instrument Act, 1881, constitutes a pre-existing dispute?’. To address this query, we turn to Section 5(6) of the Code, which delineates the definition of “Dispute” as follows:

(6) "dispute includes a suit or arbitration proceedings relating to-

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;

Further, a Suit is generally referred to as a Civil proceeding initiated by a party in the court of law.

15. On a comprehensive reading of the judgment cited above in paragraph 12 of this order, coupled with the definition of the term ‘Dispute’ under Section 5(6) of the Code, it becomes evident that proceedings initiated under Section 138 of the Negotiable Instrument Act, 1881 are inherently criminal in nature. This classification is pivotal as criminal proceedings do not fall within the ambit of a 'dispute' as defined by Section 5(6) of the Insolvency and Bankruptcy Code (IBC). Consequently, we are compelled to conclude that a case instituted under Section 138 of the Negotiable Instrument Act, 1881 does not constitute a pre-existing dispute.

16. Therefore, the mere pendency of a case under Section 138 cannot be construed as a dispute in the context of the IBC, thereby allowing the Operational Creditor to simultaneously pursue remedies under both legal frameworks without any legal conflict or impediment.

17. Considering the facts of the present case, we find that the debt in question exceeds the statutory threshold of Rs. 1 Crore. There is an established default in the repayment of this debt, and no pre-existing dispute has been demonstrated. Notably, although the Corporate Debtor is not a party to the Service Agreement and the Closure Agreement, it is evident that the invoices have been issued under the Corporate Debtor’s GSTIN, and payments were correspondingly made by the Corporate Debtor. Therefore, the assertion by the Corporate Debtor that it is not privy to the aforementioned arrangements is devoid of merit and untenable.

18. In light of the above facts and circumstances, it is ordered as follows: -

a) The Application bearing **IB-327(PB)/2023** filed by the Applicant/Operational Creditor, under section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

b) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.”

3. The Ld. Counsel for the Respondent/Operational Creditor in his written and oral submissions stated as under:

i. The Vimhans Hospital had engaged the appellant/Corporate Debtor for providing various services, including OPD and IPD services.

ii. The appellant had represented itself as a related concern and on account of such representations the Operational Creditor had entered into a service agreement with the Hospital.

iii. The Operational Creditor and the Corporate Debtor had a running account and appellant/ Corporate Debtor had undertaken to make timely payment in lieu of the services rendered by the Operational Creditor.

iv. The appellant/ Corporate Debtor issued cheques to discharge the liability against the OC. Initially cheques of Rs. 1,80,44,000/- were issued but they were returned dishonoured on account of insufficient funds.

v. Thereafter, the Operational Creditor entered into a closure service agreement dated 31.08.2022 terminating the service agreement and a settlement amount of Rs. 1,50,00,000/- was agreed for which the cheques were issued by the appellant/ Corporate Debtor. Against 7 cheques issued by

the appellant/ Corporate Debtor after the closure agreement, 5 cheques were returned dishonoured and thus the appellant is liable to make balance payment of Rs. 1,25,00,000/-

vi. The appellant/ Corporate Debtor had admitted financial obligations against the Respondent/ Operational Creditor. The Operational Creditor had issued invoices on the Corporate Debtor.

4. It was submitted that considering the facts of this case, the Ld. NCLT had rightly initiated CIRP against the Corporate Debtor vide impugned order dated 05.07.2024.

5. The Ld. Sr. Counsel for the appellant/ Corporate Debtor in his written and oral submissions stated as under:

i. The Corporate Debtor has zero financial creditors and is healthy and solvent company.

ii. The Corporate Debtor is providing inpatient and outpatient services in Vimhans Hospital. The Vimhans Hospital is controlled and managed by the Vidya Sagar Kaushalya Devi Memorial Health Centre, which is a public charitable Trust under the Indian Trusts Act, 1882.

iii. The appellant has three directors and the Vidya Sagar Kaushalya Devi Memorial Health Centre Trust has 7 Trustees. There is no common person in the board of directors of Corporate Debtor and the management of the trust.

iv. There is no commonality of interest, ownership, membership and structure between the Corporate Debtor and the Trust.

v. The Trust entered into three agreements with the Corporate Debtor dated 01.04.2015, 01.04.2015 and 27.05.2015 for operating and managing

the OPD centre, for running IPD services and for operating diagnostic, radiology and pathology labs, etc.

vi. The Trust had entered into a separate agreement with Operational Creditor on 07.04.2022 for providing laboratory services in the Hospital and for running 5 OPD rooms. Subsequently, a closure agreement was entered between the Operational Creditor and the Trust on 31.08.2022.

vii. The role of the Corporate Debtor is restricted to merely issuing cheques on behalf of the Trust.

viii. Separate proceedings under Section 138 of the Negotiable Instruments Act, 1881, have been initiated by the Operational Creditor regarding dishonour of cheques.

ix. The judgment cited by the Operational Creditor relating to acknowledgement of debt on issuance of cheques relate to just extension of time limit under the Limitation Act and cannot be *ipso facto* strict proof of acknowledgement of an operational debt.

x. The appellant referred to decision in the case of *G.L. Engineering Industries Pvt. Ltd. v. Supreme Engineering Ltd. in Company Appeal (AT) (Ins.) No. 431 of 2021* and *Hotel Diplomat v. Folio Holdings (India) Pvt. Ltd., reported in (2012) 192 DLT 771* to support his contentions.

xi. The Operational Creditor operated 5 OPD rooms under the name “Healthian Research Centre” separately. The Corporate Debtor operated independent OPD facilities under the name “Vimhans Primamed OPD Centre”.

6. It was submitted by the Appellant that the Ld. NCLT erred in admitting the application under Section 9 and initiating CIRP when there was no privity

of contract between the Operational Creditor and the Corporate Debtor and services were provided to the Trust, and not the Corporate Debtor.

7. We have heard the Ld. Counsels for the Appellant and the Respondent and have perused the records.

8. We note that Vimhans Hospital is run by Vidya Sagar Kaushalya Devi Memorial Health Centre, a public charitable Trust. The Trust has entered into three separate agreements with the Corporate Debtor dated 01.04.2015, 01.04.2015 and 27.05.2015 whereby the Corporate Debtor was to operate, manage and run the OPD centre, operate and manage IPD services for various medical branches like Neuro Services, Orthopaedics, etc. and to operate and manage centre for diagnostics, Nuclear medicine, radiology imaging, pathology and lab services at the Trust's Hospital. Copy of these agreements have been placed on record. As per clause 29 of the agreement, it is specified that parties are independent of each other, and that this agreement shall not create any agency inter-se or tenancy or any partnership or any other separate legal entity, and accordingly none of the parties shall be treated as agent or representative of the other party. As per clause 31, the Corporate Debtor was restrained from entering into any arrangement with a view to sub-granting the management of the facilities. It is apparent that the Corporate Debtor was not an agent of the Trust and also had no authority to sub-grant the management of the facilities to any third party.

9. We note that the Appellant/Corporate Debtor and the Trust have no common directors/trustees.

10. The Operational Creditor had entered into an independent service agreement with Vimhans Niyati Trust for providing medical services which are

of the same nature as the services provided by the Corporate Debtor. However, the Operational Creditor is given only 5 OPD rooms to operate and manage by the Trust.

11. The salient features of this Service Agreement dated 07.04.2022 (placed at page 47 of Appeal Paper Book) are:

- i. Vimhans shall provide 5 OPD chambers to Operational Creditor.
- ii. Operational Creditor guarantees revenue share of 15 lakhs per month to Vimhans.
- iii. Agreement is for 3 years and either party can terminate by 30 days advance notice.
- iv. The relationship between the parties shall be on principal to principal basis.
- v. Operation's shall be initiated w.e.f. 11.04.2022.
- vi. 15 car parking space shall be provided by Vimhans.
- vii. The agreement defines various profit-sharing ratios for critical management, surgical procedures, day care etc. between Vimhans and Operational Creditor.

There is no mention of Corporate Debtor in this agreement. Further, the agreement between Vimhans and Operational Creditor is on "principal to principal basis".

12. The service agreement between the Operational Creditor and the Trust was short lived, as it started on 07.04.2022 and ended with the "closure of service agreement" terminating the earlier agreement on 31.08.2022.

13. The closure of Service Agreement dated 31.08.2022 is placed at page 50 of Appeal Paper Book. The salient features of this agreement are:

- i. Vimhans Niyati (second party) has requested Operational Creditor (first party) to withdraw its services with immediate effect.
- ii. The second party has assured Operational Creditor that all cheques issued with this agreement shall be honoured on presentation.

- iii. Operational Creditor shall withdraw its employees.
- iv. Operational Creditor shall not solicit professionals/employees of Vimhans for 24 months.
- v. Cheques of Rs. 1,50,00,000/- (Less TDS) are issued.

Again, there is no mention of Corporate Debtor in this agreement. Both Service Agreement and Closure of Service Agreement are signed by Nishant Singhal for Operational Creditor and Dr. Ubaid Hamid Rangrez for Vimhans. Dr. Ubaid H. Rangrez has put his stamp as “Vice President-Medical & Operations”. In various notices issued by the Operational Creditor, he has been identified as “Vice President Operations” of “Vimhans Nayati Superspeciality Hospital”, that is not as employee of the Corporate Debtor, but as employee of the Hospital.

14. We find that some of the invoices are raised in the name of the Corporate Debtor but some others are raised in the name of the Hospital/Trust which are placed at page 419 onwards in the Appeal Paper Book. Both the Corporate Debtor and Operational Creditor had independent separate contracts with the Trust and there is no privity of contract between the Corporate Debtor and the Operational Creditor. This issue has been examined earlier by this Bench in the case of *EBPL Ventures Pvt. Ltd. v. Sarguja Rail Corridor Pvt. Ltd. in Company Appeal (AT) (Ins.) No. 1305 of 2022* wherein this Bench held as under:

“7.10 A bare perusal of the clauses 11.4 and 11.11 indicates that the prime responsibility of payment to sub-contractor lies on the contractor with the employer reserving its right, with intimation to contractor, to make payments due to sub-contractor, whenever employer has reason to believe contractor has not made the payment on a timely basis, though these payments shall be made on behalf of the contractor and that the contractor is required to immediately credit, secure or repay the amount of such payments to the principal employer. It is clearly recorded that under no

circumstances the sub-contractor can make a claim against the employer.

7.11 The minutes of the meeting dated 09.04.2018 nowhere record that SRCPL has taken over the responsibility of payment, as the payer is not identified. The unilateral Indemnity Bond given by EBPL records in para 11, that the Indemnity Bond is given both to SRCPL and GDCL, and it is binding on EBPL.

7.12 We note that a similar issue was considered by the Hon'ble Supreme Court in *M/s Essar Oil Limited v. Hindustan Shipyard Ltd. & Ors.* in Civil Appeal Nos. 3353 and 3355 of 2005 wherein ONGC, as principal employer, had entered into a contract with Hindustan Shipyard Ltd, which in turn has entered into a sub-contract with M/s Essar Oil Limited (the appellant in both the appeals). In paragraphs 24 and 25 of the said judgment, the Hon'ble Supreme Court has noted as under:

“24. It is true that the ONGC had made payment to the appellant directly on several occasions. Upon perusal of the correspondence, we find that some understanding, but not amounting to any agreement or contract, was arrived at between the ONGC and the respondent for making direct payment to the appellant, possibly because the respondent was not in a position to make prompt payments to the appellant. It also appears that on account of the delay in making payment to the appellant, the work of the ONGC was likely to be adversely affected. The ONGC was interested in getting its work done promptly and without any hassles. In the circumstances, upon perusal of the correspondence, which had taken place between the ONGC and the respondent, it is clear that so as to facilitate the respondent, the ONGC had made payments on behalf of the respondent to the appellant directly.

25. Simply because some payments had been made by the ONGC to the appellant, it would not be established that there was a privity of contract between the ONGC and the appellant and only for that reason the ONGC cannot be saddled with a liability to pay the amount payable to the appellant by the respondent.”

(Emphasis supplied)

7.13 The said judgment of the Hon'ble Supreme Court has been followed by this Tribunal in the case of *Hardwin Construction Pvt. Ltd. v. ONGC Petro Additions Ltd.*, (2022) ibclaw.in 223 NCLAT wherein it was held that only limited liability to make payment was accepted by the Corporate Debtor subject to certification of the bills by the original contractor, the Corporate

Debtor cannot be treated as substituted in place of original contractor.

7.14 This Tribunal in the case of *Sterling and Wilson Private Limited v. Embassy Energy Private Limited in Company Appeal (AT) (CH) (Ins.) No. 161 of 2022* has followed the decision of Hon'ble Supreme Court in *M/s Essar Oil Limited v. Hindustan Shipyard Ltd.* on similar facts and held that there is no privity of contract between the appellant and respondent. It was held in para 14 and 15 of the said judgment, as under:

*"14. It is clear from the record that there are no 'goods and services' supplied directly by the 'Operational Creditor' to the 'Respondent' herein and therefore it cannot be said that there is any 'Operational Debt' between the 'Operational Creditor' and the 'Respondent' herein. Merely because the 'owner' had given a bona fide assurance that if IEDCL fails to pay the amount they would pay the same on their behalf, the amount will not fall within the definition of 'Operational Debt' as defined under Section 5(21) of the Code. Learned Sr. Counsel for the Respondent submitted that all payments 'due and payable' by the 'Respondent' towards ISPL were made and discharged. The Hon'ble Supreme Court in the matter of '**Essar Oil Limited' Vs. 'Hindustan Shipyard Ltd. & Ors.'**, has held that when a 'principal employer' grants a contract to a Construction Company the sub-Contractors cannot sue the 'principal employer' for any issues, if payable, as there is no 'privity of contract' between the sub-Contractors and the 'principal employer'....."*

15. This Tribunal is of the considered view that any promise made in the letter dated 17.10.2018, specifically having regard to Clause 6.1.4 of the 'Agreement for Civil Works and Construction' entered into between Embassy Energy Private Limited and ISPL, whereby and whereunder, it was clearly specified that the sub-Contractor, would not have any contractual relationship with the owner and would not be entitled to prefer any 'Claims' against the owner, these amounts claimed cannot fall within the definition of 'acknowledgement of debt' in the absence of any contractual relationship between the 'Operational Creditor' and the 'Respondent' herein."

7.15 From the facts of this case as narrated above, and in the light of judicial pronouncements cited above, it can be said that there was no privity of contract between SRCPL and EBPL and it cannot be said that SRCPL had taken over the liability of GDCL in any manner."

15. In the present case also, there is no privity of contract between the Corporate Debtor and the Operational Creditor and it cannot be said that Corporate Debtor had taken over the liability of the Trust/Hospital in any manner. The Corporate Debtor has merely issued some cheques on behalf of the Trust. The legal remedy for dishonour of cheques has already been resorted to by the Operational Creditor.

16. We also note that no services were directly provided by the Operational Creditor to the Corporate Debtor. The claim of the Operational Creditor does not fulfil the requirements of definition of ‘operational debt’ as contained in Section 5(21) of the IBC, 2016. The said provision is reproduced below for ready reference:

“Section 5(21)- “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”

17. Apparently, the Operational Creditor has provided services to the Trust/Hospital and not to the Corporate Debtor. There was direct agreement between the Operational Creditor and the Trust. We also note that in the agreements with the Trust, the Corporate Debtor was debarred from granting sub-management to any other agency of the services which the Corporate Debtor is providing directly to the Trust/Hospital.

18. Considering the conspectus of facts narrated above, we hold that there is no privity of contract between the Operational Creditor and the Corporate Debtor. Further, as no services were provided by the Operational Creditor to the Corporate Debtor, the claim in any way cannot be classified as ‘operational’
Company Appeal (AT) (Insolvency) No. 1517 of 2024

debt' in terms of Section 5(21) of IBC, 2016. There was no direct liability of the Corporate Debtor to pay to the Operational Creditor.

19. Considering these facts, we hold that the Ld. NCLT erred in admitting the application under Section 9 and initiating the CIRP against the Corporate Debtor. For the foregoing reasons, the impugned order passed by the Ld. NCLT is set aside and accordingly, the appeal is allowed. Pending application(s), if any, are also closed. No order as to costs.

**[Justice Yogesh Khanna]
Member (Judicial)**

**[Mr. Ajai Das Mehrotra]
Member (Technical)**

***Place: New Delhi
Dated: 12.12.2025
Ram N.***