

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB) 41/KB/2021

*A petition under **section 9** of the Insolvency and Bankruptcy Code, 2016, read with rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

In the matter of:

India Medtronic Private Limited [CIN: U33110MH1993PTC204814],

..... Operational Creditor/ Petitioner

-versus-

Healthcare Associates Private Limited [CIN: U33119WB2004PTC098408]

..... Corporate Debtor/ Respondent

Date of Pronouncement of the order: 01.05.2024

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Operational Creditor:

Mr. Jishnu Saha, Sr. Adv.

Mr. Tanish Ganeriwala, Adv.

Mr. T. Kakarania, Adv.

Mr. Karanjeet Sharma, Adv.

For the Corporate Debtor:

Mr. Ratnanko Banerjee, Sr. Adv.

Mr. Shaunak Mitra, Adv.

Mr. Joveria Sabbah, Adv.

Mr. Saptarshi Kar, Adv.

Mr. Joyshree Ghosh, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **India Medtronic Private Limited**, hereinafter referred to as “*Operational Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Healthcare Associates Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 26.04.2004. The authorized share-capital of the company ₹2,00,00,000/- and the paid-up share capital of the company is ₹1,99,91,941/-.
4. The total amount claimed to be in due to the Operational Creditor, is Rs. 2,96,52,209/-. The date of default is mentioned as 25.08.2022.
5. The Operational Creditor has relied on the various documents in support of its claims, including:
 - a) Copy of the Non- Exclusive Distribution Agreement and amendment thereto, annexed as **Annexures P- 4** and **P-5** respectively;
 - b) Copy of the unpaid invoices issued by the Operational Creditor, annexed as **AnnexureP-6 (Colly.)**;
 - c) Copies of the dishonoured cheques, annexed as **AnnexureP-8 (Colly)**;
 - d) Copy of Demand Notice dated 04.01.2020 and its reply dated 17.01.2020, annexed as **Annexures P- 9** and **P-11** respectively;
 - e) Copy of the re-issued Demand Notice dated 19.06.2020 and its reply dated 01.07.2020, annexed as **Annexures P- 12** and **P-13** respectively.

6. Submissions on behalf of the Operational Creditor:

6.1 The case of the Operational Creditor is that in 2015, it entered into a Non-Exclusive Distribution Agreement¹ with the Corporate Debtor, effective from 25.04.2015 until 28.04.2017, whereby the Operational Creditor, inter alia, appointed the Corporate Debtor as its non-exclusive distributor for sale of Operational Creditor's products [the "Agreement"].

6.2 In pursuance to the said agreement, the Corporate Debtor placed orders with the Operational Creditor for supply of its medical products and the Operational Creditor duly supplied the same to the Corporate Debtor. Accordingly, the Operational Creditor raised invoices upon the Corporate Debtor, from time to time, and the same were duly accepted by the Corporate Debtor after receiving the supply of the products.

6.3 In the beginning, the Corporate Debtor used to make timely payments with respect to the products supplied to it, in order to build a good commercial relationship with the Operational Creditor. On this premise, the Operational Creditor executed an Amendment² dated 30.04.2016 to the Non-Exclusive Distribution Agreement, inter alia, increasing the tenure of the Agreement by one year (till 27.04.2018).

6.4 However, after October 2017, the Corporate Debtor became highly irregular in its payments and severely defaulted in making the outstanding payments against certain invoices³ issued by the Operational Creditor. In view of its aforementioned defaults, the Corporate Debtor furnished an Undertaking cum Indemnity Bond⁴ dated 17.08.2018 to the Operational Creditor wherein, inter alia, admitted and acknowledged that an amount of Rs.3,31,81,042/- (Rupees Three Crores, Thirty One Lakhs, Eighty One Thousand and Forty Two only) continues to be due and payable by the Corporate Debtor to the Operational Creditor. Furthermore, the Corporate Debtor also undertook to open an escrow account as in additional repayment mechanism for the aforementioned outstanding amount.

¹Annexure P-4

²Annexure P-5

³Annexure P-6 (Colly)

⁴Annexure P-7

6.5 The Corporate Debtor, in partial discharge of its liability, issued 3 (Three) cheques dated 07.02.2019 amounting to a sum of Rs.3,21,20,236/- (Rupees Three Crores, Twenty One Lakhs, Twenty Thousand, Two Hundred and Thirty Six only) in favor of the Operational Creditor. These cheques were dated between February 9, 2018 and April 5, 2018. However, the same were dishonored⁵ and returned by the bank vide the return memos stating "Drawers signature differs" as the reason for dishonor.

6.6 In course of transactions between, the Operational Creditor and the Corporate Debtor, the total amount of Rs.4,43,14,123.50/- (Rupees Four Crores, Forty Three Lakhs, Fourteen Thousand, One Hundred Twenty Three and Paise Fifty only) including Rs.3.15,41,747.25/- (Rupees Three Crores, Fifteen Lakhs, Forty One Thousand, Seven Hundred Forty Seven and Paise Twenty Five only) as principal sum along with interest @18% (Eighteen Percent) per annum amounting to Rs. 1,27,72,376.25/- (Rupees One Crore, Twenty Seven Lakhs, Seventy Two Thousand, Three Hundred Seventy Six and Paise Twenty Five only), calculated up to 30.06.2020, has become due and payable on account of the products supplied by the Operational Creditor, from time to time, and accepted by the Corporate Debtor.

6.7 Since the Corporate Debtor has gravely failed to fulfil its obligation and make payments towards its admitted outstanding liabilities, a Notice of Demand⁶ dated 04.01.2020 under Section 8 of the Code was issued by the Operational Creditor upon the Corporate Debtor. Since, the aforementioned Demand Notice suffered a few clerical errors, the Operational Creditor issued a letter⁷ dated 17.01.2020 withdrawing the Demand Notice dated 04.01.2020 and requesting the Corporate Debtor to unconditionally repay the outstanding amount at the earliest.

6.8 Pursuant thereto, the Corporate Debtor issued its Reply⁸ dated 17.01.2020 wherein the Corporate Debtor did not dispute its outstanding liabilities of the principal amount aggregating to the tune of Rs.3,15,41,747.25/- (Rupees Three Crores, Fifteen Lakhs,

⁵Annexure P-8 (Colly)

⁶Annexure P-9

⁷Annexure p-10

⁸Annexure P-11

Forty One Thousand, Seven Hundred Forty Seven and Paise Twenty Five only) towards the outstanding invoices. However, the Corporate Debtor raised whimsical and misconceived contentions that are clearly a half-hearted moonshine defense, in an attempt to dishonestly escape/ evade its admitted liabilities.

6.9 Since the earlier Demand Notice dated 04.01.2020 suffered a few clerical errors and was withdrawn vide the aforementioned letter dated 17.10.2020, the Operational Creditor reissued a Notice of Demand⁹ dated 19.06.2020 under Section 8 of Code upon the Corporate Debtor. That the Corporate Debtor issued its Reply¹⁰ dated 01.07.2020 to the Demand Notice dated 19.06.2020 wherein the Corporate Debtor admitted that there are only cosmetic changes in the second Demand Notice, and again did not dispute its outstanding liabilities of the principal amount aggregating to the tune of Rs.3,15,41,747.25/- (Rupees Three Crores, Fifteen Lakhs, Forty One Thousand, Seven Hundred Forty Seven and Paise Twenty Five only) towards the outstanding invoices. Therefore, there is no dispute with respect to the outstanding debt owed by the Corporate Debtor.

6.10 As on date, the Corporate Debtor is still liable to pay the Operational Creditor a total sum of Rs.4,43,14,123.50/- (Rupees Four Crores, Forty Three Lakhs, Fourteen Thousand, One Hundred Twenty Three and Paise Fifty only) including Rs.3,15,41,747.25/- (Rupees Three Crores, Fifteen Lakhs, Forty One Thousand, Seven Hundred Forty Seven and Paise Twenty Five only) as principal sum along with interest @18% (Eighteen Percent) per annum amounting to Rs.1,27,72,376.25/- (Rupees One Crore, Twenty Seven Lakhs, Seventy Two Thousand, Three Hundred Seventy Six and Paise Twenty Five only), calculated up to 30.06.2020.

7 Submissions on behalf of the Corporate Debtor:

7.1 Since 1999, the Petitioner had engaged the Corporate Debtor as a distributor to develop the market and for distributing the products manufactured by the Petitioner's parent company and duly imported by the Petitioner in various parts of Eastern and North

⁹Annexure P-12

¹⁰Annexure P-13

Eastern India including, inter alia, the states of West Bengal, Orissa, Jharkhand and Bihar. The Corporate Debtor has played a key role in achieving the exponential growth and development of the market for the Petitioner's products in Eastern/North-Eastern India.

- 7.2 On April 25, 2015, the parties entered into and executed a written non-exclusive distribution agreement ("the agreement") whereby the Corporate Debtor was appointed as non-exclusive distributor in the specific territories for the sale of the products of the Petitioner of as specified in the agreement. The term of the agreement was from April 25, 2015 upto April 28, 2017. Subsequently, the Petitioner on its own accord renewed the agreement by executing a written amendment dated April 30, 2016 by which, inter alia, the tenure of the distribution agreement was modified to operate from April 30, 2016 to April 27, 2018.
- 7.3 However, during the tenure of the distribution agreement, as extended, taking wrongful advantage of the situation, the Petitioner began soliciting direct sales of the products to various hospitals and physicians, including hospitals which used to purchase such products through the Corporate Debtor. However, since the Petitioner had no knowledge or experience of the market for such goods in Eastern and North Eastern India, the Petitioner attempted to and on many occasions poached key employees of the Corporate Debtor, who were privy to sensitive business information including the particulars of the vendors of the Corporate Debtor, sales prices, margins, credit periods, credit worthiness of vendors and like confidential information.
- 7.4 The Petitioner also targeted poaching those employees of the Corporate Debtor who were in charge of recovering the price of goods distributed by the Corporate Debtor, out of which payment was required to be made to the Petitioner. As a direct consequence thereof, the Corporate Debtor was severely handicapped in its efforts to recover its substantial dues from the market.

- 7.5 By directly approaching the customers who were under the umbrella of the Corporate Debtor, the Petitioner created a situation where they offered the same customers the same products which were offered by the Corporate Debtor at a lower rate. Thus, these customers stopped dealing with the Corporate Debtor altogether and emboldened by a fact that they were being able to source their requirements now directly from the Petitioner, and they chose not to make payment of the outstanding dues of the Corporate Debtor for supplies received by them from the Corporate Debtor as the distributor of the Petitioner in respect of the products of the Petitioner distributed by the Corporate Debtor.
- 7.6 Such act of the Petitioner in directly approaching the customers affected the business of the Corporate Debtor and caused direct loss to the Corporate Debtor who was unable to realize their dues from such customers as they were not receiving payments from such customers simply because these customers were now receiving all the requirements directly from the Petitioner. Further, the petitioner had even stopped supplying spares to the Corporate Debtor that impeded the after sales service quality and responsiveness of the Corporate Debtor exposing the Corporate Debtor to penal action from Government hospitals where the Corporate Debtor had sold equipments on a 5 years warranty terms¹¹ with performance bank guarantees.
- 7.7 Several emails¹² including emails dated August 17, 2017, January 11, 2018, February 16, 2018, March 2, 2018 and March 12, 2018, were issued by the Corporate Debtor with regard to the aforesaid wrongful acts of the Petitioner. However, the objections raised by the Corporate Debtor were totally ignored and remained unremedied.
- 7.8 Before the expiry of the tenure of the agreement (as extended on April 30, 2016), the parties had been in discussions for renewal of the tenure thereof. The Corporate Debtor had duly signed such renewal agreement and sent the same back to the Petitioner for final execution by the Petitioner. However, the Corporate Debtor was shocked to be informed on January 5, 2018 that the management of the Petitioner had put the renewal on hold.

¹¹Annexure B to Reply Affidavit

¹²Annexure C to Reply Affidavit

This was seriously objected to by the Corporate Debtor in an email¹³ dated January 9, 2018. However, no positive response was received from the Petitioner and ultimately, the Petitioner allowed the distributorship agreement to lapse in derogation of the understanding between the parties to further renew the same.

7.9 Believing that the agreement shall be renewed, the Corporate Debtor purchased goods worth Rs. 6.74 Crores between the period October, 2017 and April, 2018 which increased the exposure and outstanding of the Corporate Debtor towards the Petitioner. If the Petitioner had expressed their intention of not renewing the agreement, the Corporate Debtor would not have purchased any further goods from the Petitioner which in turn would have entailed the Corporate Debtor to have substantially less outstanding or no outstanding at all.

7.10 Owing to the aforesaid illegal acts of the Petitioner, the Corporate Debtor suffered loss to the tune of Rs. 69.56 Crores. The Corporate Debtor accordingly issued emails¹⁴ dated April 17, 2018 and April 26, 2018 claiming such amount from the Petitioner and placing on record the breaches and illegal acts committed by the Petitioner. However, till date there has been no response to such emails issued on behalf of the Corporate Debtor. As a result, the Corporate Debtor was unable to pay the costs of the goods to the Petitioner, which were distributed by the Corporate Debtor but sale proceeds whereof could not be recovered from the market.

7.11 The Petitioner, vide Agreement¹⁵ dated August 16, 2018, agreed to assist the Corporate Debtor to recover the dues but on the condition that the Petitioner would receive 50% proceeds thereof against its dues and that the Corporate Debtor's Director had to execute an undertaking admitting the alleged dues.

7.12 The Petitioner immediately on the next day, i.e. August 17, 2018 sent a representative with a purported undertaking printed on a stamp paper purchased on June 1, 2018 to the

¹³Annexure D to Reply Affidavit

¹⁴Annexure E to Reply Affidavit

¹⁵Annexure F to Reply Affidavit

residence of Rakesh Mehta, Director of the Corporate Debtor and since Mr. Mehta was out of station on the said date, the representative of the Petitioner made the wife of Rakesh Mehta, Smt. Jyotsna Mehta to sign the said undertaking without informing and/or explaining to her the purport of such undertaking. A perusal of the said undertaking would show that the Petitioner had agreed to assist the Corporate Debtor in recovering its dues from the market in exchange of the right of the Petitioner to adjust 50% of the amount recovered from the market against its dues. Such arrangement consisted of reciprocal promises which the Petitioner ultimately breached.

7.13 The Corporate Debtor complained to the Petitioner about the lack of assistance by the representatives of the Petitioner in recovering the dues of the Corporate Debtor from the market vide emails¹⁶ dated August 25, 2018, December 12, 2018 and December 13, 2018. Instead of rendering assistance to the Corporate Debtor to recover its dues from the market, as agreed between the parties hereinabove, the Petitioner illegally and in breach of the aforesaid agreement started demanding payment of the dues of the Petitioner.

7.14 Ultimately, due to lack of other alternatives,¹⁷ the Corporate Debtor filed a civil suit¹⁷ against the Petitioner being Money Suit No. 247 of 2020 before the 4th Court of the Civil Judge (Senior Division) at Alipore where the relief claimed is a decree for Rs.68,48,76,427/-. As such, there are genuine pre-existing disputes insofar as the purported claims of the Petitioner are concerned.

7.15 Proceedings under Section 9 of IBC are summary in nature and the adjudication of the inter-se claims between the parties in the facts of the case would require leading of evidence and trial which is beyond the scope and purview of the instant proceeding and beyond the jurisdiction of this Adjudicating Authority.

8 Analysis and Findings:

8.1 Heard the Ld. Sr. Counsels on behalf of the parties and perused the records.

¹⁶Annexure G to Reply Affidavit

¹⁷Annexure H to Reply Affidavit

- 8.2 It is noted that this Adjudicating Authority passed an order dated 23.03.2023 in C.P. 41/KB/2021, thereby rejecting the petition. Subsequently, an appeal being Comp App (AT) (Ins) No. 515 of 2023 along with I.A. No. 1679, 1680 of 2023 was filed against the said order and the Hon'ble National Company Law Appellate Tribunal (NCLAT) allowed the said appeal and remanded the matter back to this Adjudicating Authority with direction to take into consideration the invoices relied upon by the Appellant therein and pass an appropriate order in accordance with law after affording an opportunity to the parties.
- 8.3 It is further noted that the Operational Creditor had also relied upon dishonored cheques and an undertaking- cum- indemnity bond dated 01.06.2018 in support of the instant petition. Since the said points have already been decided upon previously vide order dated 23.03.2023, the findings of the to the extent remain intact. As directed by Hon'ble Hon'ble National Company Law Tribunal (NCLAT), we will deal with the merits of the case on the basis of invoices only.
- 8.4 As such, the invoices attached to the petition in Annexure P-9 being the unpaid invoices raised by the Petitioner ranging between 27.10.2017 and 11.07. 2018 are taken note of and dealt with hereinafter.
- 8.5 It is seen that the first invoice was payable within 90 days from issuance *i.e* on 25.01.2018 and the last invoice was payable immediately and in full *i.e* on 11.07.2018. As such, the default for various invoices would have occurred between the period of 25.01.2018 and 11.07.2018.
- 8.6 However, it is seen that subsequent to the aforesaid issuance of invoices, various emails came to be exchanged between the parties and whereby certain grievances were raised by the Corporate Debtor *vide* email dated 17.04.2018. The said email is been extracted hereinafter:

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

C.P (IB) 41/KB/2021

From: Rakesh Mehta <r.mehta@healthcare.co.in>
Subject: Request for settlement
Date: 17 April 2018 at 4:55:01 PM IST
To: "Rohini Krishnan, Madan" <madan.r.krishnan@medtronic.com>, amar.ishrak@medtronic.com

Dear All,

Sometime in 1999, we commenced our partnership, beginning with the Vascular business of Medtronic in Eastern India. We worked professionally and diligently, and developed other businesses for Medtronic & Covidien - Neuro, ENT, Diabetes, APV, Structural Heart, MITG (Valleylab) etc. I remember, the CRDM business in Orissa had nosedived, courtesy of the existing distributor switching sides to St Judes. We were asked to rectify the situation, which we did, and brought the business to its former glory, before handing it back to your distributor of choice, as was the plan. Together, we have encountered huge challenges and resolved every issue, with steadfast commitment for growth of Medtronic's business.

It's very sad, after 2 decades of association and such unwavering support, we are facing your onslaught, where you are determined to destroy our business and organisation. I do not propose to set out each and every matter of complaint which I have, save to say that:

- You have systematically sabotaged our business.
- Poached our key employees, although you had given a gentleman's commitment to the contrary.
- Your newly appointed C&F, under the active support of Harshal Tidake, has been regularly calling and facilitating poaching of our employees.
- My request for your intervention was not heeded.
- Your actions have left my company bleeding and we have huge debtors in the marketplace and in hospitals where MDT staff had asked us to place inventory, which we now doubt, can be recovered. As you are aware, we purchase entire inventory and place on consignment with hospitals. As an average, purchased inventory to sales ratio is 9:1
- Your managers have gone around and informed every customer, that we won't be in business with Medtronic any more, which is shocking.
- As a matter of fact, they are going to customers with another distributor, who claims to be appointed by Medtronic, and spreading lies and demeaning us.
- It has caused a huge blow to our reputation and goodwill, which of course is unquantifiable.
- Various understandings and agreements which have been made previously, have not been adhered to. If necessary, I can expand on this.

I am sure, you appreciate our contributions till date, where we have conducted business, even with no profits at times, provided the highest service levels and ensured Medtronic's market share, image and reputation are held in highest esteem. We continue to service a huge number of equipments for Valleylab range of products, which ultimately benefits Medtronic. In spite of all your unethical acts, we have maintained our dignity and continue to work tirelessly for achieving sales of your products, and not devote our energies to poach your employees or speak ill about your organisation.

I am sorry, but the fact is that you have not kept your part of the promise and the various agreements between us, and have in fact betrayed me. Apart from the grave injury done to Healthcare whose employees have been stolen by grossly unfair and unethical means, I wonder if MDT have fully appreciated the possible repercussions within MDT and the ultimate consequences to themselves. Making money doesn't oblige people to forfeit their honour or conscience.

I don't wish to get involved in any sort of unpleasant situation, beyond what has been created by you and request that you compensate me adequately for:

- Loss of Business
- Loss of Organisation
- Loss of Reputation
- Loss of Goodwill
- Loss of Accounts Receivable

Considering average revenue for 2 years, based on revenues for FY 14-15 to 16-17, this amounts to INR 69.56 Crores. I request you to compensate us with INR 69.56 Crores and part gracefully. This does not take into account the vast and substantial amounts that I have invested in distributorship with your active engagement and support and from which you have benefited at my expense.

Please consider this letter as an endeavour from my side to resolve the matter amicably and in a spirit of cooperation.

With thanks,

Rakesh Mehta
Healthcare Associates Pvt Ltd
13 Elgin Road, 3rd Floor
Kolkata 700 020
INDIA

Phone: +9133 2283 3535
Fax: +9133 2283 3537
www.healthcare.co.in

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Considering average revenue for 2 years, based on revenues for FY 14-15 to 16-17, this amounts to INR 69.56 Crores. I request you to compensate us with INR 69.56 Crores and part gracefully. This does not take into account the vast and substantial amounts that I have invested in distributorship with your active engagement and support and from which you have benefited at my expense.

Please consider this letter as an endeavour from my side to resolve the matter amicably and in a spirit of cooperation.

With thanks,

Rakesh Mehta
Healthcare Associates Pvt Ltd
13 Elgin Road, 3rd Floor
Kolkata 700 020
INDIA

Phone: +9133 2283 3535
Fax: +9133 2283 3537
www.healthcare.co.in

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8.7 It appears from an email dated 16.08.2018, petitioner agreed to assist the Corporate Debtor in recovery of dues from their debtors to the extent of sales of the Petitioner's products. In response thereto, the Petitioner issued an email dated 16.08.2018 wherein the Petitioner has not denied the contents of the Corporate Debtor's email, thereby implicitly agreeing to the same. Both emails dated 16.08.2018 are extracted hereinafter:

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

C.P (IB) 41/KB/2021

From: Shastri, Sandeep <sandeep.shastri@medtronic.com>
Subject: RE [EXTERNAL] Undertaking
Date: 16 August 2018 at 4:05 PM
To: r.mehta@healthcare.co.in, Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>



Dear Rakeshji – Based on our con call, here is the revised draft copy for your reference. Kindly go through and revert so that I will take printout on letter head and will proceed further.

Sandeep Shastri
Manager | Finance

Medtronic
India Medtronic Pvt. Ltd.
Solitaire Corporate Park, Bldg No 12, 4th Floor, Units 1241 & 1251
167 Guru Hargovindji Rd, Andheri East, Mumbai MH 400093
Office +22- 48810768 | Mobile 8451059931
sandeep.shastri@medtronic.com
medtronic.com | [Facebook](#) | [LinkedIn](#) | [Twitter](#) | [YouTube](#)

**LET'S TAKE HEALTHCARE
FURTHER, TOGETHER**

This message has been marked as Medtronic Controlled

From: r.mehta@healthcare.co.in <r.mehta@healthcare.co.in>
Sent: Thursday, August 16, 2018 3:53 PM
To: Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>
Cc: Shastri, Sandeep <sandeep.shastri@medtronic.com>
Subject: [EXTERNAL] Undertaking

In line with our discussions at your office on 14th instant, I suggest the following :

Healthcare has an outstanding of Rs xxx towards MDT, which they are agreeable and committed to pay progressively.

Since MDT has employed substantial number of Healthcare employees, Healthcare has been crippled to recover its debtors and thereby limited their ability to honour their dues . Further due to debacle of business, their bank limit too has been blocked.

It's agreed between Healthcare and MDT, wherein MDT will assist Healthcare in recovery of their debtors by engaging MDT manpower, connect with management of key hospitals etc, to the extent of sales of MDT products only and Healthcare agrees to pay xx % of such debtors realisation, pertaining to MDT products only, to MDT towards discharge of its dues. Should MDT desire, at its sole discretion, Healthcare agrees to open a escrow account to route these collections and securing MDT share.

Honestly, this should be good for both the entities and resolve the issue.. Hope you or your finance/legal head agree .

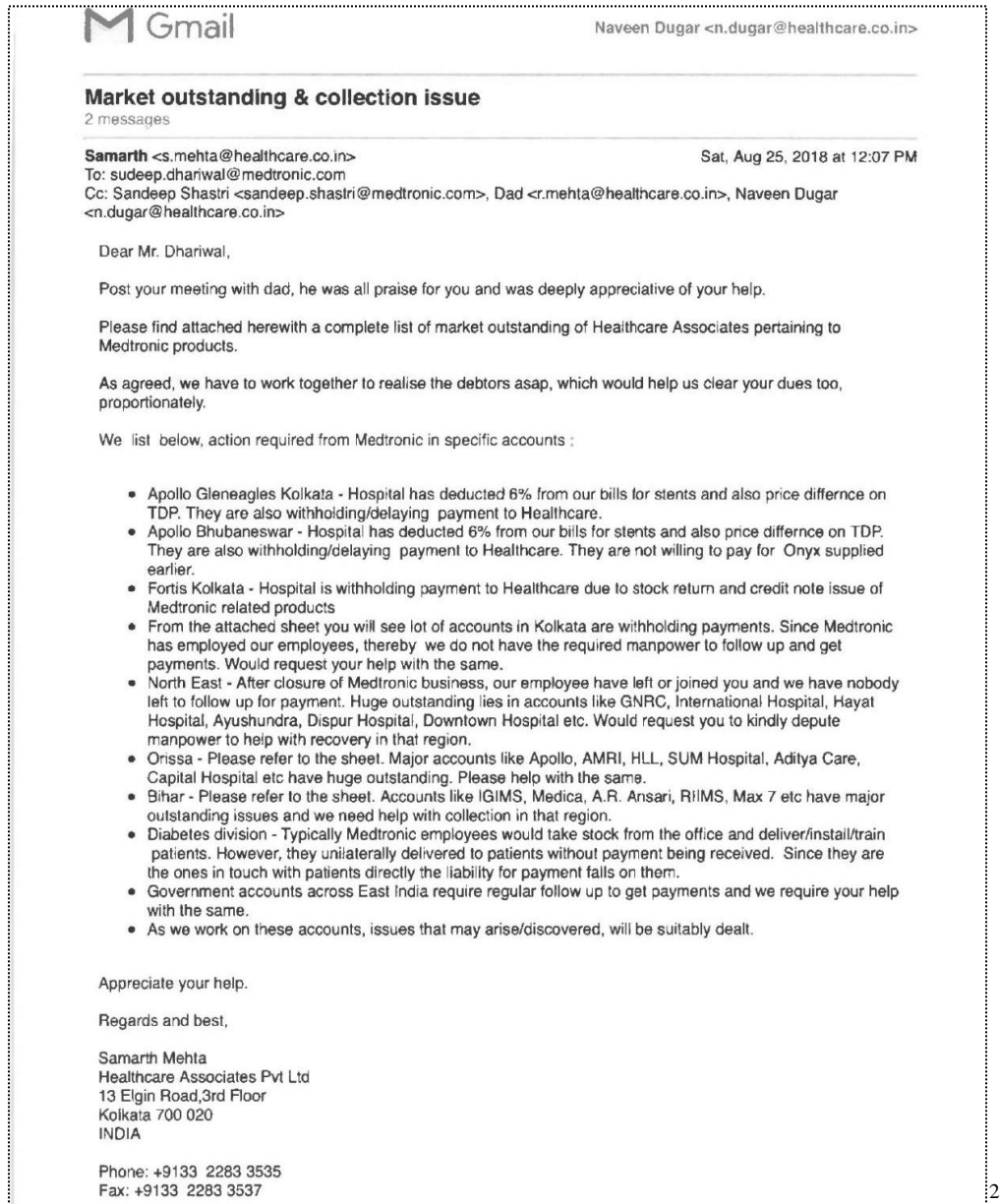
As far as our claim for damages is concerned, as discussed, we will take it up democratically, and there is no link between the two issues.This is without prejudice to our rights in the matter.

Regards

Rakesh Mehta

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8.8 Afterwards, the Corporate Debtor, vide email dated 25.08.2018 sent the list of its market outstanding pertaining to the Petitioner's products. The Operational Creditor has also not denied the same. The email dated 25.08.2018 is extracted hereinafter:



8.9 It is seen that subsequently, the Corporate Debtor raised another grievance vide email dated 13.12.2018, regarding the lack of assistance provided by the Operational Creditor in collection of payments. As a response thereto, the Operational Creditor vide emails

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dated 13.12.2018 and 16.12.2018, had assured the Corporate debtor of the efforts being made on their part for starting the drive for payment collection. The aforesaid exchange between the parties has been extracted and reproduced hereinafter:

From: Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>
Subject: RE: [EXTERNAL] Healthcare Outstanding with Location
Date: 15 December 2018 at 10:10 AM
To: Jain, Chetan <chetan.jain@medtronic.com>; Shastri, Sandeep <sandeep.shastri@medtronic.com>; Naveen Dugar <n.dugar@healthcare.co.in>

Hi Rakesh Ji

I can vouch for Chetan and Sandeep that they are trying their best to ensure that we are able to start the drive for payment collection but need the data to be reconciled before any such drive as we can't go to the customer with half-baked information.

I understand that you need to fund the operations from the recovery but we also agreed that 50% of same should be enough. There is lot of pressure on us to bring the visibility for corporate team and as the escrow accounts are still not opened the entire mechanics agreed is under question. I am expecting some payments to be done before year end for us to continue working together.

Also request you to kindly specifically look into KSP reconciliation issues as 1cr should have been paid to Medtronic long back but we are still going round and round on reconciliation issues. Will wait for Chetan's visit to Kolkata and we should have a call after same.

Best Regards
Sudeep Dhariwal
Director | Finance, Sourcing and IT

India Medtronic Pvt. Ltd.
6th Floor, Tower A & B, SAS Tower
Medanta 101 Medanta Complex Sector - 39, Gurgaon - 122001, Haryana India
Office: +91 124 4723004, Mobile: +91 9899432165
Sudeep.dhariwal@medtronic.com
**LET'S TAKE HEALTHCARE
FURTHER. TOGETHER**

From: r.mehta@healthcare.co.in <r.mehta@healthcare.co.in>
Sent: Thursday, December 13, 2018 7:36 AM
To: Jain, Chetan <chetan.jain@medtronic.com>
Cc: Shastri, Sandeep <sandeep.shastri@medtronic.com>; Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>; Naveen Dugar <n.dugar@healthcare.co.in>
Subject: Re: [EXTERNAL] Healthcare Outstanding with Location

Dear Chetan,

I am checking in simpler terms - customers AR on cut off date and what's recovered since . Also the write off .

Please appreciate, we had agreed in spirit, that MDT will assist in collecting the AR, since MDT has caused immense damage to our organisation, contrary to the agreement we had. This, unfortunately has not happened in 4 months. Had right efforts been made, probably AR should have been recovered. We also have basic cash requirements, which has to be met.

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Alone, we have strived hard all these months, to get AR aligned and hopefully we should have some good collections now. Your team has not co-operated at all and Sandip ji has witnessed how they avoid coming over and taking responsibility to pursue collections. There are issues if inventory worth 40 lakhs in warehouse, against Govt tender. Order has been received past 3 months, but your team has not assisted us to install and chase payments .

We are planning to meet soon, and will resolve this issue during our meeting.

Regards

Rakesh Mehta
Healthcare Associates Pvt Ltd
13 Elgin Road, 3rd floor
Kolkata 700 020
INDIA

Phone: +9133 2283 3535
Fax: +9133 2283 3537
www.healthcare.co.in

On 12-Dec-2018, at 19:27, Jain, Chetan <chetan.jain@medtronic.com> wrote

Dear Rakeshji,

Request you to please review the statement & release the payment of 2.17 crs as per the below working

Rgds,

Chetan

From: Shastri, Sandeep
Sent: Sunday, December 09, 2018 5:08 PM
To: Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>; Naveen Dugar <n.dugar@healthcare.co.in>; IMPL Rakesh Mehta (r.mehta@healthcare.co.in) <r.mehta@healthcare.co.in>
Cc: Jain, Chetan <chetan.jain@medtronic.com>
Subject: RE: [EXTERNAL] Healthcare Outstanding with Location

Dear Sudeep

Here is the summary of the movement from Aug-18 to Nov-18.

If we considered 50% of payment to be received out of collection received by Healthcare we should get payment of Rs. 2.17 Cr.

<image003.png>

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**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

C.P (IB) 41/KB/2021

From: Jain, Chetan <chetan.jain@medtronic.com>
Subject: RE: [EXTERNAL] Healthcare Outstanding with Location
Date: 13 December 2018 at 3:44 PM
To: r.mehta@healthcare.co.in
Cc: Shastri, Sandeep <sandeep.shastri@medtronic.com>, Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>, Naveen Dugar <n.dugar@healthcare.co.in>

Dear Rakeshji,

M happy to meet you soon & hence planning to visit Kolkatta in the week starting 24th Dec, do let me know your availability & would plan accordingly. Sandeep has been visiting Kolkatta over a period of time on the recon issues which we are facing since almost a year now, but with no great luck. We have also initiated the conversation with the AR agency to expedite the entire collection process & hopefully we should start seeing the results soon.

Rgds,

Chetan

From: r.mehta@healthcare.co.in <r.mehta@healthcare.co.in>
Sent: Thursday, December 13, 2018 7:36 AM
To: Jain, Chetan <chetan.jain@medtronic.com>
Cc: Shastri, Sandeep <sandeep.shastri@medtronic.com>; Dhariwal, Sudeep <sudeep.dhariwal@medtronic.com>; Naveen Dugar <n.dugar@healthcare.co.in>
Subject: Re: [EXTERNAL] Healthcare Outstanding with Location

Dear Chetan,

I am checking in simpler terms - customers AR on cut off date and what's recovered since . Also the write off .

Please appreciate, we had agreed in spirit, that MDT will assist in collecting the AR, since MDT has caused immense damage to our organisation, contrary to the agreement we had. This, unfortunately has not happened in 4 months. Had right efforts been made, probably AR should have been recovered. We also have basic cash requirements, which has to be met.

Alone, we have strived hard all these months, to get AR aligned and hopefully we should have some good collections now. Your team has not co-operated at all and Sandip ji has witnessed how they avoid coming over and taking responsibility to pursue collections. There are issues if inventory worth 40 lakhs in warehouse, against Govt tender. Order has been received past 3 months, but your team has not assisted us to install and chase payments .

We are planning to meet soon, and will resolve this issue during our meeting.

Regards

Rakesh Mehta
Healthcare Associates Pvt Ltd
13 Elgin Road, 3rd floor
Kolkata 700 020
INDIA

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8.10 These emails were exchanged, as mentioned above subsequent issuance of invoices. From the aforesaid conversations, it emerges that subsequent to the issuance of the invoices ranging between the period of 21.10.2017 and 11.07.2018, the parties have endeavored to work out the grievances raised by the Corporate Debtor and efforts for payment collection have been assured to be made by the Operational Creditor.

8.11 As such, while it is not denied by the Corporate Debtor that certain sums may be due from it to the Operational Creditor, the quantum thereof remained undecided and was contingent upon the assistance provided by the Operational Creditor and the resultant collection of payment from the debtors of the Corporate Debtor herein.

8.12 It is clear that 'debt' and 'default' are key ingredients of a section 9 petition and in absence of either, a petition under section 9 fails.

8.13 In this regard, we place reliance on the decision of the Hon'ble NCLAT in the matter of *SFO Technologies (P) Ltd. v. Vanu India (P) Ltd.*²⁵ wherein the following has been observed by the Appellate Authority:

“39. It cannot be forgotten that an Application under Section 9 of the Code, requires a 'strict proof' of 'Debt and Default'. An existence of a 'Pre-existing Dispute', is a bar to the initiation of the 'Corporate Insolvency Resolution Process', at the instance of an 'Operational Creditor'. If there is a 'Pre-existing Dispute', between the 'Parties', the main 'CP (IB) No.49 / BB /2021', under Section 9 of the Code, against the 'Respondent / Corporate Debtor' (filed by the 'Appellant / Petitioner / Operational Creditor'), per se is 'not maintainable'.”

8.14 In the instant matter, both the quantum of dues and the existence of default remain uncertain. As such, in absence of strict proof of existence of 'default', the Adjudicating Authority is not satisfied that the instant petition should be admitted.

8.15 Further, with regard to the aforesaid communication exchanged between the parties, we also find it pertinent to refer to the decision taken by the Hon'ble NCLAT in the matter of

²⁵2023 SCC OnLineNCLAT 301

*Amrop India Pvt. Ltd. vs. Hi-tech Gears Ltd.*²⁶, wherein while considering the emails exchanged between parties, the Appellate Authority has held that :

"18.From the email of 29.04.2018, it is clear that the Corporate Debtor gave opportunities to the Operational Creditor to sit across the table to sort out their problems amicably. In the other email issued on 30.04.2018 as extracted in the impugned order, the Corporate Debtor invited the Operational Creditor to share the revised work plan to take the process of Executive Search forward and made the payment contingent thereto... The very fact that the payment was made contingent upon holding meetings between themselves show that there were pre-existing disputes..... "

"19.The tone and tenor of the emails exchanged between the two parties clearly manifest existence of dispute which antedates Section 8 demand notice. It is well settled that in Section 9 proceeding, there is no need to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt..."

In the instant matter, it is seen that attempts were made by the parties for sorting out the problems and this was after the issuance of the last invoice on 11.07.2018 for the collection of dues of the Corporate Debtor.

8.16 It is also noted that while this Adjudicating Authority, in its earlier order dated 23.03.2023 had taken the view that the poaching of the Corporate Debtor's employees by the Operational Creditor and the resultant financial loss suffered by the Corporate Debtor will not by itself constitute a pre-existing dispute.

8.17 Now, plea of preexisting dispute has been raised on behalf of Corporate Debtor on the basis of above referred emails between the parties and law laid down subsequently by Hon'ble NCLAT on 11.10.2023 in *Amrop* (supra).

²⁶2023 SCC OnLine NCLAT 730

- 8.18 The tone and tenor of the emails exchanged between the parties clearly indicate that the parties were undergoing negotiations in pursuance of collection of payments from the debtors of the Corporate Debtor and that such negotiations were not settled. As such, it is not possible to conclusively determine when the 'default' occurred, if at all.
- 8.19 In view of the emails referred above and order dated 11.10.2023 passed by Hon'ble NCLAT , we feel present there are pre existing disputes.
- 8.20 As such, in absence of strict proof of default and pre-existing disputes, we are not inclined to admit the petition.
- 8.21 **CP(IB) 41/KB/2021** is accordingly *rejected*.
- 8.22 Needless to mention, the Petitioner is at liberty to pursue any other remedy available to it under any other law.
- 8.23 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 8.24 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 1st day of May, 2024