



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-II, CHENNAI
CP/IB/278/CHE/2024**

*(filed under section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)
In the matter of Harshitha Hospitals Pvt Ltd*

**K.G GURUSAMY,
44/2A 78, SOUND 1ST STREET,
ALLAMPATTI VIRUDHUNAGAR,
TAMIL NADU-626001**

.... FINANCIAL CREDITOR

-Vs-

**HARSHITHA HOSPITALS PVT LTD,
128/1A, AYANPAPAKUDI VILLAGE,
ARUPPUKOTTAI MAIN ROAD,
AVANIYAPURAM, MADURAI,
TAMIL NADU, INDIA – 625012**

...RESPONDENT/CORPORATE DEBTOR

CORAM:

**Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

*For Applicant: N.P. Vijaykumar, R Pradeep, Advocates
For Respondent: Monesha*

Order Pronounced on 1ST May 2025

ORDER

(Heard Through Hybrid Mode)

Under adjudication is an Application filed by **K C GURUSAMY**
(hereinafter the “Financial Creditor”) against **HARSHITHA HOSPITALS PVT LTD**
(hereinafter the “Corporate Debtor”) under Section 7 of the Insolvency and



Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. In Part-I of the Application, it is stated that the Financial Creditor is, *K.C.Gurusamy*. Part-II of the Application, mentions the details of the corporate debtor as Harshitha Hospitals Private Limited the Registered office of the Corporate Debtor is stated 128/1A, Ayanpapakudi Village, Aruppukottai Main Road, Avaniyapuram, Madurai, Tamil Nadu, India – 625012.

3. In Part III of the application, the Financial Creditor has proposed one Ms. Priya S Anand, with Registration No: IBBI/IPA-001/IPP00421/2017-2018/10744 as an “Interim Resolution Professional” of the Corporate Debtor. The Written Consent of the IRP is appended at Page No.46 of the Application typeset.

4. The Affidavit verifying the application is placed at Page No-83 of the Application typeset.

5. In Part-IV of the Application, it is stated that a total sum of Rs.2,55,91,244/- (Rupees. Two Crore fifty five lakh ninety one thousand two hundred and Forty four only) as the amount claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. Further the date of default is stated to be 05.08.2024.



6. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor to prove the existence of a 'Financial debt' and the same are enumerated hereunder:-

- i) *Statement of Accounts*
- ii) *Loan Agreement dated 25.04.2024*
- iii) *Demand Promissory Note*
- iv) *Letter of Continuity for Demand Promissory Note*
- v) *Board Resolution Corporate Debtor of authorizing the loan dated 24.04.2024*

7. Ld. Counsel for the Applicant submits that M/s Harshitha Hospitals Private Limited (the CD) defaulted to pay the amount due and payable by the them based on the loan agreement dated 25.04.2024.

8. It is submitted that vide request for disbursal of the loan dated 25.04.2024 the Applicant Financial Creditor has disbursed the loan. It is submitted that the total due form the corporate debtor is Rs 2,55,91,244/- comprising of Rs 2,47,11,000/- towards the principle and Rs 8,80,244 towards the interest.

9. The applicant has placed on record the affidavit dated 23.11.2024 and sworn that the loan amount was paid to the respondent from 29.04.2024 to 29.07.2024 tabulated herein below,

Date of disbursement	Amount of disbursement in Rupees
29.04.2024	62,28,380/-
29.04.2024	36,74,000/-
29.04.2024	4,10,000/-
04.05.2024	20,000/-
06.05.2024	3,33,000/-
09.05.2024	7,41,916/-
09.05.2024	4,01,439/-
14.05.2024	80,000/-
17.05.2024	4,01,439/-
22.05.2024	9,45,873/-
24.05.2024	15,15,000/-
24.05.2024	77,953/-
28.05.2024	20,000/-



28.05.2024	44,000/-
30.05.2024	3,00,000/-
30.05.2024	22,00,000/-
10.06.2024	4,72,000/-
29.06.2024	42,00,000/-
06.07.2024	4,01,000/-
09.07.2024	2,20,000/-
10.07.2024	9,00,000/-
29.07.2024	11,25,000/-
Total	2,47,11,000/-

10. Applicant submits that the debt is undisputed and that the Corporate Debtor is liable to pay the defaulted amount of Rs.2,55,91,244/- (Rupees Two Crore Fifty Five Lakh Ninety One Thousand Two Hundred and Forty Four only) to the Applicant/Financial Creditor.

11. Ld. Counsel for the Applicant submitted that in view of the facts and circumstances, a clear case of debt and default is established. Ld. Counsel concluded his arguments by praying that this Tribunal may pass an order of CIRP against the Corporate Debtor considering the defaults committed in repayment of loan dues, liable to be paid by the Corporate Debtor.

12. The Financial Creditor has annexed the copy of the certificate of Information Utility registered with NesL in page 63 the said report in Form C records as status "Authenticated "

13. In the instant case, vide order dated 06.01.2025 the Petitioner/Financial Creditor was directed to serve a copy of the application on the respondent.

14. The reply was filed by the respondent, vide SR no 4039 the respondent through their Managing director Dr Ilankumaran admitted the debt and default



in paying the amount due to the Financial creditor the relevant portion of admission by the corporate debtor is extracted below,

I state that I donot have funds readily available to make repayment of loan to the Applicant. Since the Hospital's operations are suspended, I am not in a position to generate any revenue to pay the Applicant. I state that the Company is not in a position presently to make any payment to the Applicant. I have also not been able to generate any resources personally to make payment as I have exhausted my resources in making payment to Canara bank to keep the account current.

15. The Financial Creditor has placed on record the copy of the statement of account and copy of the loan agreement dated 25.04.2024 to substantiate on the existence of a Financial debt, which has been disbursed by the Financial Creditor. Further, from the record of default attached by the Financial Creditor it is evident that there is an existence of 'default' committed by the Corporate Debtor.

EXTRACT OF NESL RECORD OF DEFAULT ANNEXED BY THE FINANCIAL CREDITOR IS

AS UNDER:-

Submission Details			
Unique Debt Identifier	ADBPG4130H 1	Submission ID	1
Submitted by	gurusamy K C	Submitted Date & Time	20/11/2024 18:05:02
Submission Type	Default	Information as on	20/11/2024

Authentication Status				
Party Name	Relationship	UserId	Status	Date and Time of Authentication
Harshitha Hospitals Private limited	debtor	9367164	AUTHENTICATED	04/12/2024 15:49:49

Submitter Information			
Name	gurusamy K C	UIN (PAN)	ADBPG4130H
Relationship	creditor	DOI / DOB	15/05/1956
Mobile No.	9xxxxxxx8	Email ID	*****@gmail.com



13. The Financial Creditor in the Application has attached Copy of loan agreement dated 25.04.2024, Copy of demand promissory note dated 25.04.2024 and copy of continuity for the demand promissory note dated 25.04,2024 and copy of board resolution dated 24.04.2024 authorising the loan. The relevant portion of the loan agreement document is extracted herein below,

LOAN AGREEMENT

This Loan Agreement is made on this 25th day of April 2024 at Chennai between :-

Mr. K C .Gurusamy S/o Mr.Chinnadurai, residing at 44 / 2A 78, Sound 1st street, Allampatti, Virudhunagar, Tamil Nadu – 626001 (hereinafter referred to as the "LENDER" which expression shall, unless repugnant to or inconsistent with the context, mean and include their successors and permitted assignees of the FIRST PART).

AND

M/s. Harshita Hospitals Private Limited , having its registered office at 128/1A, Ayanpapakudi Village, Aruppukottai Main Road, Avaniyapuram, Madurai, Tamil Nadu – 625 102 represented by its Managing Director, Mr. Ilankumaran S/o Nataraja Perumal (hereinafter referred to as the "BORROWER" (which expression shall, unless repugnant to or inconsistent with the context, mean and include their successors and permitted assigns) being party of the SECOND PART).

[Borrowers and Lender shall be referred to together as "the Parties" and individually as "the Party"]

WHEREAS the Borrower represented by its Managing Director has approached the Lender and represented to the Lender that the Borrower is engaged in the business of running a 100 bed hospital in Madurai and is in need of temporary financial support to meet the working capital needs of the Borrower.

WHEREAS the Lender is known to the Borrower through common friends and the Lender has agreed to provide temporary financial support to the Borrower to enable the Borrower meet their working

For HARSHITA HOSPITALS PVT.LTD.

capital needs and repay pressing loans and outstandings of the Borrower.

WHEREAS the Lender has agreed to raise funds from his family and friends to provide the same by way of loan to the Borrower.

AND WHEREAS the Borrower has requested for loan of Rs. 3.00 crores and the Lender after considering the request of the Borrower has agreed to lend Rs. 2.50 crores to the Borrower for a period of 18 months at an interest of 15% p.a. subject to repayment in terms of installments provided in the annexure and terms and conditions as mentioned below.

AND WHEREAS, the Borrower is ready and willing to accept loan of Rs. 2.50 crores from the Lender for an interest of 15% p.a. subject to the terms and conditions mentioned below.

NOW IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. That the Lender has agreed to provide Loan amount upto a sum Rs. 2.50 crores to the Borrower and the Borrower is entitled to draw down loan upto such amount aforementioned in one or many drawdowns.
2. That the loan provided under this agreement shall be for period of 18 months at an interest of 15% p.a compounded on monthly rests.

14. On perusal of the loan agreement it is apparent that the corporate debtor has agreed to avail loan facility for the time value of money in the relationship



of financial creditor. The applicant has also placed on record the demand promissory note and continuing demand promissory note the relevant portion is extracted herein,

DEMAND PROMISSORY NOTE

Rs.2,50,00,000/-

Place: Chennai

Date 25-Apr-2024

We, M/s. Harshitha Hospitals Pvt Ltd, having office at having its registered office at 128/1A, Ayanpapakudi Village, Aruppukottai Main Road, Avaniyapuram, Madurai, Tamil Nadu – 625 102, represented through its Managing Director Dr.IIankumaran, S/o. Nataraja Perumal, do hereby promise to pay, on demand, to Mr. K C Gurusamy, S/o. Mr. Chinnadurai residing at 44 / 2A 78, Sound 1st street, Allampatti, Virudhunagar, Tamil Nadu – 626001 or order the sum of Rs. 2,50,00,000/- (Rupees Two crore fifty lakh only) *together* with interest at 15 per cent per annum and such other penal interest and costs as applicable.

LETTER OF CONTINUITY FOR DEMAND PROMISSORY NOTE

To,
K C. Gurusamy,
44 / 2A 78, Sound 1st street
Allampatti, Virudhunagar,
Tamil Nadu – 626001

We refer to the Demand Promissory Note for Rs 250,00,000/- (Rupees Two Crore Fifty Lakh only) dated 25-Apr-2024 duly signed and delivered by us, as security for the repayment of amounts due under the facility granted to us, at present outstanding as also the repayment of any further amount, which we may avail hereafter from you. We hereby irrevocably and unconditionally agree and undertake that:

- (a) that the said Demand Promissory Note shall operate as a continuing security to you to be enforceable for the repayment of the ultimate balance and/or all sums remaining unpaid under the Facility now or hereafter, including all interest to become payable in respect of the Facility, and also all moneys lent, advanced, paid or incurred in respect of/ under the said Facility or which may be in future be advanced or incurred together with interest, discount, commission and other charges and all other costs, charges and expenses which may be or become payable in connection therewith; and
- (b) We are to remain liable on the same Demand Promissory Note notwithstanding the fact that by payment made into the account of the Facility from time to time, the Facility may from time to time be reduced or extinguished or even that the balance in the Facility account may be at credit.

IN WITNESS WHEREOF the Borrower have caused its common seal to be affixed to this agreement on the day, month and year first herein above written and in the manner herein after mentioned.

THE COMMON SEAL of the Company has been affixed hereto pursuant to the Resolution of the Board of Directors of the Company passed in their meeting dated 24-Apr-24 .



15. On perusal of the documents placed on record and In view of the facts as stated supra and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is of the considered opinion to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.



16. It has been consistently held by the Hon'ble Supreme Court in *Innoventive Industries Ltd. –Vs- ICICI Bank* and another [(2018) 1 SCC 407] as well as *Mobilox Innovations Pvt. Ltd.. –Vs- Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353] after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, that in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1.0 Crore.

17. For the aforesaid reasons and case laws cited supra, this Tribunal orders to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz, *Harshitha Hospitals Pvt Ltd*

18. The Financial Creditor has proposed the name **Ms. Priya S Anand** with **Registration Number: IBBI/IPA-001/IPP00421/2017-2018/10744** (email- priya@sprandco.com) as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2. Upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the IRP till 31/12/2025. We



therefore appoint **Ms. Priya S Anand** as the IRP. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file her report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. As a consequence of the Application being **ADMITTED** in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.



- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

22. Based on the above terms, the Application stands **ADMITTED** in terms of Section 7 (5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this



Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-
RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-
JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Rannika/LRA