

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.P. (I.B) No. 204/KB/2021

In the matter of :

Sections 10 of the Insolvency and Bankruptcy Code, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016

And

In the matter of :

Suasth Health Care Foundation (Formerly known as Suasth Health Care (India) Limited), an existing company within the meaning of the Companies Act, 2013, having its registered office at Plot No. X-1,2&3, Block-EP Sector-V, Salt Lake City, Kolkata, West Bengal- 700091.

.... Corporate Debtor /Corporate Applicant

Coram: Mr. Rajasekhar VK, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

COUNSELS APPEARED THROUGH VIDEO CONFERENCE :

1. Mr. Joy Saha, Senior Advocate -For the Petitioner
2. Mr. Supriyo Gole, Advocate

Date of Hearing : 09/08/ 2021

Date of pronouncement of the Order : 31/08/2021

ORDER

Per: **Harish Chander Suri, Member (Technical)**

1. The Corporate Applicant, Suasth Health Care Foundation, (CIN: U85100WB2008NPL130971) has filed this Application, bearing **C.P. (I.B) No. 204/KB/2021** under Section 10 of the Insolvency & Bankruptcy Code, 2016, praying for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant, through its Managing Director Badri Kumar Tulsyan (DIN 00536905)

duly authorized vide Board Resolution dated 23/07/2021, stating that it has committed default in paying its debts (financial as well as operational).

2. The Corporate Debtor, Suasth Health Care Foundation, was incorporated on 01/12/2008 and is engaged in the business of running a prime health care/ medical facility in Mumbai, Maharashtra. The Authorized capital of the Corporate Applicant is Rs. 25, crores and paid-up share capital is Rs. 8,11,00,000/-.

3. **The reasons for applying for initiation of the Corporate Insolvency Resolution Process, under section 10, by the Corporate Applicant, are briefly, stated below :**

4. It is submitted that the total debt exposure of the Corporate Applicant to the financial Creditors as well as the Operational Creditor is to the tune of Rs. 611,42,35,816/- (Rupees Six Hundred Eleven Crores Forty Two Lacs Thirty Five Thousand Eight Hundred Sixteen Only) and an amount of Rs. 62,53,76,308/- (Rupees Sixty Two Crores Fifty Three Lacs Seventy Six Thousand Three Hundred and Eighty only) is in default as on 15th July,2021. Furthermore, true copies of the audited financial statements of the Corporate Debtor for the last two financial years i.e.F.Y. 2019-20 and F.Y. 2020-21 are annexed alongwith provisional financial statement for the current financial year dt. 15th July, 2021 as Annexure-J collectively.

5. It is further stated that total debt raised by the Corporate Debtor from the Financial Creditors pursuant to actual disbursement is Rs.498,96,81,316/- and under the FITL arrangement Rs. 6,82,49,593/-, and an amount of Rs. 44,89,15,876/- is in default as on July 15, 2021.

6. It is further stated that a total amount of Rs. 101,82,82,784/- has been actually raised by the Corporate Debtor from Yes Bank Limited by way of aggregate principal amount actually disbursed to the Corporate Debtor by Yes Bank Limited and since January 01,2016 pursuant to Yes Bank Limited issuing a letter dated September 29,2015, conveying the sanction of a Rupree Term Loan of Rs. 220,00,00,000/- to the Corporate Debtor and the execution of a Facility Agreement dated 22nd March, 2016 executed by and between Yes Bank Limited, the Corporate Debtor and Axis Trustee

Services Limited as Security Trustee thereof that was thereafter novated vide novation agreement i.e. “Amendment Agreement, and Assignment Agreement” dated 31st March, 2016 executed by and between the Corporate Debtor, Yes Bank Limited (as Lender, lenders’ agent, issuing Bank, LoU issuing Bank, BG issuing Bank, Axis Bank Limited (as Lender) And Axis Trustee Service Limited as Security Trustee thereof.

7. It is further stated that an amount of Rs.6,82,49,593/- equivalent to six months interest from March, 2020 to August 2020 on the principal amount originally raised from Yes Bank has been thereafter converted into a funded interest term loan granted to the Corporate Debtor under a letter-cum-loan agreement dated December 9,2020, executed by and between Yes Bank Limited and the Corporate Debtor for sanction of Funded Interest Term Loan (FITL) as per the Regulatory Package dated March, 27,2020 and May 23,2020 of RBI.

8. It is further stated that a sum of Rs.16,24,15,745/- is Instalments and interests default as on July 15,2021 having been calculated after duly adjusting payments made by the Corporate Debtor till July 15,2021.

9. It is further stated that Yes Bank Limited has sent an e-mail dated March 24,2020, to the Corporate Debtor pointing out the fact that the Corporate Debtor is in default of its repayment obligations towards Yes Bank Limited. Furthermore, Yes Bank Limited has sent another e-mail dated April 01,2020, to the Corporate Debtor intimating it that the account of the Corporate Debtor has been classified as a Non Performing Asset in the books of Yes Bank Limited owing to non-payment of dues beyond 90 days on March 31,2020, concurrently evidencing the fact that the Corporate Debtor had already failed to repay an amount of Rs. 1,11,64,883/- that had already fallen due and payable in terms of agreement between Yes Bank Limited and the Corporate Debtor but had remained unpaid as on April 01,2020. Therefore, there is an admitted default on part of the Corporate Debtor arising since 31st January, 2020 as admitted by a financial Creditor. Further, the Company opted for moratorium Regulatory Package dated March 27,2020 and May 23, 2020 of RBI on account of Covid-19 pandemic situation across the nation availed the one time FITL facility as per RBI direction issued and the subsequently the loan accounts has been classified as

NPA w.e.f. November, 1, 2020 in accordance with the direction/guideline issued by RBI as intimated by Yes Bank Limited in its Loan Recall cum Guaranteed Innovation Notice.

10. It is further stated that Corporate Debtor is in receipt of a purported statutory notice issued by Yes Bank Limited under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,(SARFESI Act) via e-mail dated May 03,2021, wherein Yes Bank Limited has admitted that the Corporate Debtor has committed a default in excess of Rs. 1,00,00,000/-in relation to repayment obligations under pertinent financing documents and has called upon the Corporate Debtor to pay it a sum of Rs. 1,19,49,51,226.87/- together with further interest and other charges thereon till realization within 60 days from May 03,2021, failing which, Yes Bank Limited will be entitled to enforce its security interest vis a vis the Corporate Debtor which operates a medical facility presently engaged in, inter alia, treatment of patients afflicted with the Covid-19 virus. In this connection a true copy of the letter dated September 29, 2015, issued by Yes Bank Limited conveying the sanction of a Rupee Term Loan of Rs. 220 Crore only as well true copies of the said Facility Agreement dated March 22, 2016 and “Amendment, Novation And Assignment Agreement” dated March 31, 2016, said Letter-cum-Agreement dated December 09,2020, for sanction of Funded Interest Term Loan (“FITL”) and pertinent bank statements evidencing disbursement of the entire aforesaid principal amount actually raised/received by the Corporate Debtor from Yes Bank Limited and pertinent bank statements evidencing disbursement of the entire aforesaid principal amount actually raised/received by the Corporate Debtor from Yes Bank Limited are annexed along with a copy of each of the aforesaid e-mails dated March 24, 2020, and May 03,2021 (i.e. statutory notice under section 13(2) of SARFAESI Act, 2002) issued by Yes Bank Limited as Annexure K-1.

11. It is pertinent to mention that at this juncture Yes Bank Limited and Axis Bank agreed vide the said “Amendment, Novation and Assignment Agreement” dated 31st March, 2016, that Yes Bank Limited shall novate out of its existing commitment under the aforesaid Facility Agreement dated 22nd March, 2016, an aggregate

principal amount Rs.44,05,94,067/- as well as assign out of the loans already disbursed by it thereunder to the Corporate Debtor till 31st March, 2016, an aggregate principal amount of Rs. 65,94,05,933/- to Axis Bank Limited.

12. It is further stated that a total amount of Rs. 101,82,82,784/- has been raised by the Corporate Debtor from Axis Bank Limited by way of principal amount on and since April 19,2016. In terms of the said “Amendment, Novation and Assignment Agreement” dated 31st March,2016. The Corporate Debtor is in Installments and Interest default of its repayment obligations towards Axis Bank Limited to the tune of Rs.22,13,44,721/- as on July 15, 2021, having been calculated after duly adjusting payments made by the Corporate Debtor towards its repayment obligations thereof since January 01, 2020 till July, 15,2021. In this connection a true copy of the letter dated March 16, 2016, issued by Axis Bank Limited approving the sanction of a Rupee Term Loan of Rs. 110 Crore to the Corporate Debtor is annexed hereto and collectively marked as (Annexure K-2).

13. It is further stated that a total amount of Rs. 251,11,15,748/- has been raised by the Corporate Debtor from SREI Equipment Finance Limited by way of principal amount on and since March 13,2019 in terms of Rupee Loan Agreements dated May 15, 2019, and March 12,2020, a pertinent offer letter dated January 03,2019, offering the Corporate Debtor under loan transaction the equipment /assets indicatively described therein and a credit facility sanction letter dated March 11,2020 and an amount of Rs. 6,51,55,409/- as interest is in default as on July 15,2021. In this connection the said loan agreements executed by and between SREI Equipment Finance Limited and Suasth Health Care India Limited as well as the said loan sanction letters issued by SERI Equipment Finance Limited to the Corporate Debtor as well as pertinent bank statements evidencing the disbursement of the entire aforesaid principal amount actually raised the Corporate Debtor from SERI Equipment Finance Limited are annexed hereto and collectively marked as (Annexure-K-3) to this petition.

14. It is further stated that a total amount of Rs. 44,20,000,00 has been raised by Corporate Debtor from Hari Vitthal Mission since November 17,2017, vide Agreement dated October 10, 2017 and is in default as on July 15,2021. In this

connection, the pertinent Agreement dated October 10, 2017 in relation to the advances issued to the Corporate Debtor by Hari Vitthal Missionas well as the pertinent bank statements evidencing disbursement of the entire aforesaid principal amount actually raised/received by the Corporate Debtor from Hari Vitthal Mission are annexed hereto and collectively marked as Annexure K-4 to this petition.

15. It is further stated that the total debt outstanding and payable to the aforementioned Operational Creditors is Rs.17,64,60,432/- and is in default as on 15th July, 2021. In this regard, it is pertinent to note that one of Operational Creditor namely PIECO India Engineering Company served demand notice under section 8(1) of the Insolvency and Bankruptcy Code, 2016 through email dated February 20, 2021 and filed a case before the National Company Law Tribunal, Kolkata Bench vide Case No. CP(IB) 105/KB/2021 against the Corporate Debtor.

16. It is stated that at present the Applicant is unable to complete even pending projects due to paucity of funds and is facing imminent termination of contracts and imposition of penalties by customers.

17. It is stated that if the prayer of the Applicant for admission into CIRP and appointment of IRP gets further delayed, the liabilities of the Applicant would increase vastly, forcing the Applicant into liquidation, rather than getting its resolution.

18. It is submitted that Form MGT-7 has already been filed with Ministry of Corporate Affairs, Government of India, along with copy of Special Resolution dated 23rd July, 2021 passed at an EOGM of the Corporate Applicant, to apply under section 10 of the Insolvency & Bankruptcy Code, 2016.

19 The extract of the Resolution passed at the Extra Ordinary General Meeting of the Shareholders of Suasth Health Care Foundation held on 23rd July, 2021, is reproduced below :

“Special Resolution passed unanimously:

To initiate Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code,2016 – Special Resolution.

“RESOLVED THAT pursuant to the provisions of Section 10 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and any other rules made thereunder, including any statutory modification amendment or re-enactment thereof (“IBC”) as may be applicable for time being in force, the members of the Company be and hereby accord their consent, approval, sanction to initiate corporate insolvency process (“CIRP”) in respect of the Company (“Corporate Debtor”) by filing necessary Application under, inter alia, the aforesaid Section 10 of the IBC and approve the filing of the said Application by the Company (“Corporate Debtor”) with the National Company Law Tribunal (“NCLT”) i.e. relevant adjudicating authority under the IBC for the default(s) made by the Company in terms of the definition of ‘default’ under section 3(12) of the Insolvency and Bankruptcy Code, 2016, and confirm further by way of abundant precaution that the Corporate Debtor is not otherwise ineligible to file such Application under section 11 of the Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTEHR THAT Mr. Badri Kumar Tulsyan, Mr. Shankar Mukherjee and Mr. Ravindra Vishwanath Karanjekar, Directors of the Company be and is hereby, severally, authorized to finalize the form of application and file the same individually in the capacity of Authorized Signatory of the Company, freely consult and appoint advocates/interim resolutions professionals as deemed necessary on behalf of the Company and freely issue necessary instruction in this regard on behalf of the Company and to do all such acts, deeds, and things as it may, in its absolute discretion, as deemed necessary, expedient, proper or desirable to give effect to this resolution and to settle any matter, question, difficulty or doubt that may arise in respect of the filing of the aforesaid Application with the NCLT and all consequent steps necessary for admission thereof by the NCLT and any connected proceeding before the NCLAT and/or any appellate court/Tribunal and or/any court ascertaining supervisory jurisdiction over the NCLR and to finalize and execute any other agreement(s) or document(s) and writings relating to CIRP as it may deem necessary, proper, desirable or expedient without requiring any further approval of the Members and that the Members shall be deemed to have given their approval thereto expressly by the authority of this resolution and any such documents so executed and delivered

or acts and things done or caused to be done shall be conclusive evidence of the authority of the Company in so doing and any such document so executed and delivered or acts and things done or caused to be done prior to the date hereof are hereby ratified, confirmed and approved as the acts and deeds of the Company, as the case may be.

“RESOLVED FURTHER THAT Board of Directors of the Company be and is hereby authorised to do all such acts, deeds, matters, things and take all steps as may be necessary, proper to expedient to give effect to this resolution”

“FURTHER RESOLVED THAT Mr. Arun Kumar Khandelia an Insolvency Professional having IBBI Registration No. IBBI/IPA-002/IP-N000514/2017-18/11592 is hereby appointed as an Interim Resolution Professional(IRP) registered with the Insolvency and Bankruptcy Board of India based on the in-principle consent received from him.”

20. As stated above, the Corporate Debtor has four Financial Creditors, (1)Yes Bank, (2) Axis Bank Limited, (3) SREI Equipment Finance Limited and (4) Hari Vittal Mission . The amounts in default to Financial Creditors is as on 15th July,2021 of Rs. 62,53,76,308/- .

21. In support of the Petition, the Corporate Applicant has submitted the following documents along with the Company Petition:

- i. Copy of the Master Data of the Corporate Debtor as available on the MCA 21 website of the Ministry of Corporate Affairs, Government of India (Annexure-A)
- ii. Copy of the Annual Return of the Corporate Debtor in Form MGT-7 with the Ministry of Corporate Affairs, Government of India and Tripartite Agreement dated 30th March, 2019. (Annexure- C).
- iii. Copy of the Board Resolution passed in the Board Meeting held on July 23rd, 2021 by the Directors of the Corporate Applicant/Corporate Debtor authorizing Mr. Badri Kumar Tulsyan to make, affirm and file the instant Application. (Annexure-D).

- iv. Copy of the Special Resolution passed by Shareholders of the Corporate Debtor in the Extraordinary General Meeting held on July 23,2021 authorizing the Corporate Debtor i.e. Suasth Health Care Foundation (formerly known as Suasth Health Care (India) Limited to initiate Corporate Insolvency Resolution Process in respect of itself by filing the instant application/petition. (Annexure-F)
- v. Copy of the written communication by the Proposed Interim Resolution Professional, being Mr. Arun Kumar Khandelia, in Form-2 along with pertinent certificate ((Annexure-G).
- vi. Copies of Master Data of each of Four aforementioned Financial Creditors of the Corporate Debtor (Annexure-I).
- vii. Copies of the Audited Financial Statements of the Corporate Debtor for the last two financial years i.e. F.Y. 2019-20 and F.Y.2020-21 for the current financial year upto July,2021.(Annexure-J).
- viii. Copy of letter dated September 29, 2015 issued by Yes Bank Limited conveying the sanction of a Rupee Term loan of Rs. 220 Crore only as well as true copies of the said Facility Agreement dated 22,2016 and “Amendment, Novation and Assignment Agreement” dated March 31,2916 (Annexure K-1).
- ix. Copy of letter dated March 16,2016, issued by Axis Bank Limited approving the sanction of a Rupee Term Loan of Rs. 110 Crore to the Corporate Debtor (Annexure-K-2).
- x. Loan Agreements executed by and between SREI Equipment Finance Limited and Suasth Health Care India Limited, the loan sanction letters issued by SREI Equipment Finance Limited to the Corporate Debtor as well as pertinent bank statements evidencing the disbursement of the entire aforesaid principal amount actually raised the Corporate Debtor from SREI Equipment Finance Limited (Annexure-K-3).

- xi. Copy of the pertinent books of Accounts maintained by the Corporate Debtor itself and detailing the debt raised from Yes Bank including the dates of disbursement thereof. (Annexure L-1).
- xii. Copy of the pertinent books of accounts maintained by the Corporate Debtor itself and detailing the debt from Axis Bank including the dates of disbursement thereof.(Annexure-L-2).
- xiii. Copy of books of accounts maintained by the Corporate Debtor itself and detailing the debt raised from SERI Equipment Finance Limited including the dates of disbursement thereof . (Annexure-L-3)
- ivx. Books of Accounts maintained by the Corporate Debtor itself and detailing the debt raised from Hari Vitthal Mission including the dates of disbursement thereof. (Annexure-L4).
- xv. Copy of chart detailing the operational debts incurred in respect of each Operational Creditor including date of default thereto (Annexure-M).
- xvi. Copies of Form CHG-1 filed with the Ministry of Corporate Affairs, Government of India and the Certificates issued by Ministry of Corporate Affairs, Government of India along with pertinent agreements executed by and between the Corporate Debtor and respective Financial Creditors creating security interest in favour of the latter. (Annexure-N)
- xvii. Copy of statement of Affairs of the Corporate Debtor upto July 15,2021. (Annexure-O).

22. In this case, there is absolutely no dispute about facts that the debts due and payable by the Corporate Applicant to the various Creditors and Corporate persons, could not be paid by the Corporate Applicant.

23. In these proceedings, Corporate Applicant submitted information relating to its books of accounts for the relevant period (Section 10(3)(a) of IBC). The Corporate Applicant has proposed the name of the IRP, as Mr. Arun Kumar Khandelia, who has submitted his consent in Form 2 and also his Authorisation for taking up the

Assignment. The Corporate Applicant produced on record Special resolution passed by shareholders in Extra Ordinary General meeting dated 23rd July, 2021.

24. The Application is defect-free and complete in all respects.

25. We have heard Ld. Sr. Counsel for the Corporate Applicant.

26. In the light of the facts stated in the application and the evidence placed on record, we have no hesitation in admitting the petition and ordering initiation of CIRP in respect of the corporate applicant by the following Orders :

ORDERS

- (i) The Application filed by the Corporate Applicant under Section 10 of the Insolvency & Bankruptcy Code, 2016, is hereby, admitted for initiating the Corporate Insolvency Resolution Process in respect of Suasth Health Care Foundation. Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency resolution process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.
- (iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following :
 - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority ;

- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) ;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
 - v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
 - vii) 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.
 - viii) Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.

- ix) As per proposal given by the Corporate applicant, Mr.Arun Kumar Khandelia, 8,Camac Street, 8th Floor, Suite No. 807, Kolkata 700017 Registration No. IBBI/IPA-002/IP-N00514/2017-18/11592, for appointment as the IRP, is appointed as the Interim Resolution Professional for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.
- x) The Corporate applicant to pay to IRP a sum of **Rs.3,00,000/-** as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.
- xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xii) The Registry is hereby directed to communicate the Order to the Corporate Applicant, and to the Interim Resolution Professional by Speed Post and also by e-mail.
27. Let the certified copy of the Order be issued upon compliance with requisite formalities.
28. List the matter on 25/11/2021 for filing progress report.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar VK)
Member (Judicial)

Order signed this 31st day of August, 2021

PJ