

48

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/1437/2019

*(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 **M/s. Vaasan Medical Center (India) Pvt. Ltd.**

RSK Housing (India) Private Limited

13A, New No.45, Ground Floor,
Ormes Road, 1st Cross, Kilpauk,
Chennai – 600 010

... Financial Creditor

-Vs-

M/s. Vaasan Medical Center (India) Private Limited

Reg. Off:-
15-A, Main Road, Thillai Nagar,
Trichy, Tamil Nadu – 620 018

...Corporate Debtor

Order Pronounced on 1st November 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : E.K. Kumaresan, Advocate
B. Sarath Babu, Advocate*

For Corporate Debtor : Sandeep Kumar, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by
RSK Housing India Private Limited (hereinafter referred to as
'*Financial Creditor*') under Section 7 of the Insolvency &
Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of

the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Vaasan Medical Center (India) Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditors is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U85100TN2010PTC075214 was incorporated on 31.03.2010 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at 15-A, Main Road Thillai Nagar, Trichy, Tamil Nadu - 620 018. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Kedar Ramratan Laddha as the Interim Resolution Professional, who has also filed his consent in Form - 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.46,72,603/- is being claimed by the Financial Creditor as the Financial debt, which is due and payable by the Corporate Debtor.

Part – V of the Application discloses the details of the documents which has been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;

- a) Copy of the notice served by the Financial Creditor to the Corporate Debtor
- b) Copy of the e-mail sent for the issue of notice by the Financial Creditor to the Corporate Debtor
- c) Copy of the Ledger account of the Corporate Debtor in the book of accounts of the Financial Creditor.
- d) Copy of the Promissory Notice issued by the Corporate Debtor to the Financial Creditor.
- e) Copy of the Bank Statement reflecting transfer of the amount from the Bank Account of the Financial Creditor to the Corporate Debtor.
- f) Copy of the request letter sent by the Financial Creditor to the Corporate Debtor demanding to repay the outstanding loan amount.

4. The Learned Counsel for the Financial Creditors submitted that the Corporate Debtor through their Directors approached the Financial Creditor in the month of April 2018 and requested for availing loan to the tune of Rs.1 Crore. It was submitted that the Financial Creditor, in good faith, granted the loan to the tune of Rs.1 Crore to the Corporate Debtor on 12.04.2018 for a period of 2 months and interest at the rate of 30% p.a. was agreed between the parties and in pursuance of the same, it was submitted that the Corporate Debtor has executed a Promissory Note on 12.04.2018.



5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor was required to repay the said amount on or before 12.06.2018. However, it was submitted that the Corporate Debtor has been repaying the amount by way of Equated Monthly Instalments (EMI) of Rs.2,00,000/- (Rupees Two Lakh Only) starting from 13.04.2018 and till now the Corporate Debtor has paid only a sum of Rs.64,00,000/- (Rupees Sixty Four Lakh Only) and has failed to repay the balance amount of Rs.36,00,000/- (Rupees Thirty Six Lakh Only). Further, it was submitted that the Corporate Debtor is also liable to pay interest on the outstanding due amounting to Rs.10,72,603/- (Rupees Ten Lakh Seventy Two Thousand Six Hundred and Three only) as per the promissory note signed by the Director of the Corporate Debtor.

6. The Learned Counsel for the Financial Creditor submitted that they have reminded several time to the Corporate Debtor to pay the due amount and has also sent various letters to the Corporate Debtor to repay the outstanding amount, however the Corporate Debtor has not paid the amount. Under the said circumstances, it was submitted that the Financial Creditor has file the present Application seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.



7. In relation to the Corporate Debtor, it is seen from the record of proceedings that the Corporate Debtor entered appearance through its counsel before this Tribunal on 10.02.2020 and the Corporate Debtor was directed to file reply, for which 15 days time was granted. Thereafter, when the matter came up for hearing on 03.03.2020, this Tribunal has passed the following order;

Learned Counsel for the parties are present. It is represented by the Counsel for the Petitioner that in view of the liability being admitted, the Corporate Debtor is not inclined to file reply to the petition and the same is taken on record. Counsel for the Corporate Debtor represents that earnest effort had been taken to settle the claim for which he seeks two weeks' time. Post the matter on 01.04.2020 for reporting settlement.

8. Thereafter, the matter was not posted for hearing due to Covid-19 pandemic and attendant lockdowns imposed by the Central / State Government. Subsequently the matter came up for hearing on 07.01.2021 and on the said date again this Tribunal has passed the following order;

Learned Counsel for Petitioner Mr. B. Sarath Babu and Learned Counsel for Corporate Debtor Mr. Sandeep Kumar are present through video conferencing platform.

It is represented by Learned Counsel for Corporate Debtor that the Corporate Debtor is ready for settlement which is also agreed to by Learned Counsel for Petitioner. In the circumstances, some time is sought by Learned Counsel for Corporate Debtor for reporting the settlement.

Taking into consideration the said representation four weeks time is granted to the Corporate Debtor for reporting settlement.

Post this matter on **08.02.2021**.



9. Thereafter, it is seen from the record of proceedings that the settlement talks between the parties have failed and last opportunity was granted to the Corporate Debtor to file its reply on or before 15.03.2021, however it is seen that the Corporate Debtor has not filed its reply before this Tribunal and also there was no representation on the part of the Corporate Debtor when the matter was heard on 26.08.2021 and 06.09.2021. Hence, we were constrained to hear this matter in the absence of the Corporate Debtor.

10. From the documents filed by the Financial Creditor, it is seen that the Financial Creditor has disbursed the loan to the Corporate Debtor and the Financial Creditor has attached the proof of such disbursement in the typed set filed along with the Application. Also the promissory noted which is signed by the Corporate Debtor by its Director also shows that there exist a 'financial debt' between the parties. Further, the Corporate Debtor has failed to repay the amount to the Financial Creditor and in support of the same, the Financial Creditor has filed its ledger account. It is also seen from the record of proceedings dated 03.03.2020, the Corporate Debtor has admitted its liability and has sought time to settle the matter, however the Corporate Debtor could not repay its outstanding dues and subsequently there was no appearance on behalf of the Corporate Debtor before this Tribunal. Hence the 'default' on the

part of the Corporate Debtor is proved to the satisfaction of this Tribunal by the Financial Creditor.

11. Further, it is also seen that the 'default' which is arising in the present Application has happened much before the advent of Covid - 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 05.08.2019, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

12. The Financial Creditor has proposed the name of **KEDARRAM R LADDHA** with Reg. No. (IBBI/IPA-001/IP-P00586/2017-2018/1115) (email id:- info@kpsjca.com) (Mob. No.:- +91 - 9737533000) as the Interim Resolution Professional

(IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 21.01.2022. 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 his 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.

13. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under 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;

14. However during the pendency of moratorium period in terms of Section 14(2) 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.

15. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;



- (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.

16. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into 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 shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond