



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 193/Chd/Hry/2020

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

Caspian Impact Investments Private Limited

Having its registered office at
Financial District Near ICICI Bank,
4th Floor, Ventureast Plaza, Plot No.40 & 41,
Gachibowli Post, Nanakramguda,
Hyderabad-500032

....Petitioner-Financial Creditor

Vs.

Vivo Healthcare Private Limited

CIN No.U85100HR2009PTC043840

Having its registered office at
DLF City Club, Opposite Galleria Market DLF City
Phase-4,
Gurgaon, Haryana-122009
Creditor

...Respondent-Financial

Judgment delivered on: 23 .11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. Vishav Bharti Gupta, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 10.11.2022.



PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Caspian Impact Investments Private Limited** (hereinafter referred to as 'Petitioner/Financial Creditor') through its authorized representative, Mr. Narendra Singh Bisht under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Vivo Healthcare Private Limited**. (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Narendra Singh Bisht, with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 16.04.2009. The company having its registered address at DLF City Club, Opposite Galleria Market, DLF City Phase 4, Gurugram, 1002009. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is available on page number 152 of the petition.

3. Brief facts of the case are that the financial creditor is engaged in providing financial assistance to various business institutions. The corporate debtor had approached the financial creditor for a credit facility of Rs.3,00,00,000/- vide a Secured Facility Agreement executed on 16.01.2018 which was required to be repaid in 24 Monthly installments by the corporate debtor along with interest @ 16% per annum against Deed of Hypothecation dated 16.01.2018, deed of



personal guarantee dated 16.01.2018 and loan was forwarded on 19.01.2018. The corporate debtor had issued demand promissory notes dated 16.01.2018 promising to pay the loan amounts. The Financial Creditor issued a default notice dated 21.06.2019 and loan Recall Notice on 16.07.2019. As per Clause 3.8 of the Secured Credit Facility Agreement, in case of a payment default, the corporate debtor was required to pay an additional default interest of 4% which was to be over and above the fixed interest of 16% to be charged monthly. The Financial Creditor has appointed an intermediary Ingenico e-Payments India Pvt. Ltd. ("Ingenico") to record all its financial transitions including both the debit and credit side of payments made in the accounts of the Financial Creditor. .

4. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.3,00,00,000/- (Rupees Three Crore Only). The total amount claimed to be in default is Rs. 1,75,29,251/-/- (Rupees One Crore Seventy-Five Lakhs Twenty Nine Thousand Two Hundred and Fifty-One Only) and the date of default is 16.02.2019. Copies of Secured Credit Facility Agreement, Deed of Hypothecation and Deed of Personal Guarantee dated 16.01.2018 (Annexure-A1), Demand Promissory Notes dated 16.01.2018 (Annexure-A2), tabular repayment Schedule showing the monthly installments along with interest to be paid by the corporate debtor (Annexure A3) Default Notice dated 21.06.2019 along with the Loan Recall Notice dated 16.07.2019, (Annexure A4), NACH Reports evidencing default in payments by the corporate debtor (Annexure A5), detailed tabular evidencing default in payments by the corporate debtor (Annexure A-6), Screenshot of the Charge ID as per the Ministry of Corporate Affairs website (Annexure A7), Record of the Default Report by the information Utility (Annexure A8) is attached with the main petition.



5. The notice of this petition was issued to the respondent corporate debtor vide order dated 09.10.2020 for 24.11.2020 to show cause as to why this petition be not admitted. The reply was filed on behalf of the respondent-corporate debtor vide Diary No.00606/4 dated 28.07.2021, wherein, the corporate debtor accepts the liability on account of dues claim and undertakes to re-pay the reasonable, outstanding, justified financial debt within the span of five years to the financial creditor. Further, it is submitted that the financial creditor failed to provide valid bifurcation of the outstanding financial debt, and documents annexed to the petition are not legible. The rejoinder was filed by the petitioner-financial creditor vide Diary No.00606/5 dated 02.03.2021. Vide order dated 10.11.2022, the respondent-corporate debtor was directed to file Vakalatnama as well as written submissions. Neither the Vakalatnama was filed nor the written submissions, thus, it has been observed that the respondent corporate debtor was not interested in defending the present petition, therefore, the respondent corporate debtor proceeded ex parte. The short written submissions were filed by the petitioner-financial creditor vide Dairy No. 00606/7 dated 01.08.2022.

6. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 16.02.2019.



The present petition is filed vide Special Diary No. 146 dated 19.06.2020. Therefore, the present petition is filed within limitation.

9. Another issue for consideration is whether there is default in payment or not. It is observed from the record that in the present case, the default is evidenced by the Secured Credit Facility Agreement, Deed of Hypothecation and Deed of Personal Guarantee dated 16.01.2018 as (Annexure-A1), Demand Promissory Notes dated 16.01.2018 (Annexure-A2), tabular repayment Schedule showing the monthly installments along with interest to be paid by the corporate debtor (Annexure A3), Default Notice dated 21.06.2019 along with the Loan Recal Notice dated 16.07.2019, (Annexure-A4), NACH Reports evidencing default in payments by the corporate debtor (Annexure-A5), detailed tabular evidencing default in payments by the corporate debtor (Annexure A-6), Screenshot of the Charge ID as per the Ministry of Corporate Affairs website (Annexure-A7), Record of the Default Report by the information Utility (Annexure-A8). There is no rebuttal to the claim of the petitioner-financial creditor as the respondent admitted his liability. Further, respondent chose not to appear and proceeded ex-parte.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Rajneesh Kumar Agrawal Registration No.IBBI/IPA-0001/IP-P00886/2017-18/11483 has been proposed as Interim Resolution Professional (IRP). The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajneesh Kumar Aggarwal and it is found that his AFA Certification expired on 11.11.2022. In view of the above, we appoint Ms. Sunita, Registration No.IBBI/IPA-002/IP-N01208/2021-2022/14031, Email:



csskanwar@gmail.com, Mobile No.9872003058, the Interim Resolution Professional whose name is reflected in the list of Insolvency Professionals available on the website of Insolvency and Bankruptcy Board of India, subject to her written consent to be filed within seven days of this order. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016. 12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC. Accordingly, the moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 assets 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;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.



- (e) It is further directed that 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.
- (f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

11. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

12. We direct the Financial Creditor to deposit a sum of Rs. 80,000/- (Rupees Eighty Thousand Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to



adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

14. Accordingly, the petition is admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

November 23 , 2022

SD/TB