

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.64/BB/2022
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Canara Bank,

ARM-I Branch

Spencer Towers,86,

MG Road,

Bangalore560001

... Financial Creditor/Petitioner

VERSUS

Sanjeevini Medlife Hospitals (India) Pvt.Ltd

No.760,7thMain,Last Bus Stop

Near Swimming Pool,

Mahalakshmi Layout,

Bangalore 560086

... Corporate Debtor/Respondent

Order delivered on 31st March 2023

Coram:

1.Hon'ble Justice (Retd) T Krishnavalli, Member (Judicial)

2.Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner

: Shri.Hemanth R Rao

For the Respondent

: Shri. Ashvin B.G

ORDER

Per:Manoj Kumar Dubey, Member (Technical)

1. This present Company Petition has been filed on 18.02.2022 by **CANARA BANK** (for brevity 'Financial Creditor') under Section 7of the IBC, 2016, r/w Rule 4of the I&B (Application to Adjudicating Authority) Rules, 2016with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against **SANJEEVINI MEDLIFE HOSPITALS (INDIA) PVT.LTD**(hereinafter called as 'Corporate Debtor'),on the ground that it has committed default for total

amount of Rs. 35,53,75,893/-/-(Rupees Thirty Five Crores Fifty Three Lakhs Seventy Five Thousand Eight Hundred and Ninety Three Only.

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

- I.** The Corporate Debtor namely M/s SanjeeviniMedlife Hospitals (India) Pvt. Ltd is a company incorporated on 26.03.2009 with CIN:U85195KA2009PTC049466 having its registered office at No.760, 7thMain,Last Bus Stop, Near Swimming Pool,MahalakshmiLayout,Bangalore- 560086, which falls within the territorial jurisdiction of this Adjudicating Authority .The Authorised Capital of the Respondent/Corporate Debtor is Rs.3,00,00,000/- and the Paid –Up Share Capital is Rs. 2,63,62,500/- as per the Company Master Data attached at Annexure T of this application.
- II.** The Financial Creditor has issued a Sanction Memorandum dated 10.02.2011 for a Loan of Rs. 1390 Lacs for a hospital. Accordingly, the Corporate Debtor executed Term Loan Agreement and Common Hypothecation Agreement dated 10.2.2011 in favour of the Financial Creditor. Further, the Corporate Debtor executed Supplemental Common Hypothecation Agreement dated 27.03.2013 and Supplemental Common Hypothecation Agreement dated 09.04.2014 in favour of the Financial Creditor for a working capital loan of Rs. 200 Lakhs. Under there agreements, a sum of Rs. 35,53,75,893/-was advanced to the Corporate Debtor.
- III.** The Financial Creditor filed OA No.833/2017 before DRT and the Corporate Debtor admitted the dues and entered in to a Compromise Petition dated 20.06.2019.TheDRT has passed a final Order dated 20.06.2019 directing the Recovery Officer to issue a Recovery Certificate in terms of the compromise petition.
- IV.** Therefore, the debt that is due to the Financial Creditor has been advanced as against consideration for the time value of money, and qualifies as a financial debt under section 5 (8) of the IBC, 2016.

3. The Respondent/Corporate Debtor opposed the C.P., vide Diary No. 5203 dated 02.12.2022 by *inter alia* contending as under:

- i. The Financial Creditor sanctioned a sum of Rs.1390.00 towards purchase, construction of the Hospital (Composite Loan) and purchase of Medical equipments; and for working capital requirement, sanctioned a further sum of Rs.1.16 Crores, as detailed in the sanction letter dated 10.02.2011 and also the additional Sanction letter.
- ii. The Secured Creditor has not enclosed the entire Loan Sanction letter in their petition. The important sanction terms with regard to disbursement, repayment, paying of upfront fee, concession in upfront fee, estimated valuation of the property, networth is not enclosed. The petition is liable to be dismissed on this ground.
- iii. The project could not be completed as per schedule due to delay in construction of the Hospital Building, installation of machineries, delay in importing of the machineries etc.,
- iv. The secured creditor has appropriated a sum of Rs.82.00 lakhs (appx) towards Bank Guarantee, for making payments towards Customs, etc. The said amount, if not appropriated, the said sanctioned limit would have been utilized for procuring CT Scan machine which is worth approx. Rs.1.00 crore. Thereby the income, which was expected from CT scan was ruled out, resulted in loss of income.
- v. The secured creditor, should have taken in to consideration these aspects, should have extended the moratorium period or enhance /revise the project escalations, reduce the rate of interest, waiving all penal/compound and other charges etc.
- vi. The secured creditor has classified the account as “Non-Performing Assets” as on 10.11.2014. However, the Corporate Debtor has remitted, in total a sum of Rs.9.82 crores (appx). The statement of account submitted by the secured creditor will establish the contentions.

- vii. It is stated that the Corporate Debtor is entitled for the “Covid -19 Package Relief Scheme” announced by Government;and also eligible for restructuring/ rescheduling/ rephrasing of the Loan account, including settling the account under OTS scheme, since, during Covid-19 the Hospital serviced the Covid Patient, with high risk and made payments to their staff and met all maintenance expenditure, without having sufficient income.
- viii. The Secured creditor have also filed an application under section 19 of the Recovery of Debts and Bankruptcy Act,1993, which was not required. However, the Bank assured to settle the account under OTS scheme by agreeing to settle the account for a sum of Rs15.70 crores towards full and final settlement of the dues, with the condition that it should be remitted on or before 12.09.2019.Further, it was also agreed that an amount of Rs.2.60 crores remitted during Covid period will be deducted, and taking into consideration the repayments made, in total Rs.9.82 crores will be considered. Thus instead of Rs.15.70 crores, the secured creditor assured to reduce it to Rs.10.50 to Rs.11.00 crores, based on which the compromise petition was filed. However, without recalling the said on 20.06.2019 the compromise petition was filed by taking “signature on Blank papers” and even on “Vakalathnama”. It was surprising to note that this “Vakalathnama” has been filed on behalf of Corporate Debtor by engaging their own Bank’s Panel Advocate, which is nothing but, taking undue advantage of the Corporate Debtor .Hence, this said compromise petition, alleged to have been signed should not be taken in to consideration.
- ix. It is stated that, OA 833 OF 2017 was allowed without contesting the matter. On the advice of the secured creditor, the joint memo dated 20.06.2019 was filed by the secured creditor without recalling the ex-party order in the said OA by misleading the Hon’ble Debt Recovery Tribunal.
- x. It is submitted that the Corporate Debtor intends to settle the entire outstanding debt under OTS. Moreover the Secured Creditor has

shown discretion and discriminated with other existing customers and acted contrary to RBI guidelines.

- xi. The secured creditor have debited the compound, penal and other charges from the date of the classifying the account as NPA, and have also issued Demand Notice dated 12.03.2015, followed by the Possession Notice, based on which orders are also passed under section 14 of the SARFAESI Act, 2002, though the account was generating substantial income. Instead of settling the account under OTS scheme, the respondent bank have claimed the sum of Rs.18,19,76,388/-, in OA; which was reduced to Rs.15.70 crores instead of Rs.10.50 to Rs.11.00 Crores.
 - xii. It is submitted that if the rate of interest is reduced to 10.50 to 11.00% p.a. or even if it is reduced to 9.75 to 10 % p.a. simple rate of interest, since the Loan falls under the category of Priority Sector Advances, then the liability would not exceed more than Rs.10.50 to Rs.11.00 Crores. Hence, the Corporate Debtor are with the permission/leave of the Hon'ble Court, are filing "Prepackage Insolvency Resolution Application, by paying requisite fees, on the next date of hearing,
4. The Petitioner/Financial Creditor has filed Rejoinder vide diary no 62 dated 03.01.2023, by *inter alia* stating as follows:
- a) It is stated that the Corporate Debtor has admitted the debt and default at Para no.2; and at Para No. 17 of the statement of objections, and admits the liability. Thus, the petition satisfies the requirement of section 7 of IBC, 2016
 - b) It is submitted that the Corporate Debtor has sought a relief for keeping the captioned Petition in abeyance and permit to file an application under Pre-Package Insolvency Resolution Process. Thus the Corporate Debtor itself admits that it is insolvent and insolvency resolution process needs to be initiated in respect of the Corporate Debtor.

- c) It is submitted that the entire Sanction Memorandum dated 10.02.2011 is attached as Annexure A to the rejoinder. It shows that it provided the Corporate Debtor a repayment holiday of 6 quarters i.e., 18 month, considering the delay caused in construction of the hospital and installation of machineries etc.
- d) Instead of making the repayment within the stipulated time period the Corporate Debtor is seeking for reduction of rate of interest and Covid -19 relief scheme. The outstanding loan liability as on 31.12.2021 was Rs. 35,53,75,893/- (Rupees Thirty Five Crores Fifty Three Lakhs Seventy -Five Thousand Eight Hundred and Ninety -Three only). Moreover such issues cannot be agitated before this Tribunal as the DRT's Order 20.06.2019 accepting the Compromise Petition has attained finality.
- e) Further the Corporate Debtor availed a One Time Settlement ('OTS') for the credit facilities which was to be complied with by 12.09.2019. The Corporate Debtor has failed to comply with the terms of the OTS and thus it stands cancelled under clause (iv) of the Compromise Petition dated 20.06.2019, which is attached to Annexure K to the petition.
- f) The Financial Creditor denied the averments made by the Corporate Debtor at Para no.11 to 14 of statement of objections. The Corporate Debtor's contention that the details of proceedings under the SARFAESI Act,2002 have not been disclosed in the current petition do not hold any water as the present petition is initiated under IBC,2016
- g) It is submitted that the Corporate Debtor itself has acted on the Joint Compromise Petition by making payments on 31.03.2020 of Rs.1.00 Crore and on 30.01.2021 of Rs.25.00 Lakh towards the OTS. Further the order dated 20.06.2019 has attained finality and the Corporate Debtor cannot resile from the Joint Compromise Petition at such a belated stage.

- h) The Corporate Debtor has agreed to pay interest on the outstanding loan at Base Rate +4.50% p.a (15% p.a as on 10.02.2011) at the time of availing the credit facilities and signed agreements to that effect as produced at Annexure B of the Petition.
 - i) Moreover, it is stated that the Corporate Debtor was given sufficient time and opportunity by the Financial Creditor for clearing the outstanding liability and compliance of terms of OTS whereas the Corporate Debtor has failed to fulfill the same
5. Heard Shri. Hemanth Rao, learned Counsel for the Financial Creditor and Shri Ashvin B.G for the Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.
 6. The application filed in the prescribed Form No 1 is found to be complete. The Financial Creditor has filed Nesl report vide diary no 1800 dated 26.04.2022 wherein the date of default given as 31.12.2014.
 7. On 15.03.2023, this Adjudicating Authority directed the petitioner to clarify the limitation from the date of default till the date of order by DRT i.e. 20.06.2019. In Form No.1, the date of NPA 10.11.2014 was mentioned as 'Date of Default'. In compliance to the Order, the petitioner counsel vide diary no: 1674 dated 24.03.2023 stated that the Corporate debtor itself has admitted the debt and as not contended anywhere in its objections that the Petition is barred by limitation. The Corporate Debtor has shown the term loan from Canara Bank in all its Balance Sheet from the financial year 2014-2015. Thus, the Corporate Debtor has consistently, admitted the debt in its Balance sheet every year from 2014-2015, and the same is attached as Annexure A1 to A6. The Petitioner Bank has filed OA NO.833/2017 before the DRT ON 28.7.2017 and DRT has passed its Final Order dated 20.6.2019 accepting the Compromise Petition filed by the parties. Thus, the Order dated 20.06.2019 has attained finality as none of the parties have challenged it. In Kotak Mahindra Bank Limited v. Balakrishna, the Supreme Court has held that a judgment /Order of the DRT would give rise to a fresh

cause of action and a Section 7 Petition can be filed with 3 years from the date of judgment. The Supreme Court held:

“141. Moreover, a judgment and / or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under section 7 IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and / or decree or with in three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/ or decree and/ or in terms of the certificate of recovery, or any part thereof remained unpaid.”

Thus, in view of the above referred Supreme Court’s judgment, and on a perusal of the Balance Sheets of the Corporate Debtor filed by the Applicant as above, it is seen that the captioned petition filed on 18.02.2022 is within limitation and there is no bar for this Tribunal to admit the same.

- 8.** In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/-, the petition is admitted in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences 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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (d) 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;
- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) 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;
- (g) 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;
- (h) 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

9. In Part III of Form 1, **Mr. Suresh Kannan**, Registration No. IBBI/IPA-001/IP-P-01434/2018-2019/12277 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 10.01.2022 has been filed along with the C.P at Page Nos.426-432. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.
10. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. **Suresh Kannan** and there is nothing adverse against him. In view of the above, we appoint Mr. **Suresh Kannan**, bearing Registration No. IBBI/IPA-001/IP-P-01434/2018-2019/12277, registered address at 547, 3rd Floor, Premier Court, CMH Road, Bangalore-560038, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

- 11.** The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 12.** The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 13.** A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners 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.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T KRISHNAVALLI)
MEMBER (JUDICIAL)