

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
IB-536/ND/2024

IN THE MATTER OF:

Dickey Alternative Investment Trust Acting
1105, 11th Floor, Indra Prakash Building, 21
Barakhamba Road, New Delhi- 110048

**... Applicant/
Financial Creditor**

Versus

Mowkish Healthcare Solutions Private Limited
Godown Kh.no.445, GF Bakshi farm Road Ghitorni,
Near farm No. 34, South West Delhi, New Delhi- 110048

**... Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 09.12.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the FC : Adv. Amar Sir, Adv. Aditya Gauri, Adv. Damini
Srestha, Adv. Anant Jain
For the Respondent : None

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

As the present petition has been preferred under Section 7 of IBC, 2016 for commencement of CIRP qua the Corporate Debtor, despite service of notice no one appeared on behalf of the Corporate Debtor/Respondent. In terms of the order dated 03.12.2024 we directed that the matter should proceed ex-parte. The order dated 03.12.2024 reads thus:-

“We issued the notice to the Corporate Debtor on 03.09.2024 and again on 09.10.2024. The Creditor has filed the affidavit of service of notice upon the Corporate Debtor. There is no appearance on the behalf of the Corporate Debtor despite service of notice. In the wake, the proceedings qua the Corporate Debtor are set ex parte. Let the application be listed for ex parte hearing on 09.12.2024.”

2. During the course of hearing Ld. Counsel for the Applicant could draw our attention to page 116 to 122 of the paper book to show the disbursement of amount of debt to the Corporate Debtor. In his submission the default was committed by the Corporate Debtor on 30.09.2022 when the amount with the interest due on the OCDs was not paid. To establish the default, the Ld. Counsel for the Applicant could draw our attention to debenture subscription agreement dated 21.09.2020. According to him in the terms of the agreement in the event of failure of the Corporate Debtor to pay the due interest, the entire amount of proceeding was repayable and a default occurred. Clause 5 and 5.1 and 5.2 of the agreement reads thus:-

5. EVENTS OF DEFAULT AND REMEDIES

5.1 If one or more of the events specified in Clause 5.2 (each, an “Event of Default”) shall have occurred or continuing, then the Debenture Holder(s)/ Beneficial Owner(s) shall by a notice in writing to the Company declare all the Debentures outstanding together with and all accrued interest thereon to be due and upon such declaration the same shall thereupon become due and payable forthwith and the Debenture Holder shall have the following rights (notwithstanding anything in these presents to the contrary):-

- (a) Exercise the Conversion Option in terms of this Agreement;
- (b) to transfer the assets of the Company by way of lease/sub-lease or licence or sale;
- (c) to appoint a nominee director on the board of directors of the Company;
- (d) initiating any enforcement action;
- (e) levy default interest at the rate of 18% p.a (Eighteen Percent Per Annum) on overdue amounts
- (f) Exercise such other rights as the Debenture Holder may deem fit under Applicable Law.

5.2 EVENTS OF DEFAULT

The occurrence of any one of the following events shall constitute an “Event of Default” by the Company:

- (a) **Default in redemption of Debentures**
Default shall have occurred in the redemption of the Debentures, as and when the same shall have become due and payable.
- (b) **Default in payment of interest/principal amount**
Defaults by the Company in the payment of any instalment of interest or the principal amount of the Debentures, as and when the same shall have become due and payable.
- (c) **Default in performance of covenants and conditions**
Default shall have occurred in the performance of any covenants, conditions or agreements on the part of the Company under this Deed or the other Transaction Documents or deeds entered into between the Company and the Debenture Holder(s)/Beneficial Owner(s) and such default shall have continued for a period of 30 (Thirty) days after notice in writing thereof been given to the Company by the Debenture Holder(s)/Beneficial Owner(s) for remedying such default.
- (d) **Supply of misleading information**
Any information given by the Company in the Disclosure Documents, the Issue Documents and/or other information furnished and/or the representations and warranties given/deemed to have been given by the Company to the Debenture Holder(s)/Beneficial Owner(s) for availing financial assistance by way of subscription to the Debentures is or proves to be misleading or incorrect in any material respect or is found to be incorrect.
- (e) **Inability to pay debts**
If the Company is unable to or admits in writing its inability to pay its debts as they mature or proceedings for taking it into liquidation have been admitted by any competent court or a special resolution has been passed by the shareholders of winding up of the Company.
- (f) **Inadequate insurance**
If the properties and assets offered as security to the Debenture Holder(s)/Beneficial Owner(s) for the Debentures are not insured or kept under-insured by the Company or depreciate in value to such an extent that in the opinion of the Debenture Holder(s)/Beneficial Owner(s) further security to the satisfaction of the Debenture Holder(s)/Beneficial Owner(s) should be given and such security is not given.
- (g) **Sale, disposal and removal of assets**
If without the prior approval of the Debenture Holder(s)/Beneficial Owner(s) any land, buildings, structures, plant and machinery of the Company are sold, disposed of charged, encumbered or alienated or the said buildings, structures, machinery, plant or other equipment are removed pulled down or demolished.
- (h) **Insolvency Proceedings**
The Company shall have voluntarily or involuntarily become the subject of proceedings under IBC or any proceeding by a Financial Creditor or an Operation Creditor is initiated under the IBC against the Company.
- (i) **Appointment of receiver or liquidator**
A receiver or liquidator is appointed or allowed to be appointed in respect of all or any part of the undertaking of the Company.

- (j) **Attachment or distraint on any Assets of the Company**
If an attachment or distraint is levied on the assets of the Company or any part thereof and / or certificate proceedings are taken or commenced for recovery of any dues from the Company.
- (k) **Extra-ordinary circumstances**
If extraordinary circumstances have occurred which make it improbable for the Company to fulfil its obligations under this Agreement and/or the Debentures.
- (l) **Company ceases to carry on business**
If the Company ceases or threatens to cease to carry on its business or gives notice of its intention to do so.
- (m) **Expropriation**
If any Governmental Authority shall have condemned, nationalized, seized, or otherwise expropriated all or any part of the assets of the Company or of the shares of the Company held by any director or the promoters, or shall have assumed custody or control of such shares or the business or operations of the Company or shall have taken any action for the dissolution of the Company or any action that would prevent the Company or its officers from carrying on its business or operations or a substantial part thereof.
- (n) **Alteration in provisions of memorandum and/or articles of association**
If the Company, shall without the previous consent in writing of the Debenture Holder, make or attempt to make any alteration in the provisions of its Memorandum and/or Articles of Association which will detrimentally affect the interests of the Debenture-holder(s)/Beneficial Owner(s).
- (o) Any of the necessary clearances required or desirable in relation to the business or Company or the Debentures in accordance with any of the Issue Documents is not received or is revoked or terminated, withdrawn, suspended, modified or withheld or shall cease to be in full force and effect which shall, in the reasonable opinion of Debenture Holder(s)/Beneficial Owners(s), have Material Adverse Effect on the business of the Company or the Debentures.
- (p) The Company enters into any arrangement or composition with its creditors or commits any act of insolvency or any other act, the consequence of which may lead to the insolvency or liquidation of the Company
- (q) a petition for the reorganization, arrangement, adjustment, winding up or composition of debts of the Company is filed or the Company or have been admitted or makes an assignment for the benefit of its creditors generally and such proceeding (other than a proceeding commenced voluntarily by the Borrower is not stayed, quashed or dismissed).
- (r) The Company is adjudged insolvent or takes advantage of any law for the relief of insolvent debtors;
- (s) It is or becomes unlawful for the Company to perform any of its obligations under any Issue Document in the reasonable opinion of the Debenture Holder/Beneficial Owner(s).
- (t) The occurrence of any event or condition which, in the reasonable opinion of the Debenture Holder(s)/ Beneficial Owner(s), constitutes a Material Adverse Effect.
- (u) Any other event described as an Event of Default in the Disclosure Documents and the Issue Documents.

3. Apparently there is sufficient evidence on record to indicate the disbursement of amount of debt and default in payment of the same. In terms of the provisions of Section 7(5) of IBC, 2016, while taking a decision regarding admission/rejection of an application preferred under Section 7(1) of the Code, we need to satisfy ourselves that the default had occurred and the application under sub-section (2) is complete and there is no proceeding pending against the proposed Resolution Professional. If such conditions are satisfied, we may order admission of the application and commencement of CIRP in terms of provisions of Section 7(6) of the Code.

4. From the agreement (ibid) it is clear that the Corporate Debtor has committed default. We do not find any deficiency in the application. No reply could be filed on behalf of the Corporate Debtor to oppose the application. No one is present on its behalf today. The Applicant has filed Form-2 (consent) of the Resolution Professional. The Resolution Professional has declared that no disciplinary proceedings are pending against him. The relevant excerpt of the declaration made by the Resolution Professional are pending against him reads thus:

“(iv) certify that there are no disciplinary proceedings pending against the firm with the Board or IPA of Institute of Cost Accountants of India.”

5. From the aforementioned it is clear that the requirements of Section 7 (3) and (5) of IBC, 2016 are satisfied. Thus, we are left with no option but to admit the application. Ordered accordingly.

6. **In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof 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 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.

7. As proposed by the Petitioner **Mr. Praveen Kumar Agrawal**, having Registration IBBI/IPA-002/IP-N00700/2018-19/12348 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

8. Mr. Praveen Kumar Agrawal shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extended

provisions of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

10. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

11. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Iqraa Wasi/Nikhil