

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 11th DECEMBER, 2023, 10:30 A.M.

CP (IB)/16/GB/2023

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

| | |
|---------------------|--|
| Name of the Company | Cipaca Healthcare Services pvt. Ltd. (OC) Vs Unakoti Nursing Care Pvt. Ltd. (CD) |
| Under Section | U/s 9 of IBC, 2016 |

For Petitioner (s) :

For Respondent (s) :

ORDER

None appeared on either side. Order pronounced in open Court *vide* separate order. In the result CP is allowed, ordering initiation of CIRP against the Corporate Debtor "Unakoti Nursing Care Pvt. Ltd". Mr. Amit Pareek is appointed as IRP.

Detailed order follows.

Sd/-
Arvind Devanathan
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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CP (IB) No.16/GB/2023

In the matter of:

Insolvency and Bankruptcy Code, 2016. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) to initiate Corporate Insolvency Resolution Process;

-And-

In the matter of:

Cipaca Healthcare Services Pvt. Ltd., Door No. 2/2102/A, Mugalivakkam-Manapakkam Road, Mugalivakkam, Chennai TN 600125 IN, Tamil Nadu;

... Applicant/Operational Creditor

-Versus-

Unakoti Nursing Care Private Limited, Opposite of ITI, Central Road Kailashahar, Unakoti Tripura Kailashahar, North Tripura TR 799277 IN.

... Respondent/Corporate Debtor

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Arvind Devanathan : Member (Technical)

Appearances (through video conferencing):

For the Petitioners : Mr. Arun Kumar, CMA

For the Respondent : Mr. S. Sarkar, Adv.

Order reserved on: 24.11.2023

Order pronounced on: 11.12.2023

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ORDER

1. This Company petition is filed by Cipaca Healthcare Services Private Limited (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Unakoti Nursing Care Private Limited (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a sum of Rs. 1,19,65,323/- (Rupees One Crore Nineteen Lakh Sixty Five Thousand Three Hundred and Twenty-Three only) [Principle Rs. 1,03,41,994/- (One Crore Three Lakh Forty One Thousand Nine Hundred Ninety Four only) along with interest of Rs. 16,23,329/- (Rupees Sixteen Lakh Twenty Three Thousand Three Hundred and Twenty Nine only)] being an Operational Debt due and payable by the Corporate Debtor.
2. The brief facts of the case are as follows:
 - 2.1 The Petitioner i.e. Cipaca Healthcare Services Private Limited is engaged in the profession of providing, investing and operating Comprehensive Medical Services (CMS), including but not limited to- Intensive Care Unit, Acute Care, Medical and Paramedical Services, Emergency Services, Super Speciality Services, ICU Administration & Billing, Guest Relations, ICU Nursing Services, Technician Backup, Transport of Sick Patients by investing on the hospital by providing teams of doctors and other professionals appointed and trained by it and supporting the hospital on equipment/infrastructure, if required.
 - 2.2 The Operational Creditor entered into an agreement for providing Comprehensive Medical Services dated 24th June 2021, Addendum #1 to the aforesaid agreement dated 09.05.2022, and Deed of Indemnity Services dated 24th June 2021 with Unakoti Nursing Care Private Limited (CD), the Operational Creditor rendered various services and supplied men and materials, equipment etc., relating to healthcare to Corporate Debtor and raised Statement of Accounts.

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- 2.3 The transactions relating to default for the rendering of services and supply of men and materials (“Services”) commenced from August 2021 and ended in September 2022 and on such transaction UNAKOTI NURSING CARE PRIVATE LIMITED is obliged to make payment within 5th of succeeding month as agreed in Appendix-4 Clause 4(1) in page 27 of the Agreement for providing Comprehensive Medical Services. Hence, there is continuing default commencing from 5th October, 2021 and the last default occurred on 5th October, 2022.
- 2.4 Due to default on payment by Corporate Debtor, the Operational Creditor issued a demand notice initially in Form No. 3 through registered Post to CD on 01.02.2023 and to its directors 02.02.2023; 02.03.2023; 06.02.2023; 03.02.2023 and E-mail dated 07.12.2022 and 02.02.2023 respectively. In response of the aforesaid demand notice, the Board of Directors telephonically assured the payment of debt due since they failed to make the payment finally the applicant has again sent demand notice in Form 3 through registered Post to CD and to its directors on 04.07.2023 and E-mail dated 19.07.2023. The copy of post receipts, track report, screen shot of E-mails and copy of demand notice dated 02.05.2023 has been annexed as **ANNEXURE-D**.
- 2.5 The total amount of claim of the Petitioner as per Form 5 is as under:

| Sr. No | Particulars | Amount INR |
|--------|---|--------------------|
| 1 | Principal amount outstanding | 1,03,41,994 |
| 2 | Interest calculated @ 18% p.a. on unpaid invoices as on 25 th April, 2023. | 16,23,329 |
| | Total Claim made | 1,19,65,323 |

6. The above matter was listed on board for the first time on 12.10.2023. On 12.10.2023 this bench while ordering notice to the respondent, directed the respondent to file their

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- affidavit in reply within 10 days if petition copy is also served along with the notice and accordingly ordered the matter to be listed on board on 30.10.2023.
7. On 30.10.2023, one Mr. S Sarkar, Advocate appeared on behalf of the Corporate Debtor, and requested for further extension of time for filing reply which was turned down by this Tribunal by forfeiting the right of the CD to file their reply and adjourned the matter to 24.11.2023.
 8. Accordingly, the matter was once again came on board on 24.11.2023 on which date Mr. S Sarkar, Advocate appearing for CD was also present. Since the CD didn't choose to file any application to condone the delay in filing their reply along with their affidavit-in-reply this bench is left with no option except to reserve the matter for orders after hearing the submission of the counsel appearing for Operational Creditor as per the material available on record.
 9. Accordingly, Mr. A Kumar, the Learned PCA appearing for the Operational Creditor completed his submissions and the matter was reserved for order. Even though Mr. S. Sarkar, the advocate appearing for the CD was present he did not choose to make any submission nor took any steps to file affidavit in reply with delay condonation application.
 10. The Learned Counsel appearing for the Operational Creditor invited the attention of this Bench to the Agreement for providing comprehensive Medical Services dated 24.06.2021 annexed to the Company Petition as **Annexure-B**. He also invited the attention of this Bench to the First Demand Notice dated 01.02.2023 issued by the Operational Creditor to the Corporate Debtor and its directors along with proof of delivery annexed to the Company Petition as **Annexure-C**. The Corporate Debtor having received the Demand Notice did not send any reply nor paid the amount to Operational Creditor.
 11. It is clear from the records that there is continuing default commencing from 5th October, 2021 and the last default occurred on 5th October, 2022. The above Company Petition being filed on 03.09.2023 is within the limitation period allowed under the Limitation

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Act, 1963. The Operational Debt claimed is Rs. 1,19,65,323 (Rupees One Crore Nineteen Lakh Sixty Five Thousand Three Hundred and Twenty Three only) is above the threshold limit as per the notification dated 24.03.2020 made by the Ministry of Corporate Affairs. The Operational Creditor also suggested the name of the Interim Resolution Professional (IRP) to be appointed and thus the above CP satisfies all the legal requirements for admission. Since, the CD did not choose to file any affidavit in reply, the claim of the Operational Creditor remained uncontroverted. Hence, the application filed by the Petitioner under Section 9 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

12. Accordingly, the above Company Petition No. CP (IB) No.16/GB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Unakoti Nursing Care Private Limited, under Section 9 of the IBC Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016, with the following order:

12.1 The Operational Creditor has suggested the name of Mr. Amit Pareek to perform the duties of the Interim Resolution Professional in the petition. This Bench hereby appoints **Mr. Amit Pareek**, Insolvency Professional, and Registration No: IBBI/IPA-002/IP-N00413/2017-2018/11205, having email: amitpareek99@yahoo.com and having phone no. (+91) 9864031935 as the interim resolution professional to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016.

12.2 The Operational Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till is decided by CoC.

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- 12.3 This Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal rights or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- 12.4 The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- 12.5 The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 12.6 The order of moratorium shall have effect from the date of pronouncement of this order till the 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 corporate debtor under Section 33, as the case may be.
- 12.7 The public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- 12.8 During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- 12.9 Registry shall send a copy of this order to the Registrar of Companies, Guwahati, for updating the Master Data of the Corporate Debtor.

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13. Accordingly, with the above observations and direction, CP (IB) No. 16/GB/2023 is admitted.
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
16. File be consigned to records.

Sd/-
Arvind Devanathan
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

Signed this on 11th day of December 2023.