

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 606 of 2022

IN THE MATTER OF:

Ashwani Kumar Chandrakar

...Appellant

Versus

Central Bank of India & Ors.

...Respondents

Present:

For Appellant: Ms. Anitha Shenoy, Sr. Advocate with Mr. Ajay Marwah, Mr. Adhitya Srinivasan, Mr. Rishabh Kanojiya, Mr. Karan Thakur, Ms. Shalya Aggarwal, Advocates

For Respondent: Mr. Abhijeet Sinha, Mr. Akshay Goel, Advocates for R-1
Advocate Nipun Gautam, Advocate for R-2/IRP
Mr. Sumeer S., Mr. Dhruv Wadhwa, Advocates for R-3, 4.

ORDER
(14th October, 2022)

Ashok Bhushan, J:

1. This Appeal was entertained by this Appellate Tribunal on 27th May, 2022 and following Order was passed:

“27.05.2022: Issue notice. Learned counsel for the Appellant submits that the Appellant’s hospital namely Chandulal Chandrakar Memorial Medical College, District Durg has been acquired by the State Act 15 of 2021 which enactment has been published in the Gazette on 03.09.2021. It is submitted that in view of the compulsory nature of the acquisition, the Government is likely to pay two times of the valuation of the assets of the Corporate Debtor. It is submitted that the process requires some time and it is expected that valuation shall be completed and amount will be paid which shall be sufficient to clear the dues of the

Central Bank of India. On the application under Section 7 filed by the Central Bank of India, the Adjudicating Authority has initiated insolvency resolution process by order dated 06. 05.2022.

Learned counsel for the Interim Resolution Professional (IRP) submits that the IRP has taken possession of other assets except the acquired hospital.

Mr. Abhijeet Sinha, learned counsel appears for the Central Bank of India and submits that the Bank's dues are much more than the expected amount which will be received from the Government.

Let reply be filed within three weeks. Rejoinder be filed within two weeks thereafter.

*List this Appeal on **19.07.2022**.*

In the meantime, the Interim Resolution Professional shall proceed and ensure that the Corporate Debtor continues as going concern, however, he shall not constitute the CoC in pursuance of order dated 06.05.2022.”

2. In pursuance of issuance of notice, the Reply-Affidavit has been filed by Respondent No. 1-Bank and Status Report has also been filed on behalf of State of Chattishgarh-Respondent No. 3 and 4 on 29.09.2022.

3. Learned Counsel for the Appellant submits that after passing of the Interim Order by this Appellate Tribunal now a Report has been submitted by the Valuation Officer of the State Government on 04.07.2022 which fact has already been admitted in the Status Report filed by the State of Chattisgarh. Learned Counsel for the Appellant submits that in view of the provisions of Chandulal Chandrakar Memorial Medical College Acquisition Act 2021, the State is obliged to make the payment of an amount upto two times the amount

of actual valuation of the acquired hospital. Reference has been made to Section 8. Learned Counsel submits that estimated value is expected upto Rs. 125 Crores of the acquired assets and hence Appellant might be receiving an amount of compensation for Rs. 250 Crores which shall be sufficient to satisfy the claim of the Central Bank of India and Indian Bank, other Financial Creditors are related parties who shall duly be settled by the Appellant. It is submitted that under the aforesaid Act, the State is obliged to make the payment of compensation within a period of six months from the receipt of the report and hence by first week of January, 2023, the Appellant shall receive the compensation amount which shall be sufficient to settle all the claims.

4. It is further submitted that the second major asset which is in the 'Corporate Insolvency Resolution Process' is a hospital and medical college situated at Bhillai and in view of the Interim Order of this Tribunal, the RP has taken control of the said hospital which is being run as a going concern. Learned Counsel for the Appellant relying on the Judgement of the Hon'ble Supreme Court in Civil Appeal No. 4633 of 2021 in the matter of **"Vidarbha Industries Power Limited Vs. Axis Bank Limited"** has submitted that Adjudicating Authority had not to automatically admit the Section 7 Application merely on the ground of debt and default and in the present case, the Adjudicating Authority has admitted the Application only on the finding that there is a debt and default. It is submitted that the Adjudicating Authority ought to have adverted to the acquisition of the hospital at Durg and amount of compensation which was to be received by the Corporate Debtor which was relevant factor for consideration. Learned Counsel for the Appellant further submitted that in the Joint Lender Meeting where the Central Bank of India as well as Indian Bank

were present, the Appellant was asked to undertake to deposit the entire amount of compensation received from the Government to the Bank so as to take care of the dues of the Bank with regard to which Appellant has undertaken to deposit the entire amount to the Bank for payment of dues of the bank. Learned Counsel for the Appellant submits that the Interim Order passed by this Appellate Tribunal may be extended at least for period of six months when the Corporate Debtor is expected to receive compensation from State which may be sufficient to discharge its liabilities and no useful purpose shall be served in permitting the CIRP to continue since the Hospital which is being run as a going concern is not to be revived.

5. Mr. Abhijeet Sinha, Learned Counsel appearing for the Central Bank of India submits that Interim Order was passed on 27th May, 2022 and more than about 5 months have elapsed and no amount has been received by the Corporate Debtor. The mere fact that valuation report has been submitted is not material. It is submitted that State in its Status Report does not even state that amount of compensation shall be paid to the Corporate Debtor by January, 2023. It is submitted that in paragraph 8 of the Status Report although it is mentioned that valuation report has been submitted on 04th July, 2022 but it is stated that the status report is under consideration of the Government and final valuation report is yet to be decided. There is no indication of what is the valuation which may be paid to the Appellant and Insolvency and Bankruptcy Code being a time bound proceeding, the interim Order be vacated so as to permit constitution of the Committee of Creditors.

6. Learned Counsel for the IRP submits that in pursuance of the publication issued by the IRP, Financial Creditors have filed a claim of about Rs. 212 Crores

and total claims are Rs. 227 Crores and there is also income tax liability on the Corporate Debtor.

7. Learned Counsel appearing for State of Chattisgarh submits that State may be allowed time to file up-to-date Status Report.

8. We have considered the submissions of Learned Counsel for the parties with regard to Interim Prayers and have perused the record.

9. Section 7 Application was filed by the Central Bank of India for total amount of Rs. 27.67 Crores along with the interest. One of the assets which has been taken charge by the IRP is the Hospital and Medical College which is run at Bhillai. Learned Counsel for the Appellant submits that the Hospital and Medical College is being run as a going concern and salaries etc. are being paid by the Resolution Professional. The State Enactment under which the Hospital and Medical College situated at Durg namely Chandulal Chandrakar Memorial Medical College has been acquired, there is specific provision for payment of amount payable due as compulsory nature of the acquisition up to two times of the amount of actual valuation. It is submitted that as per Section 11 sub-section 2 full and final payment of the amount specified in Section 8 have to be paid by the Government within six months of the report as submitted by the Special Officer appointed under Section 7 Sub-Section 1. State in its status report has already stated that Report has been received on 04th July, 2022.

10. We find substance in the submissions of Learned Counsel for the Appellant that since amount of compensation for acquisition of the Hospital and Medical College at Durg is a substantial amount available to the Corporate Debtor which Corporate Debtor has already undertaken before the Banks that same will be utilised for payment of the dues of the bank. We are of the view

that Interim Order passed by this Tribunal on 27th May, 2022 be continued till the end of January, 2023. We order that Interim Order dated 27th May, 2022 shall continue till 31st January, 2023 and the Appeal be listed in the first week of February, 2023 i.e. 2nd February, 2023. Learned Counsel for the State of Chattisgarh shall file up-to-date Status Report indicating the amount of compensation determined and paid, if any, before the date fixed.

List this Appeal on **02nd February, 2023**.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

[Mr. Barun Mitra]
Member (Technical)

Basant/nn