



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 7/CB/2023

In the matter of:

In the matter of Section 7 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

State Bank of India, a banking company and a body corporate constituted under the State Bank of India Act, 1955, having its registered office at 1, Strand Road, Kolkata, - 700 001 West Bengal;

...Financial Creditor

-Versus-

Swarna Hospital Private Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at C-1, Jaydev Vihar, Bhubaneswar- 751 013, Odisha.

... Respondent/Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

For Petitioner(s) : Mr. Debi Prasad Sarangi, Adv.

For Respondent(s) : Mr. Nalini Kanta Sahoo, Adv.

Order reserved on: 17.04.2023
Order pronounced on: 08.05.2023



ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) by the petitioner/Financial Creditor herein i.e., **State Bank of India (FC)** for initiation of Corporate Insolvency Resolution Process in short (**CIRP**) against respondent/Corporate Debtor i.e., **Swarna Hospital Private Limited (CD)** for alleged default in repayment of Financial Debt of ₹ 28,36,53,094/- (Rupees Twenty Eight Crore Thirty Six Lakh Fifty Three Thousand Ninety Four only) as on 31.10.2022, due and payable by the Corporate Debtor to the Financial Creditors.
2. FC states that the CD applied for and availed TL of Rs. 14.60 Crore and FBWC Limit of Rs. 2.60 Crore totaling Rs. 17.20 Crore from FC as per the terms of sanction contained in the Letter of Sanction dated 17.09.2012 duly accepted by its Board of Directors in their meeting dated 07.11.2012. To secure the said loans, CD executed Agreement of loan dated 07.11.2012, Agreement of Hypothecation of Goods and Assets dated 07.11.2012, Guarantee Agreement dated 07.11.2012, in addition to Creation of Equitable Mortgage of its land and building on Drawing Plot No. C/1, Area A0.222 dec (92 X 105) as per Drawing no. B/1195, corresponding to Revenue Plot No. 282 (part) under Khata No. 1427 (G.A. Dept.) in village- Unit No. XVI, Jaydev Vihar, SRO: Bhubaneswar, New Capital, Bhubaneswar, District: Khorda, creating first *Paripassu* Charge in favor of the petitioner as well as Central Bank of India and Odisha State Co-operative Bank (**OSCB**) as primary security.
3. FC alleges that the CD having failed to operate the loan account in terms of their contract, the loan account became highly irregular and has been classified as NPA on and from 25.07.2014. Despite all requests and demands, the CD having failed either to regularize or to close the loan



account, FC recalled the loan *vide* a notice dated 28.07.2015 and lawyer's notice dated 27.07.2015 and demanded repayment of all dues with interest and costs by 11.08.2015 or else the petitioner shall initiate legal action for recovery.

4. But there being no response from the CD, thereafter, they filed O.A. No. 543 of 2015 in the Debts Recovery Tribunal, Cuttack on or about 16.10.2015 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (now Recovery of Debts due and Bankruptcy Act, 1993) for recovery of Rs. 9,98,45,512.00 as on 03.10.2015 with further interests and costs. But the said application is pending without remarkable progress.
5. Further, FC states that even though the CD started committing default in repayment on and from 31.03.2014 yet in their representation dated 09.11.2015, while admitting their liability to the petitioner Bank as on that date requested for rephasing/ restructuring of the loan dues to enable them to repay their dues to the petitioner. In the audited Balance Sheet and Cash Flow statement dated 31.08.2017, the CD also acknowledged the debts due to the FC as on 31.03.2017 and requested in their letter dated 20.10.2017 for grant of 3/4 weeks' time to make the token deposit (earnest money) to avail OTS. In their letter dated 07.04.2018 the CD expressed their intention to avail OTS of their loan account in terms of SBI OTS 2017. Again, in their letter dated 03.03.2020 the CD, while acknowledging their liability to the petitioner as on that date requested to consider their case for OTS. In their letters dated 28.01.2022, the CD offered to pay Rs. 6.50 Crore for OTS of the loan account. Though, such offer being too low was not accepted, yet in effect the period of limitation stands extended in terms of Section 18 of the Limitation Act, 1963. In such situation, they filed this application in Form-I under Section 7 of IBC, 2016 for initiation of CIRP of the CD.



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

CP (IB) No.7/CB/2023

In re: State Bank of India V. Swarna Hospital Pvt. Ltd.

6. The Corporate Debtor/Respondent has filed reply dated 03.04.2023 and stated *inter alia* that the application filed by the FC under Section 7 of IBC is not maintainable before this forum as the claim raised by the FC is beyond the period of limitation of three years from the date of default as specified in the application i.e., 25.07.2014 under Annexure I-12 to the application.
7. The respondent submits that default took place, as mentioned in the petition, on 31.03.2014 and the account has been classified as NPA on and from dated 25.07.2014 although, in part-VI of Form-1 in the said application it has been mentioned as 25.04.2014.
8. That, the Bank for recovery of its loan dues has already filed Application No. 543 of 2015 in the Debt Recovery Tribunal, Cuttack, under section 19 of the RDDBI Act which is still pending for recovery of Rs.9,98,45,512/- with interest as on 03.10.2015. Without proceeding thereto to complete the same before the DRT Cuttack, this Tribunal has been approached by the Bank , contrary to the concept of double jeopardy, hence the petition is liable to be dismissed.
9. CD submits that after getting notice from this Tribunal, it has appeared and filed its written version to the said claim of the FC stating there in that the liability as claimed by the CD is not to be termed as debt due or a financial debt as it is a stale claim/time barred claim and also that the process under the IBC, 2016 in respect of such time barred claims cannot be entertained as a recovery mechanism for the FC, therefore, Section 7 application as has been filed by the FC is not maintainable in view of the settled position of law and most importantly as mentioned in Section 18 of the Limitation Act, which has been misconstrued by the applicant bank to come under the preview and get the benefits of Limitation Act.
10. That on the question of default by the CD, under Section 3(12) of IBC, 2016 the specific date of default is to be taken as 31.03.2014 as mentioned in Part-IV of Form 1 of the application and not declaration of NPA, which is



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

CP (IB) No.7/CB/2023

In re: State Bank of India V. Swarna Hospital Pvt. Ltd.

mentioned as 25.07.2014 in the petition. Even in terms of acknowledgement of debt in the books of accounts on 31.08.2017, the petition need to have been filed by 31.08.2020. Therefore, this application being a time barred application, the claim has to be dismissed.

11. CD also states that the purported security as mentioned in the petition and mortgaged by the Bank belongs to the General Administration Department of state of Odisha, but the applicant bank has deliberately not made them party as such the petition needs to be dismissed for non-joinder of the parties.
12. We have carefully gone through the material on record. Heard the learned counsel in detail. The main issue that needs to be looked into is that whether this Petition is barred by limitation.
13. The particulars of Debt provided in the petition and date of disbursement mentioned therein is as under, which is not in dispute:

Total Amount of the Debt Granted	Rs. 17,20,00,000.00 (Sanctioned	
Date(s) of Disbursement	Amts.)	
	Date of Disb.	Amount (in Rs.)
	12.11.2012	2,24,08,000.00
	22.11.2012	70,00,000.00
	27.11.2012	2,36,00,000.00
	26.12.2012	1,50,00,000.00
	26.12.2012	55,239.00
	07.01.2013	13,292.00
	05.02.2013	60,00,000.00
	09.03.2013	1,72,000.00
	14.03.2013	31,28,000.00
	25.04.2013	25,00,000.00
	03.05.2013	10,09,323.00



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

CP (IB) No.7/CB/2023

In re: State Bank of India V. Swarna Hospital Pvt. Ltd.

	08.08.2013	1,27,466.00
	22.10.2013	1,38,515.00
	06.01.2014	78,426.00
	14.01.2014	2,98,209.62

14. Date of default (as mentioned in the petition) is 31.03.2014. Respondent has argued that although the date of default is mentioned as 31.03.2014, the account has been classified as NPA on 25.07.2014 and it has been wrongly mentioned as 25.05.2014 in part IV at page 3 of the Petition. Respondent has in its written arguments submitted that specific date of default is to be taken as 31.03.2014 as has been mentioned in part IV of Form 1 of the Petition, as such the Petition was to be filed within three years from 31.03.2014, whereas it has been filed on January 10, 2023, as such it is barred by limitation.
15. From the above discussions it is clear that date of default, mentioned as 31.03.2014 in the petition is not in dispute. In their representation dated 09.11.2015, while admitting their liability to the petitioner Bank as on that date, respondent had requested for rephrasing/ restructuring of the loan dues to enable them to repay their dues to the petitioner. In the audited Balance Sheet and Cash Flow statement dated 31.08.2017, the CD has also acknowledged the debts due to the FC as on 31.03.2017 and requested in their letter dated 20.10.2017 for grant of 3/4 weeks' time to make the token deposit (earnest money) to avail OTS. In their letter dated 07.04.2018 the CD expressed their intention to avail OTS of their loan account in terms of SBI OTS 2017. Again, in their letter dated 03.03.2020 the CD, while acknowledging their liability to the petitioner as on that date requested to consider their case for OTS. In their letters dated 28.01.2022, the CD offered to pay Rs. 6.50 Crore for OTS of the loan account. Abovementioned dates of acknowledgements of debt, whether it is through audited balance sheet or OTS proposals etc. clearly indicate that although the date of default is



31.03.2014, limitation has been extended in terms of Section 18 of the Limitation Act and thereby this Tribunal arrives at the conclusion that the petition is not barred by limitation.

16. The Bank filing application against the Corporate Debtor for recovery of its loan dues in the Debt Recovery Tribunal, Cuttack, under section 19 of the RDDBI Act which is still pending, in no way prohibits it from filing this petition under Section 7 of IBC, 2016 for initiation of CIRP against the Corporate Debtor. As regards allegation of non-joinder of parties to the extent that GA Dept of State of Odisha not being made a party to the petition, this Tribunal is of the view that in this Section 7 petition, which is a summary proceeding, FC has disbursed loan to CD, which has defaulted in repayment. As such, CD is the only necessary party. There is no need to make General Administration Department of the State of Odisha a necessary party.
17. In view of the forgoing, we are convinced that the loan amount was duly disbursed to the Corporate Debtor by the Petitioner/Financial Creditor, i.e., State Bank of India. The requisites of an application under Section 7 of IBC are available on record and duly proved. Further, the petition is also not barred by limitation. In the above stated circumstances, we do not find any reason for not admitting this petition.
18. The FC has proposed the name of IRP **Mr. Chaitanya Kumar Ray** having **Registration No. IBBI/IPA-003/IP-N00032/2017-2018/10260** and **E-mail Id.: cma.chaitanya@yahoo.com** residence at MIG-26, Manorama Estate Rasulgarh, Bhubaneswar- 751 010. There is nothing on record to show that any disciplinary proceeding is pending against the proposed IRP. This application is defect free.
19. We, therefore, consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor i.e., Swarna Hospital Pvt. Ltd.



20. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders: -

ORDERS

- a. The Petition bearing CP (IB) No. 7/CB/2023 filed by State Bank of India (FC) under Section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **SWARNA HOSPITAL PRIVATE LIMITED** [CIN: U00093OR2005PTC008471], the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under Section 14 of the Code.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 of the IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Chaitanya Kumar Ray** having **Registration No. IBBI/IPA-003/IP-N00032/2017-2018/10260** and **E-mail Id.: cma.chaitanya@yahoo.com** residence at MIG-26, Manorama Estate Rasulgarh, Bhubaneswar- 751 010 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee



payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- h. The Financial Creditor shall deposit a sum of Rs.2.00 lakh (Rs. Two lakh 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 (CoC).
- i. In terms of section 7(5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, e-mail and/or What'sApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Odisha, Cuttack by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

CP (IB) No.7/CB/2023

In re: State Bank of India V. Swarna Hospital Pvt. Ltd.

regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

21. **CP (IB) No. 7/CB/2023** to come up on 19.06.2023 for progress report.

22. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.05.08 16:49:18 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN
MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.05.08 15:15:47 +05'30'

P. Mohan Raj
Member (Judicial)

Signed this 08th day of May, 2023.

Nishi