



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
SPECIAL BENCH COURT III

1. C.P.(IB)-746/MB/2022

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SHRI SATYA RANJAN PRASAD, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **09.01.2023**

NAME OF THE PARTIES: ASREC (INDIA) LIMITED

V/s.

WARDEN SURGICAL COMPANY PRIVATE LIMITED.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Viraj Parikh a/w Adv. Prakhar Tandon i/b Adv. Agam H Maloo, counsel appearing for the Financial Creditor and Ms. Jyoti Muley i/b JM Legum Associates, counsel appearing for the Corporate Debtor are present through virtual hearing.

Order pronounced in the open court vide separate order. In the result, the above Company Petition No. 746/2022 is **admitted** and Mr. Shashant Yeola appointed as IRP.

Sd/-
SATYA RANJAN PRASAD
Member (Technical)
//Vitthal//

Sd/-
H. V. SUBBA RAO
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 746/IBC/MB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

ASREC (India) Limited

Having registered office at: Unit No. 201, 200A, 202 & 200B, Ground Floor, Build No. 2, Solitaire Corporate Park, Andheri (East), Kurla Road, Maharashtra - 400059

.....Financial Creditor

Vs

M/s Warden Surgical Company Private Limited

(CIN: U24239MH1970PTC014516)

Registered office at: 7/8, Parel House, Dr. Borges Road, Parel Mumbai, Maharashtra - 400012.

..... Corporate Debtor

Reserved for order on: **14.12.2022**

Order pronounced on: **09.01.2023**

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Satya Ranjan Prasad, Member (Technical)

For the Applicant: Mr. Viraj Parik, Advocate

For the Respondent: Ms. Jyoti Muley, Advocate

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



1. The above Company Petition is filed by **ASREC (India) Limited** hereinafter called as Financial Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against **M/s Warden Surgical Company Private Limited** called as Corporate Debtor by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of total Financial Debt of Rs. 18,28,34,693.35/- (Total Principal amount: Rs. 13,03,37,848.52/- and Total Interest including Penal Interest: Rs. 5,24,96,844.82/-)

2. **BRIEF FACTS OF THE PETITIONER**

a) The Financial Creditor submits that M/s Warden Surgical Co. Private Limited, a company registered under the Companies Act, 1956 (hereinafter referred to as “**the borrower/Corporate Debtor**”) was granted financial assistance by way of various credit facilities by Abhyudaya Co-operative Bank Ltd (hereinafter referred to as “**the Original Lender**”), upon execution of various financing agreements, security agreements and such terms and conditions contained therein. Following is a detailed table consisting various credit facilities extended to the Corporate Debtor:

Sr. No.	Sanction Date	Letter	Amount
1.	17.01.2018		90,00,000/-
2.	17.01.2018		4,00,00,000/-
3.	29.01.2018		6,50,00,000/-
4.	29.01.2018		50,00,000/-
	Total		11,90,00,000/-



- b) That, pursuant to such sanction of credit facilities availed as above, the Corporate Debtor have executed necessary documents including the charge/mortgage on securities mentioned herein to secure the dues against aforesaid account.
- c) That, consequent to the default committed by the Corporate Debtor in repayment of such credit facilities, the Abhyudaya Co-operative Bank Ltd classified the account as non-performing asset.
- d) That, pursuant to the Assignment deed dated 26.08.2020 Abhyudaya Co-operative Bank Ltd. the original lender irrevocably transferred, assigned, the financial assets of the Corporate Debtor along with all rights, title and interest together with underlying security interest in favour of the ASREC India Limited (hereinafter referred to as “**Financial Creditor**”).
- e) That, the Financial Creditor has become secured financial creditor of the Corporate Debtor the borrower company by virtue of provisions of Section 5(7) of Code and entitled to pursue the present proceedings. Based on the above, the Financial Creditor sent a notice dated 11.12.2020 to the Corporate Debtor, giving them time period of the seven (7) days to come with a settlement proposal for the amount payable by them, otherwise the Financial Creditor would be at a liberty to proceed against them under the provisions of the Code.
- f) That, the Financial Creditor herein issued a notice to the Corporate Debtor under Section (2) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “**SARFAESI**”) dated 18.03.2021, calling upon the Corporate Debtor to pay in full and discharge your liabilities aggregating to Rs. 15,74,08,592.09/- (Rupees Fifteen Crore Seventy-Four Lakhs Eight Thousand Five Hundred Ninety-Two and Paise Nine) with



future interest thereon @ 14.50% per annum till date of realization within a period of sixty (60) days from this date notice.

- g) Thereafter, the Corporate Debtor in reply to the aforementioned notice wrote a reply dated 10.05.2021 under the provisions of Section 13 (3A) of the SARFAESI Act, to the Financial Creditor, stating that they are making all efforts to clear the pending dues by way of one-time settlement to the Financial Creditor, they also stated that due to the lockdown & the prevailing situation in Mumbai, it was very difficult to coordinate with their investors & formulate a business revival plan. The Corporate Debtor in the said reply further sought 60 days to submit their settlement proposal.
- h) That, the Financial Creditor received the said reply vide email on 25.05.2021, to which the Financial Creditor advanced a letter dated 25.05.2021 inviting the Corporate Debtor discuss the one-time settlement proposal with them.
- i) That, despite the above request made by the Financial Creditor, no settlement proposal was received from the Corporate Debtor. Therefore, the Financial Creditor had no other option but to send a notice dated 12.07.2021, under the provisions of Section 13 (4) of the SARFAESI Act, seeking symbolic and surrender of possession of the secured assets of the Corporate Debtor.
- j) That, the Corporate Debtor vide letter dated 26.07.2021 requested the Financial Creditor to allow a period of 60 days to submit the final OTS proposal.
- k) That, the Financial Creditor took the symbolic possession of the assets of the Corporate Debtor on 30.11.2021.
- l) That, the Financial Creditor published the possession notices in Navshakti and Free Press Journal newspapers on 02.12.2021.
- m) That, the Financial Creditor filed an application against the Corporate Debtor before the District Magistrate, Thane and



Alibaug for both the properties on 20.12.2021 and 07.01.2022 under Section 14 of SARFAESI Act, 2002.

- n) Thereafter, the Corporate Debtor vide letter dated 25.03.2022 submitted its OTS proposal to the Financial Creditor for an amount of Rs. 7,00,00,000/- (Rupees Seven Crore Only).
- o) That, the Financial Creditor vide letter dated 30.03.2022 requested the Corporate Debtor to improve the OTS proposal substantially as the competent authority has not accepted the said proposal.
- p) That, the Financial Creditor vide letter dated 05.04.2022 requested the Corporate Debtor to come forward with a settlement proposal within 7 days, failing which it shall to file an application before the Hon'ble NCLT for initiation of CIRP against the Corporate Debtor.
- q) In view of the above, since the Corporate Debtor has no source and cash flow to clear the aforementioned outstanding, the present petition is being filed under the provisions of the Code due to default in payment of Rs. 18,28,34,693.35/- (Rupees Eighteen Crore Twenty-Eight Lakhs Thirty-Four Thousand Six Hundred Ninety-Three and Thirty-Five Paise Only)

3. **BRIEF FACTS OF THE REPLY:**

- a) Mr. Mahesh Kandpal authorized representative of the Corporate Debtor filed reply and submits that, as to part I, II, and III of the Form 1 filed by the Petitioner are not contested owing to information provided therein.
- b) That, as to Part IV of the petition, Point No. 1 is agreed that the total borrowings were Rs. 11,90,00,000/- (Rs. Eleven Crore Ninety Lakhs Only)
- c) That, as to Point No. 2 of Part IV, the penal interest charged is against the RBI Guidelines. Once, the account is declared as NPA



(as on 29.12.2018), penal interest is not charged. Hence, the claim amount is exaggerated to that extent.

- d) That, in the same Point No. 2, the Petitioner has stated the different dates of default for various loans. Also, there is difference in the principle amount claimed and the amount outstanding and due as per letter of NPA. This shows that the Corporate Debtor has serviced the loan accounts up to the amount of Rs. 44,84,238.31/- (Rupees Forty-Four Lakhs Eighty-Four Thousand Two Hundred Thirty-Eight and Paise Thirty-One Only) during December 2018 to August 2020. This is to state that the Corporate Debtor is not a willful defaulter but is the circumstantial defaulter.
- e) That, to avoid the repetition, we are not referring to the entire communication between the Petitioner and the Corporate Debtor which we are not contesting herewith.
- f) That, in Point No. 16 of Point No. 2, the Petitioner had asked the Corporate Debtor to revise the offer within 7 days vide its letter dated 05.04.2022. The letter of first OTS proposal by the Corporate Debtor is dated 25.03.2022 which the Petitioner refused and communicated to the Corporate Debtor vide letter dated 30.03.2022. It is important to note that the Petitioner just offered 7 days to the Corporate Debtor for another revised OTS proposal. On 05.04.2022 the Corporate Debtor had sent the revised OTS proposal to the Petitioner, which is not taken on record herewith.
- g) That, in Point No. 18 of Point No. 2, the Petitioner has claimed that the Corporate Debtor does not have any source to repay. This is incorrect statement.
- h) That, as per the above exhibited documents above as Ex. D-Colly, the Corporate Debtor has total outstanding receivables are Rs. 3.89 Crores. Upon recovery of these amounts, the position of



Corporate Debtor is quite recoverable and stable. It is just that Corporate Debtor being in the healthcare industry and faced lot of hiccups due to COVID and problems of receivables, that the Corporate Debtor is at this juncture now. Further, Corporate Debtor is trying to settle the matter and being an MSME, Corporate Debtor should be given a chance to revive itself.

- i) That, Corporate Debtor is an ongoing concern and has 22 employees working with it.
- j) Hence, it is requested that the Corporate Debtor is trying to settle the matter by getting in some investors which is a matter of time. We request this Hon'ble Bench to give the Corporate Debtor the time to settle the matter and save its ongoing business.

FINDINGS

1. Heard Mr. Viraj Parikh, counsel appearing for the Petitioner and Ms. Jyoti Muley, counsel appearing for the Corporate Debtor and perused the record. It was brought to the notice of this Tribunal by the counsel appearing for the Petitioner that the Corporate Debtor has clearly admitted the 'debt' and 'default' in this case in their reply and prayed for admission of the above Company Petition.
2. Ms. Jyoti Muley, counsel appearing for the Corporate Debtor praying for some more time for settling the matter did not raise any substantial legal plea to dismiss the above application and accordingly the above Company Petition was reserved for order on 14.12.2022 with a clear notice to the Corporate Debtor that orders in the main Company Petition may not be passed before 02.01.2023 in view of the Christmas vacation with a word of caution that orders may be passed at any time after 02.01.2023 since this is an admitted case of 'debt' and 'default'.



3. However, an Interlocutory Application bearing no. 3799/2022 was filed by the Corporate Debtor for condonation of delay and to take the reply on record was listed on board in the supplementary cause title on 02.01.2023. Upon a query made by this Tribunal to the counsel for Corporate Debtor as to how the above Interlocutory Application was filed and got listed after reserving the matter for orders, she has submitted that the reply was filed by the Corporate Debtor even before reserving the matter for orders way back on 17.11.2022 through e-filing.
4. Since there is a clear admission of 'debt' and 'default' both in the reply as well as in various OTS proposals submitted to the bank, the reply filed by the Corporate Debtor has no much relevance. However, it was taken on record.
5. For the aforesaid reasons this Bench is of the considered opinion that this is a case of admitted 'debt' and 'default' by the Corporate Debtor and there is nothing to be adjudicated and there are no valid grounds to reject the above Company Petition.
6. Accordingly, the above Company Petition is admitted by passing the following order:

ORDER

- a. The above Company Petition No. (IB) 746 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Warden Surgical Company Private Limited.
- b. This Bench hereby appoints Mr. Shashant Yeola (shashantsyeola@gmail.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00310/2017-18/0574 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.



- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs 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 his fee is decided by COC.
- d. That 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 right 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.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That 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.
- g. That 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.



- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. 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.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
SATYA RANJAN PRASAD
MEMBER (TECHNICAL)
//Shubham//

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)