

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 12th MARCH, 2024, 10:30 A.M.

CP (IB)/24/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	North Eastern Development Finance Corporation Ltd. (NEDFi) Vs Ayursundra Hospital (Guwahati) Pvt. Ltd.
Under Section	U/s 7 of IBC, 2016

For Petitioner (s) : Mr. Subrata Dutta, Adv.
For Respondent (s) : Mr. Rohit Gupta, Adv.

ORDER

Ld. Counsel Mr. Subrata Dutta appearing for Financial Creditor present. Ld. Counsel Mr. Rohit Gupta representing the Corporate Debtor is also present. This is a case where there is no dispute with regard to the existence of the debt and default committed by the Corporate Debtor. In fact, the matter has been listed on several occasions previously and at the request of the Corporate Debtor for an amicable settlement it has been adjourned from time to time. Today, the Ld. Counsel appearing for the Corporate Debtor Mr. Rohit Gupta while fairly assuring settlement once again requested this Tribunal to pass an order of admission after three weeks since the Corporate Debtor is a running Hospital. After hearing both sides, this Tribunal is of the opinion that request of the Corporate Debtor cannot be considered since there is a possibility of screening of the assets and siphoning of funds of the Corporate Debtor. In the light of the above, this Bench has no option except to admit the above petition since it is a case of admitted debt and default by the Corporate Debtor.

Detailed order *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

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

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP (IB) No.24/GB/2023

In the matter of:

Insolvency and Bankruptcy Code, 2016. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process;

-And-

In the matter of:

North Eastern Development Finance Corporation Limited (NEDFi) having registered office at NEDFi House, Dispur, G.S Road, Guwahati-6, District-Kamrup (M) Assam;

... Applicant/Financial Creditor

-Versus-

Ayursundra Hospital Private Limited, having registered office at Ahom Gaon, Bhabananda Boro Path, NH-7, Garchuk, Opposite DPS School, Guwahati, Kamrup, Assam-781035.

... Respondent/Corporate Debtor

Coram:

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

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For the Petitioners : Mr. S. Dutta, Advocate .

For the Respondent : Mr. R. Gupta, Advocate.

Date: 12.03.2024

ORDER

1. The Company Petition is filed by North Eastern Development Finance Corporation Limited (NEDFi) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Ayursundra Hospitals (Guwahati) Pvt. Ltd. by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a sum of Rs. 14,41,48,264.00 (Rupees Fourteen Crore Forty One Lakh Forty Eight Thousand Two Hundred Sixty Four).
2. As per the Petitioner the brief facts of the case are as follows:
 - 2.1. The Corporate Debtor (CD) is a Private Limited Company registered under the Companies Act, 2013, incorporated on 18.09.2019 to carryout health care business, setting up hospitals, clinics etc. and having its Registered Office at Ahom Goan, Bhabananda Boro Path, NH-7 Garchuk, Opp. DPS School, Kamrup, Assam-781035.
 - 2.2. The CD approached the Financial Creditor (FC) i.e. NEDFi and State Bank of India (SBI) for consortium finance for setting up a multi-speciality hospital at Guwahati and accordingly availed loan facility from the FC to the tune of Rs. 10 Crore vide letter of Sanction dated 23.03.2013; 30.03.2013 and 29.11.2013 in the form of a Rupee Term Loan-I. Similarly, the SBI being the lead bank also sanctioned a Term Loan of Rs. 35 Crore vide Sanction Letter dated 08.10.2013; 27.11.2013 and 11.12.2013. The overall consortium finance stood at Rs. 45 Crore. The said amount of were secured by pari-pasu charge over the hypothecated properties as mentioned in the Joint Deed of Hypothecation dated 24.03.2014.
 - 2.3. The CD had again approached the Consortium lenders which included the FC (NEDFi), Punjab National Bank (PNB) and SBI for additional finance and the FC had sanctioned additional Rupee Term Loan-II of an amount of Rs. 10.00 Crore under Letter of Sanction No. NEDFi/PFD/RTL-799/2015-16/9344 dated 29.02.2016, besides the existing Rupee Term Loan-I of Rs. 10

Crore. The total Rupee Term Loan exposure of the FC stood at Rs. 20.00 Crore.

- 2.4. Thereafter, towards the Corporate Debtor in order to offset the Covid-19 financial requirements and contingencies, approached the FC for Covid Relief Fund in the form of additional Term Loan and after considering the said Application, the FC vide Letter of Sanction No. NEDFi/PFD/RTL-977/2020-21/2353 dated 16.11.2020 sanctioned and Additional Term Loan (Covid) of Rs. 350 Lakh only to the CD with interest at 8% per annum payable on monthly basis. In connection of the said Term Loan facility the CD vide Board resolution dated 10.02.2021 accepted the terms of the letter of Sanction dated 16.11.2020.
- 2.5. The Loan accounts pertaining to the FC and the SBI started to show stress and ultimately the Term Loan accounts of the FC and SBI were classified as NPA on 30.06.2023 and 29.06.2023 respectively. Having no other alternative, the FC had issued Show Cause Notices dated 07.07.2023 to the CD/Directors/Guarantors, followed by Loan recall Notice dated 16.08.2023.
- 2.6. The CD committed defaults on 01.04.2023 and 30.06.2023 in the Rupee Term Loan-I Account and on 01.04.2023 and 30.06.2023 in the Rupee Term Loan-II Account and on 01.04.2023 and 30.06.2023 in the Additional Term Loan (Covid) Account. The CIBIL Report also establishes the default in the loan accounts.
3. This matter was first listed before this Tribunal on 20.12.2023 wherein the Ld. Counsel for the CD accept notice and was thereby directed to file reply at least 3 days before the next date of hearing with advance copy to the Petitioner with an intimation that in case there is a failure to do the same, his right to file reply would be forfeited.
4. On the next date of hearing, i.e., 10.01.2024, the CD failed to file reply as per the earlier order and hence his right to file reply was forfeited. However, the counsel apprised this Tribunal that some settlement talks between the parties are going on.

5. Thereafter the matter was taken on board on 12.03.2024 to report settlement. Ld. Counsel Mr. Subrata Dutta appearing for Financial Creditor present. Ld. Counsel Mr. Rohit Gupta counsel representing the Corporate Debtor is also present. However, the counsel for the CD again requested for further three weeks' time to pass the appropriate admission order since the Corporate Debtor has admitted the debt and default.
6. This Tribunal is of the view that this is a case where there is no dispute with regard to the existence of debt and default committed by the Corporate Debtor. In fact, the matter has been listed on several occasions previously and at the request of the Corporate Debtor for an amicable settlement it has been adjourned from time to time. Today, the Ld. Counsel appearing for the Corporate Debtor Mr. Rohit Gupta while fairly assuring settlement once again requested this Tribunal to pass an order of admission after three weeks since the Corporate Debtor is a running Hospital. After hearing both sides, this Tribunal is of the opinion that request of the Corporate Debtor cannot be considered since there is a possibility of screening of the assets and siphoning of funds of the Corporate Debtor. In the light of the above, this Bench has no option except to admit the above petition since it is a case of admitted debt and default by the Corporate Debtor.
7. It is clear from the records that there is continuing default. The dates of default in the Rupee Term Loan I Account occurred on 01.04.2023 and 30.06.2023; Rupee Term Loan II Account occurred on 01.04.2023 and 30.06.2023 and Covid-19 Loan Account occurred on 01.04.2023 and 30.06.2023. The above Company Petition being filed on 06.12.2023 is within the limitation period allowed under the Limitation Act, 1963. The Debt claimed is Rs. 14,41,48,264.00 is above the threshold limit as per the notification dated 24.03.2020 made by the Ministry of Corporate Affairs. The Financial 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 Financial Creditor under Section 7 of the IBC, 2016 is found to be

complete for the purpose of initiation of Corporate Insolvency resolution Process in respect to the Corporate Debtor.

8. Accordingly, the above Company Petition No. **CP (IB)/24/GB/2023** is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Ayursundra Hospital (Guwahati) Pvt. Ltd. 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:

8.1. The Operational Creditor has suggested the name of **Shri. Sandeep Khaitan** to perform the duties of the Interim Resolution Professional in the petition. This Bench hereby appoints **Shri. Sandeep Khaitan**, IRP appointed as Resolution Professional, **IPE Registration No.** IBBI/IPA-001/IP-P00532/2017- 18/10957. **Phone No.** 8011048037. **E-mail ID:** khaitansandeep@gmail.com. Having **Registered Office** at: 2nd Floor, Sanmati Plaza, G.S. Road, ABC, Guwahati- 781005, Assam.

8.2. The Operational Creditor shall deposit an amount of Rs. 3 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.

8.3. 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.

- 8.4. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- 8.5. 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.
- 8.6. 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.
- 8.7. The public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- 8.8. 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.
- 8.9. Registry shall send a copy of this order to the Registrar of Companies, Guwahati, for updating the Master Data of the Corporate Debtor.
9. Accordingly, with the above observations and direction, CP (IB) No. 24/GB/2023 is admitted.
10. 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.
11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
12. File be consigned to records.

Sd/-
Satya Ranjan Prasad
Member (Technical)

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