

## IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KOCHI

CP (IB)/34/KOB/2021

(Under Section 7 Of Insolvency and Bankruptcy Code, 2016)

Order delivered on 31.03.2022Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Anil Kumar. B, Member (Technical)

Dhanlaxmi Bank Ltd  
Dhanalakshmi Buildings,  
Punkunnam, Thrissur-680002  
Kerala

- Financial Creditor

Vs.

M/s. S.D. Pharmacy P Ltd.  
CIN: U24231KL1989PTC005420  
26/1176, Dhanwanthari Bhavan,  
Balbhavan Road,  
Alleppey,  
Alapuzha  
Kerala-688011.

- Corporate Debtor

Parties/Counsels Present (through Video Conferencing):

For Financial Creditor : Adv. Vinod P.V &amp; Adv. Reetha D

For Corporate Debtor : Ex-parte vide order dated 08.03.2022

ORDER

1. CP (IB)/34/KOB/2021 has been filed under Section 7 of I&B Code, 2016 by the Financial Creditor, **Dhanlaxmi Bank Ltd** against the Corporate Debtor **M/s. S.D. Pharmacy P. Ltd.** for initiating Corporate Insolvency Resolution Process. The Financial Creditor alleged that the Corporate Debtor has committed default

in repayment of the credit facilities and hence the account of the Corporate Debtor was classified as Non-Performing Asset on 30.04.2019. The amount due under loan account No. 009510100000510 as on 31.08.2021 from the Corporate Debtor is Rs.1,08,58,311.16 /- which includes the principal due of Rs.76,05,465.16 and Rs.32,52,846.00 towards interest.

The facts in brief are as under:-

2. The Corporate Debtor viz., M/s. S D Pharmacy P. Ltd., having CIN: U24231KL1989PTC005420 is carrying on the business of manufacturing and distribution of Ayurvedic Medicines and other Ayurvedic products. The Financial Creditor granted a cash credit facility of Rs. 80,00,000/- (Rupees Eighty Lakh) to the Corporate Debtor, towards working capital requirements by way of sanction letter dated 07.08.2010 by executing cash credit agreement and other loan documents on 14.08.2010. As security towards the grant of credit facilities, the Corporate Debtor has mortgaged its land and factory and also hypothecated its stock actionable claims, moveable properties, book debts and other assets in favour of the Financial Creditor. Corporate Debtor also executed Demand Promissory Note for Rs.80,00,000/- and the Directors of the Corporate Debtor have also executed a deed of personal guarantee guaranteeing the repayment of Rs.80,00,000/- together with interest and other charges in the event of default. Accordingly, the Financial Creditor disbursed the loan on 18.08.2010. The sanction was finally revised on 29.05.2018 for Rs.80,00,000/-

without any enhancement for a further period of 12 months and changed the interest rate to 13.50%. The Corporate Debtor has executed a consent on renewal of the limit on 29.05.2018.

3. The Corporate Debtor has committed default in repayment of the Loan and hence the account of the Corporate Debtor was classified as Non Performing Asset (NPA) on 30.04.2019. The Corporate Debtor has issued a loan recall notice to the Borrower (Corporate Debtor) and Guarantors on 02.05.2019, however, the Corporate Debtor and Guarantors failed to repay the dues despite granting several opportunities. Accordingly, the Financial Creditor has issued notice under Section 13(2) of the SARFAESI Act, 2002 on 08.05.2019 to the Corporate Debtor and Guarantors directing them to repay the then outstanding amount of Rs.79,95,939.16; with future interest within 60 days from the date of the notice. The Corporate Debtor has replied to the said notice vide letter dated 02.07.2019 stating that company is willing to clear the dues if sufficient time is granted and that the company is entitled to OTS benefits. The Financial Creditor has replied this letter vide their letter dated 31.07.2019 stating that the bank has already advised to submit a plan for the renewal of the account and to submit relevant documents immediately for the renewal of the account. Since neither response nor payment was made by the Corporate Debtor, the Applicant issued

notice under Section 13(4) of the SARFAESI Act on 30.08.2019 to take possession of the secured assets.

4. The Corporate Debtor is unable to pay its debt despite granting various opportunities. Hence, the present application has been filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
5. This Application was filed on 19.10.2021 and notice was issued to the parties. When the matter was listed for admission on 30<sup>th</sup> November 2021 Adv. Peer Mohammed Khan appeared through Video Conferencing and stated that he represents the Corporate Debtor and has undertaken to file the vakkalath. He has also taken time to file a reply statement. The matter was adjourned to 20<sup>th</sup> December 2021. However, none appeared for the Respondents and no vakkalath has been filed. Thus, this Tribunal directed the Financial Creditor to issue fresh notice to the Corporate Debtor and the matter was adjourned to 19<sup>th</sup> January 2022. On that day, the learned counsel for the Financial Creditor stated that the notice issued to the Corporate Debtor has been returned unserved. Thus, the Tribunal directed the Financial Creditor to make necessary paper publications in English Daily "Financial Express" and Malayalam Daily "Mathrubhoomi" which have wide circulation in the State of Kerala and the matter adjourned to 14<sup>th</sup> February 2022. On that day another Advocate Shri. Girish Kumar appeared for the Corporate Debtor and stated that his Senior Adv. Peer Mohammed Khan

has already filed vakalat for the Corporate Debtor. However, the Registry reported that no vakalat was received by Adv. Peer Mohammed Khan. This Tribunal has given another opportunity to file the reply of the Corporate Debtor before the next date fixed and adjourned to 08.03.2022. On 8<sup>th</sup> March 2022 none appeared for the Corporate Debtor. The learned counsel for the Financial Creditor stated that the proof of publication has already been filed by him. However, the Corporate Debtor did not appear, and hence the Corporate Debtor was set ex-parte vide order dated 08<sup>th</sup> March 2022.

6. In the absence of Corporate Debtor, we have relied on Section 5 (7) and (8) of Insolvency and Bankruptcy Code, 2016 to satisfy the definition of Financial Creditor and Financial Debt. Further, we relied on Section 7 of the Code to determine whether the process for initiation of CIRP was followed by the Operational Creditor or not. It also appears that the claim amount in this application is Rs.1,08,58,311.16 /- which satisfies the minimum requirement of Rs. 1 Crore to file an Insolvency Application. Therefore, in all counts, the instant Application deserves to be admitted.
7. In this case the applicants proposed the name of an Insolvency Professional **Shri. Jasin Jose**, and produced his written consent in Form 2 as per Sub Rule (1) of Rule 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The learned Insolvency Professional certified that there

are no disciplinary proceedings pending against him with the Board or ICAI Insolvency Professional Agency.

8. In view of what is stated above, the following order is passed.

- I. The Application **CP (IB)/34/KOB/2021** filed by the Financial Creditor under Section 7 of the I& B Code 2016 read with Rule 4 (1) of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against **M/s. S.D. Pharmacy**, the Corporate Debtor is **admitted**.
- II. There shall be a moratorium under Section 14 of the I&B Code, 2016, in regard to the following:
  - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any Court of Law, Tribunal, Arbitration Panel or other authority;
  - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - c. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- III. Notwithstanding the above, during the period of moratorium, the following are also to be strictly followed: -
  - a. 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.

- b. 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.

- IV. That the order of moratorium against the Corporate Debtor shall have effect from the date of pronouncement of this order till the completion of the CIRP 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.
- V. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the I&B Code, 2016 read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VI. That this Bench appoints **Mr. Jasin Jose**, having Registration No. **IBBI/IPA-001/IP-P00695/2017-2018/11225**, email id: **jasinjoseponmattam@gmail.com**, residing at **Ponmattam Madaserry House, Mookkannoor P O, Ernakulam, Kerala, 683577** whose name appears in the panel of Insolvency Professionals issued by the IBBI for the Kochi Bench from the period 01.01.2022 to 30.06.2022, as the Interim Resolution Professional to carry out the functions as mentioned under the Code. The fee payable to IRP, or, as the case may be the RP, shall comply with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/ RP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the I&B Code, 2016.
- VII. 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 I&B

Code,2016. The officers and managers of the corporate debtor shall provide all documents in their possession and furnish every information in them to the IRP within a period of one week from the date of receipt of order, in default of which coercive step will follow.

- VIII. The Applicant/Financial Creditor shall deposit an amount of **₹2,00,000/- [Rupees Two Lakh]** with the Interim Resolution Professional for initiation of the proceedings as directed by this Tribunal forthwith. This amount is subject to ratification by the CoC. This amount cannot be construed as the fee paid to the Interim Resolution Professional.
- IX. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor and IRP through email and speed post immediately.

Dated this the 31<sup>st</sup> day of March, 2022

**Sd/-**

**Anil Kumar B**  
**Member (Technical)**

**Sd/-**

**Ashok Kumar Borah**  
**Member (Judicial)**