

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/477/IB/2020 in CA/1/IB/2017

*(filed under Rule 11 of NCLT Rules, 2016 r/w Section 60(5)
of IBC, 2016)*

In the matter of M/s. Vasan Health Care Private Limited

M/s. Vipul Investment,

Represented by its Proprietor, Mr. Vipul Mehta,
No. 12, Wallace Garden Road,
Thousand Lights, Chennai – 600 006.

*... Applicant/
Financial Creditor*

-Vs-

V. Mahesh,

Interim Resolution Professional of
M/s. Vasan Health Care Private Limited,
Having office at
No.39/19, ASPEN Court, 3rd Floor,
6th Main Road, R.A.Puram,
Chennai – 600 028.

*... Respondent/
Interim Resolution Professional*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : R.Murari, Senior Advocate
for Rajkumar Jhabakh, Advocate

For Respondent : Anant Merathia, Advocate

Order pronounced on 13th October, 2020

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. The Applicant namely, **M/s. Vipul Investment**, is a Proprietorship Firm who claims to have extended Financial Assistance to the tune of ₹1,20,00,000 (Rupees One Crore Twenty Lakhs Only) on sequential dates in different tranche to the Corporate Debtor viz. M/s. Vasan Health Care Limited. Subsequent to the initiation of the CIRP in relation to the Corporate Debtor, the Applicant has submitted his claim for a sum of ₹2,65,29,960/- (including interest) before the Respondent on 17.10.2019 in the capacity of Financial Creditor, which came to be rejected by the Respondent on 19.03.2020. Aggrieved by the said rejection of the claim by the Respondent, the Applicant has preferred the present Application under Section 60(5) of IBC, 2016 seeking relief as follows;

a. That this Hon'ble Tribunal may be pleased to direct the Respondent to admit and accept the claim of ₹2,65,29,960/- as a "Financial Debt" of the Corporate Debtor and to act accordingly;

b. Pass such other order or orders as this Hon'ble Tribunal may deem fit.

2. The Applicant in his application has averred that the Corporate Debtor had executed various documents evidencing the amounts due and outstanding which *inter-alia* include Demand Promissory Note and cheques, which were duly executed by one Dr. A.M.Arun, the Managing Director of the Corporate Debtor; in addition to various letters of undertaking to pan the entire money.

3. In the Application there appear to be several paragraphs containing statements pertaining to the claim, confirmation of balance, admission of liability and documentary proof pertaining to user of the amount lent for the purpose of business of the Corporate Debtor. The Applicant has stated that the Respondent / IRP has rejected the entire claim stating that since the amounts borrowed by the Corporate Debtor had been borrowed through the Promoter / Director, the amount cannot be classified as Financial Debt.

4. According to para 6 and 7 of the Counter submitted by the Respondent the money purported to have been lent to the Corporate Debtor by the Applicant was routed through the erstwhile Promoter, the transactions which of whom are not reflected in the books of the Corporate Debtor. The Respondent has further stated in the Counter that the erstwhile Director/promoter of the Corporate Debtor had brought in funds to the Corporate Debtor in his personal capacity which were deemed as 'Director's Loans' and treated accordingly in the books of accounts of the Corporate Debtor and there is no mention of the instant Applicant of having lent monies to the Corporate Debtor directly in any of its records.

5. In para 12 of the Counter, the Respondent has categorically averred that there is no evidence to prove that the monies loaned by the Applicant was used for the purpose of running the commercial business of Corporate Debtor, given the established fact that the amounts were not transferred into the bank

accounts of the Corporate Debtor by the Applicant directly. It is further stated that the erstwhile promoter has provided loans to the Corporate Debtor and the same is reflected in the 'Director's Loans' in the books of accounts of the Corporate Debtor. It is submitted that the Loans from Directors are allowed as per the provisions of the Companies Act, 1956 and the Companies Act, 2013, subject to certain conditions. It is further averred that by accepting the instant claim submitted by the Applicant herein as an Unsecured Financial Creditor, would seem as though he is helping to suppress the default or contravention of the provisions of the Companies Act, by the Corporate Debtor and its management.

6. In para 16 of the Counter it has been submitted by the Respondent that there is no Agreement between the Applicant and Corporate Debtor in order to demonstrate justification for charging of interest and the figures mentioned in the averment are denied as false and frivolous.

7. In para 17 and 18 of the Counter, the Respondent has averred that he has limited powers to the extent of verifying and collating the claim and further stated that he is not authorized to adjudicate into the claim submitted by the Creditors; he has reproduced Regulation 13 in "Verification of Claims" in support of his averment in this Counter as well as the excerpts of the decision of Hon'ble Supreme Court of India in **Swiss Ribbons Pvt. Ltd & Anr.-Vs- Union of India & Ors. [(2019) 4 SCC 17]**.

8. The question before this Adjudicating Authority is to decide as to whether a direction is to be issued to the Respondent to admit the claim of ₹2,65,29,960/- as Financial Debt of the Corporate Debtor and to act accordingly. This Authority has heard the matter in detail from both the parties during the course of hearing and examined the Application, Counter and additional documents filed.

9. We find that the Applicant herein is a proprietorship firm represented by its proprietor Mr. Vipul Mehta, claiming that it has extended Financial Assistance of an amount of Rs.1,20,00,000/- to the Company through one Dr.A.M.Arun who had executed all the negotiable instruments such as Cheques and Demand Promissory Note purported to have been issued in the name of the Company in addition to various letters of undertaking to pay the money. The Applicant has produced extract of the minutes of Board Meeting of Vasan Health Care Private Limited purported to have been held on 15.12.2014, as follows;

“RESOLVED that the Chairman informed that the Company had approached M/s. Vipul Investment, 12, Wallace Garden 2nd Street, Thousand Lights, Chennai – 600 006. The said company had agreed to finance for the same.

The Board discussed the matter and passed the following resolution:

“RESOLVED to avail a loan of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh only) which will be returned with interest and further resolved that all our cheques will be honored on presentation.

RESOLVED FURTHER that Dr.A.M.Arun – Managing Director of the Company be and is hereby authorised to sign necessary loan

documents / papers with M/s. Vipul Investment and the common Seal of the Company be affixed wherever necessary.

RESOLVED FURTHER that Dr. A.M.Arun to collect the money in his personal name and deposit the same into Company's account and the board approved that the repayment made by Company's only.

RESOLVED FURTHER that Dr. A.M.Arun be and are hereby authorised to extend their personal guarantees for this purpose.”

10. The extract of the said minutes is seen to have been signed by Dr.A.M.Arun, Managing Director and Meera Arun, Director, who appears to have authorized themselves to receive the money in his personal name and deposit the same in the Company's Account. This Tribunal finds its strange and unable to comprehend, that, when the Company itself has the bank account why such amount of loan is disbursed to the personal account of Dr. A.M.Arun. It is therefore evident that the alleged loan amount has not gone to the coffers of the Company from the lenders account. The lender has not taken proper precaution and care while extending loan of ₹1.20 crore to the Account of Dr. A.M.Arun and Company who it is alleged to have transferred the money to the Company account, whereby the Company would be made liable for repayment without the authority of proper composition of a duly convened Board Meeting and without entering into a proper loan agreement elucidating the terms of repayment, payment of interest, etc.

11. The Applicant has not produced copy of any notice convening the Board Meeting, relevant extract of attendance of other Directors on the Board.

The Applicant also cannot try to sweep that it is an internal affair of the

Corporate Debtor as to whether the amounts availed is remitted to the credit of the Corporate Debtor or based on the strength of the alleged Board Resolution had been remitted to the personal account of the Managing Director and thereby invoke the principles of '*Doctrine of Indoor Management*'. If the amounts had been remitted to the account of the Corporate Debtor probably such a plea is possible subject to surrounding circumstances on a case to case basis being considered about its efficacy. Further, the said principle in the considered view of this Tribunal can be applied only when due care and diligence had been taken by a person seeking to invoke the principle and not when there has been a laxity on the part of the said person before entering into the transaction.

12. In order to establish the claim, the bank statement of the Applicant in relation to transfer of sums is pointed out annexed as Annexure-A3, a perusal of which shows that the amounts have been directly disbursed to the individual account of one Dr. A.M.Arun. However, on the other hand the Demand Promissory Notes and Cheques, probably being security cheques, letter executed by the Corporate Debtor allegedly for taking the loan and confirmation of balance allegedly dated 31.03.2019 all annexed as Annexure-A4 to Annexure-A6 have all been signed by the said Dr. A.M.Arun on behalf of the Corporate Debtor. The very nature of the transaction *prima-facie* leads to suspicion leave alone to this Tribunal but even to a man of ordinary prudence, what to say of a man of commercial wisdom like the Applicant who

it is seen is running a sole proprietary concern, obviously a business establishment.

13. In the circumstances, is not its duty to have seen that while he is allegedly distributing the loan to an individual, but however, trying to make another person, namely, the Corporate Debtor liable for its repayment based on the execution of documents by very same person not in his individual capacity but allegedly as a Managing Director of the Corporate Debtor. Be it the Corporate Debtor, being the Private Limited Company but that does not take away the character from it of a separate legal entity. Thus, the standard of due diligence required under such circumstances has been exercised or not is required to be seen by the Applicant. Obviously from the very nature of the money transaction it is evident that the said Dr. A.M.Arun had been interested in the transaction, albeit to the affairs of the Corporate Debtor according to the Applicant. Under such circumstances, why the circuitous and devious method of transferring the money to an individual instead of directly transferring the sums allegedly availed as a loan by the Corporate Debtor, the poser which should have been posed to itself by the Applicant and in this regard should have insisted upon the payment being made only to the account of the Corporate Debtor and to no one else.

14. Thus effectively consideration is not passed from the Applicant to the Corporate Debtor and in the circumstances the recourse if at all for the

Applicant is to seek his / its remedy against the said Dr. A.M.Arun and not against the Corporate Debtor. The suspicious nature of the transaction, it is to be seen is evident from the list of Directors of the Company extracted hereunder as appeared in page 4 of Additional Documents submitted by the Respondent.

Only Board of Directors of the Corporate Debtor since November 2015					
S. No	DIN/PAN	Name of the Director	Designation	Date of Appointment	Date of Resignation
1	01303916	A.M.Arun	Promoter Director	22.06.2007	Nil
			Managing Director	01.08.2008	Nil
2	02120368	Meera Arun	Promoter Director	22.06.2007	Nil
Erstwhile Board of Directors of the Corporate Debtor					
S. No	DIN/PAN	Name of the Director	Designation	Date of appointment	Date of resignation
3	00163632	Kanarath Payattiyath Balaraj	Nominee Director	06.02.2009	10.11.2015
4	02918495	Bharadwaj Thiruvenkata Venkatavaraghavan	Nominee Director	18.12.2009	18.11.2015
5	00031805	Alagappan Arunachalam Murugappan	Additional Director (Professional)	16.03.2011	11.08.2015
6	00058467	Ramamoorthy Rajagopalan Kuttalam	Director (Professional)	11.12.2012	25.03.2015
7	05225321	Arjun Gupta	Nominee Director	14.03.2012	23.11.2015
8	00755030	Kalyanaraman Ramakrishnan	Nominee Director	11.12.2012	14.05.2015
Erstwhile KMP of the Corporate Debtor					
9	AASPR9742 A / M.No.26943	Mani Ravikannan	Company Secretary	30.11.2012	31.03.2014

From the said chart, it is seen that the directors other than Dr. A.M.Arun and Meera Arun had resigned on various dates as may be seen in the chart, from which, it can be inferred that the other Directors were also on the Board of the Company as on 15.12.2014, the date of holding the Board

Meeting, purported to have been held. Under these circumstances, this Adjudicating Authority observes the following:

1. All the six Directors other than Dr. A.M.Arun and Meera Arun who have appear to have resigned subsequently from the Board of the Corporate Debtor Company, none of whom, seem to be a party of the Board Meeting in the business transacted in Board Meeting purported to have been held on 15.12.2014.
2. This Tribunal has also taken note of the change in the statutory auditors viz., Walker Chandiook & Co LLP after conclusion of their audit for the year ending 31.03.2015 whose report dated 16.08.2017 contains a series of disclaimer as well as their inability to make mandatory disclosures pertaining to authenticity and authority of the books of accounts and on the true and fair value of the financial statement encompassing about the type of loan transaction in respect of which the Applicant has submitted a claim against the Respondent. The subsequent year ending 31.03.2016, wherein P.B. Vijayaraghavan & Co., Chartered Accountant has been appointed as the statutory auditors whose report is also re-produced in the Counter Affidavit, contains a catena of disclaimer statements particularly with reference to various types of loan, both the Short Term and Long Term in para No.11 and 12 of the disclaimer of their opinion in page No.115 of the Counter is reproduced as below: -

“11. As described in Note 41(u) to the financial statements, the balances lying in Other Long term liabilities (classified under non-current liabilities) aggregating to Rs.68,91,92,952/- Trade payables (classified under current liabilities) aggregating to Rs.2,58,10,96,372/-. Other current liabilities aggregating to R.7,17,26,53,416/-, Long Term Loans and advances (classified under Non-current assets) aggregating to

Rs.1,98,52,79,962/-, Short Term Loans and Advances (classified under Current assets) aggregating to Rs.54,12,69,927/- and Trade Receivables (classified under Current assets) aggregating to Rs.21,69,09,268/-. Other Current assets (classified under Current assets) aggregating to Rs.3,68,11,925/-, Short term borrowings (classified under current liabilities) aggregating to Rs.92,64,53,336/-, Long term borrowings (classified under non-current liabilities) aggregating to Rs.2,26,87,99,121/- as at 31st March 2017 are subject to confirmation and reconciliation with the books of accounts by the management. In the absence of confirmation and reconciliation thereof, we are unable to comment upon the existence, completeness, recoverability and carrying value of the balances mentioned thereon.”

12. As described in Note 41(b) to the financial statements, as at 31 March 2017, the net receivable from the MD of the company amounts to Rs.63,60,02,490/- (31 March 2016 – receivable of Rs.29,16,79,034). As per the explanations of the Management, the MD has acted on behalf of the Company and the balances in MD’s account include amounts received by the Company from various third parties through the MD and amounts repaid to various third parties by the MD, which are in the process of being quantified. The Company has not produced any documents supporting the above transactions. In the absence of sufficient appropriate audit evidence, we are unable to comment on the effect of the above transactions in the accompanying financial statements. Our opinion on the financial statement for the previous year ended 31 March 2016 was also qualified with respect on the balance receivable from the Managing Director’s account.

In respect of the above transactions between the Company and the MD, the Company has not and complied with the provisions of Section 73 and Section 185 of the Act. Under these circumstances and in absence of sufficient appropriate audit evidence with respect to the transactions involving the Company and the MD / third parties, we are unable to comment upon the existence, appropriateness, validity, completeness, of such transactions including



company's rights and obligations under such arrangement if any, and the consequential impact on the accompanying financial statements of the Company.”

Under these circumstances, this Adjudicating Authority is unable to recognize the amount claimed as Financial Debt due from the Corporate Debtor and as such the decision of the IRP / Respondent in this regard does not warrant any interference and accordingly we hold that the Respondent IRP's rejection of the claim of the Applicant is valid. Therefore, the Application stands **dismissed**, however, without cost.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

MS / Raymond