S.No.123

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **07-02-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA (IBC) 73 & 74/2022
CP(IB) No. 243/7/HDB/2021
U/s 7 of IBC, 2016

IN THE MATTER OF:

M/s. Arcom Medical Devices Pvt Ltd **...Financial Creditor**

Vs

B & A Best Health Care Pvt Ltd **...Corporate Debtor**

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Learned Counsel Mr. Nikunj Dugar for applicant appeared via video conference.

IA(IBC) 73/2022 and IA(IBC) 74/2022 are allowed.

As the above IA's are allowed, let CP(IB) No.243/7/7HDB/2021 be listed for hearing on 22-02-2022.

SD/-

SD/-

MEMBER (J)

Srinivas

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH-1

IA No.73/2022 in
CP (IB) No. 243/7/HDB/2021
Application Under Section 60(5) (c) of the IBC, 2016

IN THE MATTER BETWEEN

M/s. Arcom Medical Devices Private Limited

3-6-140/A, Flat No.402,

City Centre, Himayath Nagar,

Hyderabad, 500 029.

...Petitioner/Financial Creditor

VERSUS

M/s. B&A Best Health Care Private Limited

Flat No.118, Block B,

Modi Gulmohar Garden Shakti Sai Nagar,

Mallapur, Hyderabad, Telangan-500076.

... Respondent/Corporate Debtor

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)

Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Date of order: 07.02.2022

Appearance:

For the Petitioner : Shri Vivek Jain, Advocate

For the Respondent: Shri T.Natraj, Advocate

Heard on: 27.01.2022.

PER: BENCH

1. This application is filed by the financial creditor under Section 60(5) (c) of the IBC, 2016 Read with Rule 11 of the NCLT Rules, 2016 seeking interim stay on the disposal of the assets of B&A Best Health Care Private Limited, corporate debtor herein by itself.

2. **Facts of the Case:**

   a. Company petition is filed by the financial creditor against the corporate debtor for initiation of CIRP due to non-payment of the admitted dues to the tune of Rs.2,80,20,580/- inclusive of interest.

   b. Corporate debtor has approached the financial creditor and initiated talks for investment. Thereafter, the financial creditor made an initial investment of Rs.40,00,000/- for a duration of 3 months @ 12% per annum. The directors of the corporate debtor i.e Mr.Arvind Narsing Kandi and Mr.B.Balakrishna, stood as guarantors for the loan agreement which is annexed vide Exhibit no.1 to the petition.

c. Corporate Debtor again approached the financial creditor for a further investment of Rs.85,00,000/- through an unsecured loan and Rs.75,00,000/- through subscription of shares. Both the parties entered into MOU by recording the entire loan amount advance to the corporate debtor by the financial creditor i.e Rs.1,25,00,000/- for which the Directors mentioned above stood as personal guarantors to the loan availed, which is annexed as Exhibit No.2 to the petition. Further the corporate debtor and the two directors of the corporate debtor executed a promissory note for payment of Rs.1,25,00,000/-, which is annexed as Exhibit No.5 to the petition.

d. Further, the financial creditor also entered into a share subscription cum shareholders agreement, dated 24.10.2017, vide Exhibit No.3, and subscribed 7,50,000 of equity shares at Rs.10/- per share, thereby totalling to Rs.75,00,000/-.

e. Financial Creditor has submitted that corporate debtor requested the applicant to appoint a director in the corporate debtor and accordingly the financial creditor appointed its managing Director Mr.Sanjeev Kumar Gupta, as director of the corporate debtor, thereafter due to personal reasons Mr.Sanjeev Kumar Gupta, resigned as director from the corporate debtor and there was no Board meetings called and had no access to any of the records or details of the Company in his tenure.

f. Financial creditor has submitted that the total interest for unsecured Loan of Rs.1,25,00,000/- as on 31.03.2019 was Rs.21,83,523/- out of which Rs.9,00,000/- was paid by the corporate debtor on 30.07.2019 and 01.08.2019.

g. Financial creditor and corporate debtor further entered into an understanding through their respective directors whereby the financial creditor was made to invest a sum of Rs.1,00,00,000/- as interest free advance to the corporate debtor on the condition that all the finished goods sales will be supplied by the financial creditor subject to the payment of 3% margin on the sale amount. The details are annexed as Exhibit No.6. later on due to operational convenience the corporate debtor has discontinued supply and billing by the financial creditor and after adjusting credit note, commission etc., the financial creditor was entitled to receive back a sum of Rs.89,12,338/-.

h. It is averred by the Financial Creditor that corporate debtor vide letter dated 10.09.2020 acknowledged the entire debt i.e an unsecured loan of Rs.1,25,00,000/- @12% per annum and an unsecured loan of Rs.89,12,338/- @12% per annum.

i. Financial creditor has submitted that corporate debtor has paid part payment of interest i.e. Rs.14,00,671/- in respect of total loan amount of Rs.2,14,14,338 on various occasions.

j. Thereafter, the representatives of the financial creditor requested for the payments but corporate debtor has failed to pay the interest or the principal amount as well. The financial creditor thereafter issued legal notice for payment of Rs.2,14,12,338/- along with interest of Rs.66,08,842/- as on 31.03.2021, which was replied by the corporate debtor on 16.08.2021. The details of legal notice and reply are annexed as Exhibit no.9-12 to the petition.

k. Financial creditor denied the averments made by the corporate debtor in his reply and stated that the contents in the reply are created according to the convenience of the corporate debtor.

l. Financial creditor further averred that corporate debtor has made false allegations in his reply that financial creditor is not party to the "Sole selling Stockist Agency Agreement" dated 13.09.2017 and has failed to reach the target sales of finished goods worth Rs.1,00,00,000/- taken from the corporate debtor. Further corporate debtor submits that Rs.1,00,00,000/- advanced is not financial debt but it is an operational debt.

m. Further, it has come to the notice of the Financial creditor that corporate debtor has closed its office and factory without informing any of the investors or shareholders and is not responding to any calls/ mails of the Applicant. Further as on 10.01.2022, a notice has been received by the financial creditor from the corporate debtor calling for an Extraordinary General Body Meeting on 02.02.2022 to dispose of the whole or substantially the whole of the Company including but not limited to the land, building, plant and machinery, electrical equipment etc.. Hence there is a reasonable apprehension that corporate debtor along with the two directors i.e Mr.Arvind Narsing and Mr.B.Balakrishna, may be evasive in order to defeat legal rights of the financial creditor.

n. It is further averred that corporate debtor has taken large amounts of funds from its creditors and admitted the debt in numerous emails to the financial creditor. In the context of the foregoing, it is humbly submitted that in the event a stay is not placed on the disposal of assets by the respondent and its directors and such other persons acting on its behalf, grave and irreparable loss and injury will be caused to the financial creditor.

3. The gist of Respondent case :

a. Corporate debtor denied the averments made in the Application and stated that the application is liable to be dismissed.

b. The unsecured loan amount of Rs.40,00,000/- dated 27.06.2017 is a time barred debt and is barred by limitation.

The subsequent amount of Rs.85,00,000/- dated 24.06.2017 is also time barred debt.

c. It is averred that financial creditor has invested an amount of Rs.75,00,000/- through share subscription cum shareholder agreement dated 24.10.2017 and as on date, it is holding the shares to that extent. The promissory note dated 24.10.2017, is forged and fabricated document and no Board Resolution was passed to that context.

d. It is further averred that the MOU underwent between the parties wherein the financial creditor was appointed as sole billing agency for corporate debtor company for their sale transactions for a period of one year from the date of signing of the MOU. It is averred that an amount of Rupees One Crore was to be maintained by the financial creditor as interest free advance with the respondent. The said MOU died because of the non-performance of the financial creditor and it's not at all a loan.

e. Further, the letter dated 10.09.2020 is not an acknowledgement of debt, is was issued by Mr. Balakrishna, to the financial creditor upon their request. It is averred that the initial amount of Rs.40,00,000/- and Rs.85,00,000/- are clearly time barred debts and the third amount of Rs.89,12,338/- is vide supply agreement in the form of an MOU.

f. It is averred that the corporate debtor is suffering due to the failures and acts of the financial creditor and Mr.Sanjeev Kumar Gupta, Director of Yashna Medisys Private Limited. It is pertinent to note that through the Director, the goods of the respondent were to be sold. If no goods were received, vide MOU dated 18.07.2018, then the question of adjustment of amounts and claiming only Rs.89, 12,338/- does not arise. The failure of financial creditor and its group company yashna medisys, resulted loss to the corporate debtor company.

g. It is further averred that corporate debtor company is not liable to pay any amount to the financial creditor since all the amounts claimed are illegal and also time barred.

h. It is averred that corporate debtor company had to be closed owning to the objections raised by the local people during Covid pandemic. Corporate debtor Company is making all the efforts to kick start its operations and will honour all its commitments in which it is legally bound.

i. It is averred that the operations of the corporate debtor Company came to a halt in a gradual and phased manner and the Covid pandemic also added fuel to the fire. Corporate debtor has taken financial assistance from SBI. To clear the dues, corporate debtor has made several efforts with the bankers, suppliers, shareholder and third-party venders. To this effect corporate debtor addressed a letter dated 12.01.2022 to the SBI. After intimation to the SBI, corporate debtor issued the notice to conduct the EOGM on 02.02.2022 with primary agenda to seek the consent of the shareholders for sale of assets of the Company.

j. It is averred that the petitioner raised false contentions with regard to certain preferential share allotment. In fact, allotment of preferential shares was done by the Company through a share subscription cum shareholders agreement that it entered into with various parties who extended financial assistance. The petitioner also had the option of taking preferential shares by converting its debt into equity. But the petitioner did not choose to do so and in fact negated the option available to do it and hence now cannot cry foul with regard to the change in the share holding pattern. In any event the financial creditor is not a secured creditor.

k. Further submitted that corporate debtor had initiated the process of alienation of the assets only with a *bona fide* intention of clearing the loans of the SBI than to clear all the other financial dues that corporate debtor is payable.

l. It is further averred that SBI has already approached the Hon'ble DRT-1 at Hyderabad and filed OA No.286/2021 for recovery of its dues. In fact the debt was converted into equity upon the advice of the SBI.

m. It is averred that corporate debtor is following the due process as contemplated in the law. The sole secured financial creditor i.e SBI has already been informed about the EGM and resolution to be passed. The alienation of the assets will be only used to clear the financial dues of the Company and for nothing else. The financial creditor has no ground to seek restraint order in stopping the corporate debtor from alienating the assets of the Company.

n. It is further submitted that since matter is pending before this Hon'ble Tribunal, corporate debtor is ready to file all relevant papers before this Tribunal if any developments happen and seeks kind indulgence to help the company to revive and thus prayed to dismiss the petition with exemplary costs.

4. In the light of the context as aforestated, the point that emerges for consideration by this Tribunal is:

Point.

Whether the interim relief pending disposal of the company petition restraining the respondent from alienating the properties of the Company can be granted?

1. This petition is filed by the financial creditor alleging for interim relief while keeping upon the Company petition filed for initiation of CIRP against the corporate debtor is pending.
2. The corporate debtor subject to it is the business activity and other started alienating the properties like land, building, plant and

machinery, electrical equipment etc.. belonging to corporate debtor with an intention to defer the financial creditor. Therefore, unless the Tribunal restrains the respondent from alienating the properties of the Corporate debtor the petitioner will cause irreparable loss to the financial creditor.

3. The respondent in its counter has categorically admitted the debt. On account of resistance from local plea due to covid and other reasons the corporate debtor had to close its operations and for the purpose of discharging credit facilities that are taken from the SBI, corporate debtor has taken a decision in EGM to alienate the assets of the corporate debtor company. Therefore, restraining the order against the corporate debtor could not be passed.
4. We have heard the learned counsels for both sides and perused the record.
5. The plea of the petitioner that the corporate debtor is trying to alienate the assets of the company, pending disposal of the company petition has been admitted by the corporate debtor in its counter. However, while it is the contention of the petitioner that the assets of the corporate debtor are being alienated with a view

to avoid the financial debt which is due to the petitioner, it the contention of the respondent that alienation is being done with a view to discharge the liability of the financial debt taken from SBI.

6. Thus, whatever may be the reason the corporate debtor company cannot be permitted to alienate the assets, pending disposal of company petition as the same would hamper the CIRP in the event the company petition is allowed.

7. Therefore, we are satisfied that the petitioner has made out a *prima facie,* case for grant of the relief prayed. Hence this petition is allowed as prayed for.

SD/- SD/-

Veera Brahma Rao Arekapudi

Member Technical

Dr. N.V.Ramakrishna Badarinath

Member Judicial

Pavani

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH-1

IA No.74/2022 in

CP (IB) No. 243/7/HDB/2021

Application Under Section 60(5) (c) of the IBC, 2016.

IN THE MATTER BETWEEN

M/s. Arcom Medical Devices Private Limited
3-6-140/A, Flat No.402,
City Centre, Himayath Nagar,
Hyderabad, 500 029.

...Petitioner/Financial Creditor

VERSUS

M/s. B&A Best Health Care Private Limited
Flat No.118, Block B,
Modi Gulmohar Garden Shakti Sai Nagar,
Mallapur, Hyderabad, Telangan-500076.

... Respondent/Corporate Debtor

Date of order: 07.02.2022

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)

Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

SD/-

SD/-

Appearance:

For the Petitioner : Shri Vivek Jain, Advocate

For the Respondent: Shri T.Natraj, Advocate

Heard on: 27.01.2022.

PER: BENCH

1. This application is filed by the financial creditor under Section 60(5) (c) of the IBC, 2016 Read with Rule 11 of the NCLT Rules, 2016 seeking urgency for early disposal of CP IB No.243/7/HDB/2021.

2. **Facts of the Case:**

a. It is averred that corporate debtor has taken large amounts of funds from its creditors and admitted the debt in numerous emails to the financial creditor, they have still chosen to close the factory down without the prior intimation of any of the creditor. In the context of the foregoing, it is humbly submitted that in the event a stay is not placed on the disposal of assets by the respondent and its directors and such other persons acting on its behalf, grave and irreparable loss and injury will be caused to the financial creditor.

b. Further, it has come to the notice of the Financial creditor that corporate debtor has closed its office and factory without informing any of the investors or shareholders and is not responding to any calls/ mails of the Applicant. Further as on 10.01.2022, a notice has been received by the financial creditor from the corporate debtor calling for an Extraordinary General Body Meeting on 02.02.2022 to dispose off the whole or substantially the whole of the Company including but not limited to the land, building, plant and machinery, electrical equipment etc..

c. It is averred that the respondent succeed in their attempts to dispose of its assets , the petitioner would be rendered without a remedy and the purpose of filing the Company Petition would be defeated. Therefore, pleaded stay on the disposal of the assets by the respondent and its directors and such other persons acting on its behalf, grave and irreparable loss would be caused to the financial creditor.

d. Therefore pleaded to take up the matter at the earliest.

3. We have heard the learned counsels for both sides and perused the record.

4. The plea of the petitioner for early disposal of the petition is hereby granted.

5. Petition is disposed of accordingly.

SD/-

Veera Brahma Rao Arekapudi

Member Technical

SD/-

Dr. N.V.Ramakrishna Badarinath

Member Judicial

Pavani