

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 2/KB/2023

*An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016.*

IN THE MATTER OF:

Invent Assets Securitization & Reconstruction Private Limited
[CIN: U74999MH2003PTC139774]

... Applicant/ Financial Creditor.

Verses

Singh Medicare Institute Private Limited
[CIN: U85110WB1998PTC087120]

... Respondent/ Corporate Debtor.

Date of Hearing: November 21, 2023.

Date of Pronouncement: November 30, 2023.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI ARVIND DEVANATHAN, MEMBER (TECHNICAL)

Appearance:

For Financial Creditor: Shri Abhrajit Mitra, Senior Advocate

O R D E R

Per: Arvind Devanathan, Member (Technical)

1. This Court is congregated through hybrid mode.

Factual Background:

2. This present application has been filed by Invent Assets Securitisation & Reconstruction Private Limited, hereinafter referred to as the Applicant/ Financial Creditor (“FC”) seeking direction from this Adjudicating Authority to initiate of Corporate Insolvency Resolution Process (for brevity “CIR Process”/ “CIRP”) of Singh Medicare Institute Private Limited, hereinafter referred to as

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the Respondent/ Corporate Debtor (“CD”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “I&B Code”).

3. The Applicant is the assignee of the debts owed by the Corporate Debtor to Bombay Mercantile Co-operative Bank Ltd. (hereinafter referred to as “BMC Bank” or “the Erstwhile Bank”) by virtue of an assignment agreement dated 31.03.2017.
4. The corporate debtor is a private limited company incorporated on May 08, 1998, having an authorized Share Capital of Rs. 71 Lakh only and a paid-up share capital of Rs. 61.51 Lakh only.
5. It is claimed that the amount to be in default is of Rs. 6,88,02,538.92/- as on 09.10.2022. The Date of declaration of Non-Performing Assets of the Corporate Debtor is March 30, 2000, and the Date of Default is claimed to be as on November 30, 1999.
6. The Erstwhile Bank (BMC Bank) had earlier granted credit facilities being term loans for a sum of Rs. 60,00,000/- (Rs. Sixty Lakhs) under a sanction letter dated 5th April 1999 to the Corporate Debtor. However, the Corporate Debtor failed to make repayments of the outstanding principal amount and interest. Consequently, the Corporate Debtor account was classified as the “Non-Performing Asset” for brevity “NPA” on 30.03.2000, by the BMC Bank in terms of the RBI Guidelines.
7. The Corporate Debtor has acknowledged its debt in various letters dated 11.03.2003, 17.11.2003, 08.06.2006 and the debt has been reflected in the audited balance sheet filed with MCA from time to time, i.e., 31.03.2006 to 31.03.2021 for an amount of Rs. 52,43,386/-.
8. As already stated, by an assignment agreement registered and executed between BMC Bank and the Applicant on 31.03.2017, the applicant becomes the assignee of the debt owed by the Corporate Debtor.
9. It is the claim of the Applicant that the outstanding sums of dues payable by the Corporate Debtor to the Financial Creditor amounts to Rs. 6,68,02,538/- (Rupees Six Crores Eighty-Eight Lakhs Two Thousand Five Hundred Thirty-Eight only), which includes interest up to 10.10.2022.

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10. All the correspondences made with the Corporate Debtor by the Financial Creditor went in vain without any recovery and therefore the Financial Creditor initiated proceedings for recovery under Section 19 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal-I, Kolkata (hereinafter referred to as “DRT”) and the matter is still pending for consideration. This application has been filed under Section 7 of the I&B Code for the insolvency resolution of the Corporate Debtor.

Submission of the Learned Senior Counsel for the Applicant:

11. The Learned Counsel for the Applicant submits that by virtue of the assignment agreement executed between BMC Bank and the applicant, the applicant became the Financial Creditor of the Corporate Debtor on 31.03.2017 and, therefore, legally entitled to file this application, as the Financial Creditor.
12. Further it is submitted that the Corporate Debtor has acknowledged his debt in his audited balance sheet as on 31.03.2021, which is at pages 300 and 305 to the application. At page 305 to the Application, the part of the audited financials of the Corporate Debtor clearly mentions the borrowing from BMC Bank as a secured loan and the amount mentioned is Rs. 52,43,386/-. The said amount has been provided without taking into account the interest accumulated over the period of time.
13. The Applicant has proposed the name of “**Sneh Maheswari**”, **Address: 9N, Block A, 5 Esplanade Row (West), Kolkata 700001, Email ID: Sneh.maheswari@gmail.com, Registration No. IBBI/IPA-001/IP-P-01751/2019-2020/12691** for the appointment of **Interim Resolution Professional**, for brevity “**IRP**”.

Submission of the Learned Counsel for the Corporate Debtor:

14. None for the Corporate Debtor is present, however, the reply has been filed. In their reply, it has been contended that the account was declared as NPA by BMC Bank in the year 2000. The Financial Creditor sat over the issue for a considerable

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period of time and did not take any steps for recovery, only to accrue and realise exorbitant amount of interest.

15. In reply the Corporate Debtor has denied acknowledgement of the debt due to BMC Bank in the audited balance sheet of the Corporate Debtor and, therefore, claims that the application is time-barred and not maintainable. Even otherwise only an amount of Rs. 52,43,386/- has been acknowledged in the balance sheet.

Our Analysis and Findings:

16. The Corporate Debtor has been sanctioned a term loan for an amount of Rs. 60 Lakh at the rate of 18% p.a. in terms of the sanction letter dated 05.04.1999. The loan has to be paid in 5 years from the date of the first drawdown in equal monthly instalments of Rs. 1,11,112/- along with the accrued amount. The sanction letter is annexed at Page 60 to the application.
17. While the Financial Creditor has not attached the proof of remittance but has enclosed the record of default from information utility dated 20.09.2022 which records information as on 03.02.2016 showing an amount on Rs. 52,25,000/- as principal outstanding, Rs. 1,87,20,000 as interest outstanding and Rs. 2,39,45,000/- and other charges of outstanding.
18. We also find that there is an OTS proposal by the Corporate Debtor on 08.06.2006 proposing to repay Rs. 45 lakhs to settle the disputed account and the same was failed.
19. We also find from the records enclosed with the application that the Corporate Debtor has been continuously showing this loan as a secured loan outstanding, in his financials. The audited Financial Statement as on 31.03.2021 has been enclosed. However, the amount shown in the balance sheet is only Rs. 52,43,386/-.
20. We further find the Corporate Debtor has not provided the interest agreed by him in the sanction letter which is at the rate of 18% per annum, while acknowledging the loan borrowed from the BMC Bank in the financial statements.

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21. Merely, because he has not accrued and provided the interest pertaining to this loan amount, he can neither take a plea that the interest portion of the debt was not payable nor it was acknowledged in the balance sheet when there is nothing contrary show to say that interest on the loan amount is not payable.
22. In the absence of any agreement made between the parties on waiver or reduction of interest, the interest portion of the debt has to be been provided in the books of account of the Corporate Debtor. Further, the record of default as obtained from the information utility dated 20.09.2022, shown as amount of default as 52,25,000/- as the principal amount of Rs. 1,87,20,000/- as interest apart from other changes for an amount of Rs. 2,39,45,000/-.
23. Therefore, we find that there is a default of financial debt in excess of the threshold limit prescribed under Section 4 of the I&B Code based on the acknowledgement of debt in the balance sheet of the Corporate Debtor as on 31.03.2021.
24. The application under Section 7 is complete in all respects and, therefore, we find that this is a fit case for initiating CIRP of the Corporate Debtor and, accordingly, we allow this application filed by the Financial Creditor.
25. In the light of the facts stated in this application bearing **Company Petition (IB) No. 2/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **ALLOW** the application filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:
 - i. The Application filed by **Invent Assets Securitization & Reconstruction Private Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Singh Medicare Institute Private Limited (Corporate Debtor)**.
 - ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section

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14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- a) 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;*
- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset 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 Securitization 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.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- vi. The Applicant has proposed the name of “**Sneh Maheswari**”, Address: **9N, Block A, 5 Esplanade Row (West), Kolkata 700001, Email ID: Sneh.maheswari@gmail.com, Registration No. IBBI/IPA-001/IP-P-01751/2019-2020/12691**, as the “IRP”. We have perused that there is a written communication, annexed as at **Pages 29-32**, to this Application as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or ICAI, Insolvency Professional Agency. In addition, further necessary disclosures have been made by “**Sneh Maheswari**” as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint “**Sneh Maheswari**” as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC),

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West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 26.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 27.** Post the Company Petition 09/ 01/ 2024 for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 30th Day of November, 2023.

Bose, R. K. [LRA]/ AR_Steno