

2. In the requisite Form, under the head “Particulars of Financial Debt” the total amount of Debt as on 30-11-2019 is stated to be ₹14,24,90,488/- (Rupees Fourteen Crore Twenty-Four Lakhs Ninety Thousand Four Hundred and Eighty-Eight Only). The date on which the default occurred is 30.06.2019.
3. The Corporate Debtor is a private limited company incorporated on 25-02-2008, having CIN No. U85110KL2008PLC021910. The registered office of the Corporate Debtor is stated to be at T. C.7/1407, SUT ROYAL HOSPITAL, Kochulloor, Trivandrum, Thiruvananthapuram 695 011. The Authorised Paid-up Share Capital of the Corporate Debtor Company is ₹ 400,00,00,00 and ₹ 19,29,65,600 respectively.

Submissions by the Financial Creditor:

4. The counsel for the Financial Creditor/ Bank submitted that the Corporate Debtor had approached the Bank for availing credit facilities amounting to ₹ 16 Crores. Considering the request and the documents submitted by the Corporate Debtor, the Bank had sanctioned the credit facilities vide Sanction Letters dated 30-03-2015. The term loan was granted for purchase of equipment, machineries and other accessories with a tenure of 96 months including the initial holiday of 12 months. The sanction letter was amended vide letter dated 25-05-2015 and 08-07-2015 with respect to amending the securities to be furnished. The Corporate Debtor has accepted the terms of the sanction letter and executed various loan documents in favour of the Financial Creditor on 31-03-2015

including Master Credit Agreement, Term Loan Agreement with Hypothecation, Overdraft Cash Credit Agreement, General Hypothecation Agreement and also executed Power of Attorney in favour of the Financial Creditor to realise the book debts/receivable charges or mortgaged or hypothecated.

5. The counsel for the Financial Creditor stated that the Corporate Debtor had also issued Demand Promissory Note for ₹ 1 Crore and ₹15 Crore in favour of the Financial Creditor on 31-03-2015. Further submitted that the Trivandrum Medical Speciality Services Ltd has executed Corporate Guarantee and Dr K. N. Pai Heart Foundation, a trust, has executed a guarantee in favour of the Financial Creditor guaranteeing the re- payment of the loan granted to the Corporate Debtor in the event of default. Additionally, three Directors of the Corporate Debtor have also executed personal guarantee in favour of Financial Creditor.
6. The counsel for the Financial Creditor further submitted that the Corporate Debtor has also created equitable mortgage in favour of the properties of the Financial Creditor, and created first parri passu charge along with State Bank of Travancore and Kerala Financial Corporation. The Corporate Debtor has also created equitable mortgage in favour of the Financial Creditor with exclusive charge on the property.
7. The Counsel for the Financial Creditor further stated that the Corporate Debtor had committed default in repayment of credit facilities in violation of the sanction terms, loan documents and the

accounts of the Corporate Debtor was classified as Non-Performing Asset on 30-05-2016. The Financial Creditor had issued demand notice and thereafter Section 13(2) notice to the Corporate Debtor and guarantors under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) with direction to repay the dues before 22-09-2016. Further a possession notice was also issued on 23-02-2017 under Section 13(4) of SARFAESI Act, 2002.

8. The Counsel further stated that a meeting was convened by the Corporate Debtor, Financial Creditor and other lenders in the presence of the Hon'ble Finance Minister of Kerala on 25-05-2017 to discuss restructuring of the loan facilities and repayment of arrears. Pursuant to the decision taken in the said meeting the lenders on 15-06-2017 decided to give reasonable opportunity to the Corporate Debtor to settle the arrears of debt.
9. The Financial Creditor submitted that on 06-12-2018, 13-12-2019 and 11-01-2019, various communications were received from the Corporate Debtor admitting the liability and sought one-time settlement (O.T.S.) of credit facility and proposed a final offer of ₹ 8.15 Crore on 11-01-2019 as full and final settlement of all outstanding liabilities with the Financial Creditor. Thereafter, the same was approved by the Financial Creditor vide in- principle sanction letter dated 22-01-2019, which was accepted by the Corporate Debtor on 24-01-2019 and sought time till 20-02-2019 for payment of 5% of advance amount under the O.T.S

Scheme. In terms of the O.T.S. Scheme, the liabilities of the Financial Creditor have to be repaid by the Corporate Debtor by 30-06-2019 but the Corporate Debtor failed to adhere to the terms of O.T.S Scheme and committed default in repayment of the loan.

10. The counsel for the Financial Creditor also stated that the bank has already filed OA. No. 156 of 2018 on 28-02-2018 before the Debts Recovery Tribunal, Ernakulam to recover the dues from the Corporate Debtor.

11. As on 30-11-2019 an amount of Rs. 14,24,90,488 /- is due from the Corporate Debtor and the Corporate Debtor is unable to pay its debt. Therefore, the present application has been filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016.

Submissions by the Corporate Debtor

12. The Learned Counsel for the Corporate Debtor submitted that the Financial Creditor was not properly authorized to file this application. No board resolution in this regard was filed before this Bench, though the loan was sanctioned by the Board of Directors. As per the norms of the RBI, the corporate loan granted to the Corporate Debtor was sanctioned by the Board of Directors and therefore Regional Manager has no authority to file the present application before this Bench.

13. The counsel for the Corporate Debtor stated that as per the website of Insolvency and Bankruptcy Board of India the registration of the proposed interim resolution professional is not valid after 01-07-2019. The copy of the printout from the website of Insolvency and Bankruptcy Board of India is annexed with the reply statement. The loan sanction was on 30-03-2015 and the bank released only ₹ 2,76,17,962/- on 31-07-2015. The Term Loan sanction was for an amount of ₹15 Crores, the Bank released only an amount of ₹ 7,76,12,971/- that too in instalments. Balance amount of ₹ 7,23,87,029/- was withheld by the Financial Creditor due to unknown reasons and this fact was suppressed by the Financial Creditor in the present application. The project loan was availed by the Corporate Debtor for a dream project of Multi-Speciality Cancer Block. Due to the non-disbursement of balance amount of the loan, the functioning of the Cancer Block came to a standstill. Huge amount of money spent for the machinery and equipment are even now idle and the Corporate Debtor could not start the dream project. Even the moratorium period granted was overlooked and loan was declared as NPA on 30-05-2016, the last disbursement was on 26-08-2015.

14. The counsel for the Corporate Debtor further submitted that in the Master Credit Agreement, there was no such provision provided for the bank to initiate proceedings under Insolvency and Bankruptcy Code and the present application filed by the Bank is out of the purview of the Master Credit Agreement. Master Credit

Agreement cannot be called as an agreement as there is only a unilateral undertaking from one side and there is no mutual agreement and the Hon'ble Supreme Court in Catena of decisions held that unilateral agreement cannot be termed as a contract between the parties and cannot be executed.

15. The Counsel for the Corporate Debtor also stated that this Tribunal has jurisdiction only regarding the loans which was availed by a Company whereas, one of the properties involved in the transaction is a trust property. The Corporate Debtor has also availed long-term funds of ₹ 31.22 crores from the Dr. K. N. Pai Trust. So, the assets of the Corporate Debtor include the funds invested by the Dr. K. N. Pai Trust and the Balance Sheet as on 31-03-2019 disclosed ₹ 28,63,69,018/- is due to the Dr. K. N. Pai Heart Foundation Trust. The counsel submitted that the NCLT proceedings can be initiated only against a Company and not against a Trust and its properties.

16. The Corporate Debtor submitted that the interest is debited from the accounts which are declared as Non-Performing Assets, which is against the PART A – 3.4 of the Master Circular dated 01-07-2015 issued by the Reserve Bank of India. The Corporate Debtor which was facing adverse circumstances approached the Financial Creditor with an alternative proposal for a joint collaboration with Health Care Global (HCG) group for the development of Cancer Block and HCG Group offered upfront payment of ₹ 12 Crores and also proposed to invest ₹ 20 Crores in

the Cancer Block. The Kerala Financial Corporation has issued No Objection Certificate for the said proposal. The Financial Creditor did not co-operate with the Corporate Debtor for the revival proposal submitted by the Health Care Global Enterprises Limited. The HCG group has given time upto 30-03-2019 to get the NOC from the Financial Creditor, and which was denied by the Financial Creditor due to unknown reasons.

17. The counsel for the Corporate Debtor claimed that the introduction of the act is not applicable to a pending loan. The Code and National Company Law Tribunal Rules are not having retrospective effect in the pending loan as it is hit by Article 20(2) of Constitution of India.
18. The counsel for the Corporate Debtor further submitted that the Financial Creditor resorted to unconscionable practice of capitalization of penal interest which is against the dictum of the Constitution Bench decision of the Hon'ble Supreme Court of India, in the case of *Central Bank of India Vs Ravindra and others reported in 2002(1) SCC 367*. The present application is filed by the Financial Creditor in anticipation of adverse orders from the Debt Recovery Tribunal in OA No.156 of 2018..
19. Corporate Debtor further stated that they had earlier availed loans from the State Bank of Travancore, Canara Bank and KFC. All these loans were promptly repaid by the Corporate Debtor. The present application is ill timed and unwarranted. The Corporate

Debtor is already negotiating with a Corporate Company for the proper functioning of the hospital.

20. Under these circumstances, the Corporate Debtor prayed for dismissing the application to initiate Corporate Insolvency Resolution Process.

Rejoinder by the Financial Creditor:

21. The counsel for the Financial Creditor filed rejoinder and submitted that Corporate Debtor has not denied the total amount in default. Hence the existence of the default is not disputed and the amount in dispute is more than one lakh i.e. ₹ 14,24,90,488/- and the application is complete. Therefore, the application is liable to be admitted. The Insolvency and Bankruptcy Code, 2016 entails only a summary adjudication by the Adjudicating Authority wherein to admit an application, it needs to be satisfied only with regard to the existence of a default and ensure that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional. It is submitted that the Adjudicating Authority is not required to look into any other criteria for admission of the application. Hence, it is submitted that the averments made by the Corporate Debtor in its reply are not relevant and not necessary to be looked into for the purpose of admission of the application.

22. The counsel for the Financial Creditor stated that the Senior Manager of the Financial Creditor had signed the application as an

authorised person of the Financial Creditor and a specific authorisation letter to file insolvency application before this Bench has been given in favour of him and is already filed along with the application.

23. The counsel for the Financial Creditor submitted that the Adjudicating Authority in relation to corporate insolvency resolution and liquidation of the Corporate Debtor, shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the Corporate Debtor is located under Section 60(1) of the Code. The registered office of the Corporate Debtor is located in Thiruvananthapuram which is within the limits of ROC, Kochi and therefore this Bench has jurisdiction to try the present application.

24. The Counsel further stated that the Financial Creditor has co-operated with the Corporate Debtor for the revival of the company and the proposals which does not address the debt of the Financial Creditor, were not considered and accepted by them. However, it is a fact that the Financial Creditor has accepted the O.T.S. proposal submitted by the Corporate Debtor in principle vide letter dated 22-01-2019. However, Corporate Debtor failed to adhere to the terms therein and not paid the initial payment as required under the O.T.S. Scheme. Since the Corporate Debtor has committed default, the present application has been filed for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.

25. The Counsel for the Financial Creditor stated that the provisions of the Code shall apply to any company incorporated under the Companies Act, 2013, or under any previous company law. It is further submitted that the Hon'ble Supreme Court has upheld the constitutional validity of the Code and is not violative of any Articles of the Constitution of India. It is also submitted that pending proceedings before the Debt Recovery Tribunal is not a bar for the Financial Creditor to file application under Section 7 of the Code.
26. The Counsel further stated that the Corporate Debtor is negotiating with companies for the proper functioning of the hospital by bringing investment is not a ground for total denial of admission of the application by this Bench.

Findings:

27. It appears from the pleadings that on 06-12-2018, 13-12-2019 and 11-01-2019, through various communication, Corporate Debtor, admitted the liability and sought for One Time Settlement (OTS) on 11.01.2019. The mentioned settlement proposal in reply is further affirmative of the fact that the liability is acknowledged.
28. The facts of the case is that the Company has not disputed the availed loan from the Financial Creditor and also executed relevant documents in connection with the said loan. On 11-01-2019, the Corporate Debtor made a final offer of ₹ 8.15 Crores for full and final settlement of all outstanding liabilities with the Financial Creditor.

The same was approved vide sanction letter dated 22-01-2019 which was accepted by the Corporate Debtor on 24-01-2019. Further the Corporate Debtor also sought time till 20-02-2019 for payment of 5% of advancement and the OTS Scheme but failed to adhere the terms and conditions of the OTS Scheme and committed default in repayment of loan.

29. The submissions made by the Corporate Debtor are as follows:
- i. That the applicant was not properly authorized to file this application.
 - ii. Capitalization of penal interest by the Financial Creditor.
 - iii. Master Credit Agreement is an unilateral agreement and cannot be termed as contract between the parties,
 - iv. The above agreement do not merit any consideration and offered only as an excuse to delay the CIRP process.

Further the submission made by the learned counsel for the Corporate Debtor that the NCLT proceedings cannot be initiated against a trust and its properties is also without any merit.

30. Therefore, we are of the view that the application is filed in the capacity of a 'Financial Creditor' for a 'Financial Debt' of ₹14,24,90,488/- (Rupees Fourteen Crore Twenty-Four Lakhs Ninety Thousand Four Hundred and Eighty-Eight Only), recoverable from the Corporate Debtor viz Trivandrum International Health Services Ltd. The documents produced on record prove the disbursement of various loan facilities granted by the Financial Creditor to the Corporate Debtor.

31. On perusal of the record we found that the Financial Creditor has the proper authority to file the present application, and the objection raised by the counsel for the Corporate Debtor is merely incongruous, and therefore, holds no water. Moreover, the Senior Manager of the Financial Creditor had signed the application as an authorised person of the Financial Creditor and a specific authorization letter to file Insolvency Application before this Bench. Hence, the technical objection raised on the ground of maintainability is raised only for the sake of objecting and hence stands rejected.
32. The Corporate Debtor committed default in repayment of the loan amount to the Financial Creditor, and hence its Loan account was declared as NPA. SARFAESI proceedings were also initiated by the Financial Creditor in respect to the same debt, and they are pending till date. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under Section 7(4) of the I&B Code.
33. The Application under Sub-Section (4) of Section 7 of I&B Code, 2016 is complete and the Financial Creditor wanted CIRP to be initiated against the Corporate Debtor without further delay. We are of the view that, the present application filed by the Financial Creditor is satisfying all the definitions of “Financial Creditor”, “Default” and “Financial Debt” and qualifies for filing an application under Insolvency and Bankruptcy Code. Accordingly, the

application filed under Section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

34. We have heard learned counsel for both the parties and perused the whole case records including documents and photocopies appended with the case records. This application is filed by the Financial Creditor under the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor to protect the interests of the stakeholders. Accordingly, the application **IBA/51/KOB/2019** has been admitted under CIRP and the following order has been passed.
35. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.
36. The Financial Creditor has suggested the name of **Mr. Raju Palanilkunnathil Kesavan, IBBI/IPA-001/IP-P00801/2017-2018/11356, email id: rajupkin@gmail.com, residing at CGNRA-9(33/1183A), Kodamassery Line, Chalikkavattom, Vennala P. O., Kochi, Ernakulam, Kerala, 676552** for appointment as Interim Resolution Professional (IRP). He has filed a declaration in Form-2 (As per Rule 9 sub-rule (1) of

the I & B (Application to Adjudicating Authority) Rules, 2016) along with Authorization for Assignment (AFA) issued by Indian Institute of Insolvency Professionals of ICAI, No: AA1/11356/01/230121/101071 dated 24-01-2020, affirming that he is a registered Insolvency Professional and no disciplinary proceedings are pending against him.

37. Accordingly the IRP proposed by the Financial Creditor, **Mr. Raju Palanilkunnathil Kesavan, IBBI/IPA-001/IP-P00801/2017-2018/11356**, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
38. However, the supply of essential services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
39. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
40. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of

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the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

41. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of admission.

Accordingly, **IBA/51/KOB/2019** is admitted.

Dated this the 7th day of February, 2020.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)