



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP No. 214/(IB)-MB-V/2022

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

Encore Assets Reconstruction Private Limited

Caddie Commercial Tower, Regus Business Centre, 5th Floor, Aerocity (DIAL), South-west Delhi – 110037

... Petitioner/Financial Creditor

V/s

UGH Vintage Hospital and Medical Research Centre Private Limited

Caculo Enclave St. Inez Panaji Goa -403001.

... Respondent/Corporate Debtor

Order Pronounced on: 19.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner : Mr. Atul Gupta, Advocate a/w Archit Virmani
i/b Optimus Legal

For the Corporate Debtor : None



Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The Petitioners viz. '**Encore Assets Reconstruction Private Limited**' (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against '**UGH Vintage Hospital and Medical Research Centre Private Limited**' (hereinafter as '**Corporate Debtor**'). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 26,97,59,828/- inclusive of contractual interest, penal interest, costs and expenses.
2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
 - a. A copy of Sanction Letter dated 03.11.2014.
 - b. A copy of Demand Promissory Note dated 10.11.2014 for Facility 1, Facility 2, Facility 3 and Facility 4.
 - c. A copy of Letter of Lien and Set off dated 10.11.2014 for Facility 1, Facility 2, Facility 3 and Facility 4.
 - d. A copy of Term Loan agreement dated 10.11.2014 for Facility 1, Facility 2, Facility 3 and Facility 4
 - e. A copy of Sanction Letter dated 09.10.2013
 - f. A copy of Term Loan agreement dated 24.10.2013
 - g. A copy of Loan recall notice dated 16.05.2016.



- h. A copy of the orders passed by the District Magistrate, North Goa, dated 18.09.2017, Order passed November 28,2017, Panchnama dated October 11, 2017.
- i. A copy of record of default with NeSL.

Brief Facts

3. The Petition reveals that the Financial Creditor is a company incorporated under the provisions of Companies Act, 1956 and a securitization company registered with the Reserve Bank of India (**'RBI'**) under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the **'SARFAESI Act'**) vide registration certificate dated 29.09.2016, acting in the capacity of trustee of EARC-Bank-017-Trust.
4. It is submitted that NKGSB Co-op Bank Limited is a multi-state scheduled bank registered under the Maharashtra Co-operative Societies Act, (hereinafter referred to as **'NKGSB'**), was approached by the Corporate Debtor, which was formerly known as M/s Vintage Hospital and Research Centre Pvt. Ltd. through its directors, Mrs. Medha Suresh Dubhashi and Dr. Suresh Dubhashi for availing loan facilities. Upon applications made by the Corporate Debtor, 4 loan facilities vide sanction letter dated 03.11.2014 were sanctioned by NKGSB to the Corporate debtor. The details of the loan facilities are as under:
 - (i) Term Loan I of INR 6,00,00,000/- (Rupees Six Crore) bearing No. 058381300000026 (hereinafter referred to as **"Facility 1"**). Loan Agreement was executed on November 10, 2014. The loan was disbursed on November 15, 2014.
 - (ii) Term Loan II of INR 1,65,00,000/- (Rupees One Crore Sixty Five Lacs) bearing No. 058381300000025 (hereinafter referred to as **"Facility 2"**). The Loan Agreement was executed on November 10, 2014. The loan was disbursed on November 13, 2014.



- (iii) Term Loan III of INR 35,00,000/- (Rupees Thirty-Five Lacs) bearing No. 058381300000027 (hereinafter referred to as “**Facility 3**”). The Loan Agreement was executed on November 10, 2014. The loan was disbursed in three tranches, i.e., INR 8,30,000/- on February 09, 2015; INR 10,00,000/- on February 16, 2015, and INR 14,00,000/- on February 28, 2015.
- (iv) Overdraft Facility, bearing No. 058381300000002 for an amount of INR 2,00,00,000/- (Rupees Two Crores) for the purpose of working capital (hereinafter referred to as “**Facility 4**”). The Loan Agreement was executed on November 10, 2014 and loan was disbursed on November 13, 2014.
- (v) The terms of the Facility 1, 2, 3 and 4 were accepted by the Corporate Debtor and Corporate Debtor agreed and had undertaken to repay the said facilities with interest, cost and charges.
5. It is further submitted that the Corporate Debtor vide application dated 07.10.2013 applied for a term loan of INR 1,00,00,000/- (Rupees One Crore) and the facility was sanctioned vide Sanction Letter dated 09.10.2013. The facility was a Term Loan being a Mortgage Retail Loan of INR 1,00,00,000/- (Rupees One Crore) bearing No. 038301300002002, for the purpose of investment in business with an interest of 13.50% per annum at monthly rest (hereinafter referred to as “**Facility 5**”). The Loan Agreement was executed on 24.10.2013.
6. After availing the loan facilities, the Corporate Debtor was irregular in their instalment payments and committed wilful defaults despite repeated reminders from NKGSB and thereafter the Financial Creditor, as a result, declared the account of the Corporate Debtor as Non Performing Asset ‘**NPA**’ on 31.12.2015 in accordance with directions and guidelines issued by the RBI.



7. Thereafter, the NKGSB initiated measures under the provisions of the SARFAESI Act and issued demand notices dated 20.01.2016 under Section 13(2) of the SARFAESI Act, calling upon the Corporate Debtor, its Directors and Guarantors for repayment of the amount pertaining to Facility No.1, 2, 3, 4 and 5. The NKGSB also issued demand notice dated May 02, 2016 under Section 13(2) of the SARFAESI Act to the Corporate Guarantor for Facility No. 5 and also issued a loan recall notice dated 16.05.2016 which has not been responded to by the Corporate Debtor.
8. Subsequent to above the NKGSB proceeded to take physical possession of the mortgage properties under Section 13(4) on 11.12.2017 for which the Application under Section 14 of the SARFAESI Act was filed by NKGSB on 18.07.2017 and also instituted proceedings before the Hon'ble Mumbai Debt Recovery Tribunal (**DRT**) which is currently pending. In response to the above, the Corporate Debtor through its representative approached NKGSB for amicably resolving the dispute.
9. Thereafter, the NKGSB assigned and transferred the Loan Facilities 1,2,3,4 and 5 and all loan, security and other related documents to the Financial Creditor i.e. Encore Asset Reconstruction Company Private Limited in its capacity as Trustee of EARC-Bank-016-Trust vide Assignment Agreement dated June 28, 2019 with effect from March 26, 2019.
10. Pursuant to above the Corporate Debtor acknowledged and admitted the debt and further promised to clear the outstanding amount. In furtherance to its settlement proposal and vide letter dated 17.11.2019, the Corporate Debtor issued cheque of INR 2,00,000/- towards part payment of its debt to the Financial Creditor. Thereafter, the Financial Creditor called upon the Corporate Debtor to follow certain steps for the settlement, but the Corporate Debtor again failed to comply with its obligations of clearing the outstanding dues.



11. Hence, due to non-payment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
12. The Corporate Debtor failed to appear despite service of notice upon the Corporate Debtor and the paper publication in 4 newspapers viz., “Business Standard”, “Jai Hind” (Ahmedabad Edition) and “The Goan” and “Goan varta” (Goa Edition) vide order dated 31.01.2023 and Hence was set Ex-Parte vide order dated 02.03.2023.

FINDINGS:

13. We have heard the Counsel appearing for the Petitioner and perused the material available on record.
14. It is an undisputed fact that several loan facilities have been sanctioned by the NKGSB to the Corporate Debtor vide sanction letter dated 03.11.2014 and 09.10.2013. The first date of default as submitted by the Financial Creditor is 30.09.2015 and the account of the Corporate Debtor was declared as Non-Performing Asset ‘**NPA**’ on 31.12.2015. The Bench further consider, whether the claim of the Financial Creditor fall within the period of Limitation. For this the Bench rely on the Judgement of the ***Hon’ble Supreme Court of India in Sesh Nath Singh & Anr v. Baidyabati Sheoraphuli Co-operative Bank Ltd & Anr***, wherein it was held that *“an applicant under section 7 of the IBC can claim benefit of section 14 of the Limitation Act, 1963, in respect of proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”). Here it is pertinent to note that, Section 14 of the Limitation Act, 1963, states that *the period of limitation for any suit, the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the Defendant shall be excluded, where the proceedings relates to the same matter in issue and is**



prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it”.

In the Present case, NKGSB initiated the proceedings under the SARFAESI Act and sent a notice under Section 13(2) of the SARFAESI Act to the Corporate Debtor on 20.01.2016 and on 18.07.2017, NKGSB filed an application under Section 14 of the SARFAESI Act before the Ld. District Magistrate, North Goa. The application was pending before the Ld. District Magistrate and was disposed of vide order dated 18.09.2017 wherein the application filed by the Financial Creditor was allowed. The physical possession was taken by the executing officer appointed by the Ld. District Magistrate and handed over to the NKGSB on 11.12.2017. Therefore, the period during which NKGSB/Financial Creditor has pursued remedies under SARFAESI Act can be excluded while computing the limitation period in light of the law laid down in *Sesh Nath Singh & Anr.’s case (supra)*.

15. Additionally, The Corporate Debtor during the limitation period commencing from the date of default has acknowledge the debt vide acknowledgement of Debt dated 01.09.2016 annexed at page 223 of the Company Petition and vide settlement proposal & letter dated 17.11.2019 annexed as “Annexure 20” of the Company Petition, issued a cheque of INR 2,00,000/- towards part payment of its debt to the Financial Creditor which was received by the Financial Creditor in October 2019. Therefore, there is a clear acknowledgement of debt and default of non-payment of monies by the Corporate Debtor.
16. Further, it is pertinent to note that the Petition was filed on 17.09.2021 and as per the directions and guidelines passed by the Hon’ble Supreme Court for exclusion of period and extension of limitation period during the COVID -19 pandemic the period from 15.03.2020 to 28.02.2022 is also liable to be included. Therefore, the Petition is well within limitation.



17. From the set of documents placed on record by the Petitioner, it is found that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case for admission u/s 7 of the I&B Code.
18. Considering the above discussion, we come to conclusion that the petitioner has been able to establish that there is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’ for admission of a petition under section 7 of the I&B Code, have been, therefore, met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2
19. Consequently, the petition is ordered to be admitted in the following terms:

ORDER

- a. The above Company Petition No. 214/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **UGH Vintage Hospital and Medical Research Centre Private Limited.**
- b. The IRP proposed by the Financial Creditor, **Ms. Jovita Reema Mathias**, having registration No. IBBI/IPA-002/IP-00337/2017-2018/10941, having address at 306, A Wing, Rustomjee Central Park, Andheri Kurla Road, Andheri East, Mumbai City, Maharashtra - 400069, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.



- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process 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.

- f. 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.



- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 214/IBC/MB/2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

Madhu Sinha
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)