

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 252/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**Standard Chartered Bank
Through its authorized officer,
Mr. Subhajt Chattopadhyay**

Having its address at- 23/25 Mahatma
Gandhi Road, Fort,
Mumbai- Maharashtra- 400001

..... Petitioner/ Financial Creditor

Versus

Four Care Hospital Private Limited

Having its address at- Vishnu Krupa, Mahant
Road, Vile Parle (East), Mumbai,
Maharashtra- 400057

..... Respondent/Corporate Debtor

Order Delivered on :- 22/01/2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Financial Creditor : Adv. Navin Arora

For the Corporate Debtor : Adv. Manoj Mishra

ORDER

Per: - Mr. Anil Raj Chellan, Member (Technical)

1. The instant Petition has been filed on 28.03.2023 by the Financial Creditor i.e. Standard Chartered Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') to initiate the Corporate Insolvency Resolution Process ('CIRP') against Four Care Hospital Private Limited ('the Corporate Debtor') for default of an outstanding amount of Rs. 5,78,59,420.92.
2. The averments and submissions made by the Financial Creditor are summarised as under: -
 - (a) Shri Babanna Venkatraman Sheregar had availed a loan against property from Dewan Housing Finance Corporation Limited ('the Original Lender') for an amount of Rs. 5.31 crore, which was taken over by the Financial Creditor on the terms and conditions contained in the Facility Letter dated 25.11.2019 and Facility Agreement dated 27.11.2019. In the Facility Agreement, the Corporate Debtor also joined as a co-borrower. The said loan is secured, inter alia, by a mortgage created on duplex flat No. 602 and

702 on 6th and 7th floor, Parshwa Kunj Co-operative Housing Society Limited, Malvia Road, Vile Parle (East), Mumbai. The Corporate Debtor and other borrowers failed to repay the loan resulting in categorisation of the loan as a Non-Performing Asset(NPA) in the books of the Financial Creditor on 10.12.2021 in pursuance to the guidelines with respect to asset classification of Reserve Bank of India.

- (b) The Petitioner stated in the Petition that the Corporate Debtor defaulted an amount of Rs. 5,78,59,420.92/- as on 05.04.2022 in respect of the loan account no. 52307557, and attached the statement of account maintained by the Financial Creditor with the Petition but no specific date of default has been mentioned in the Petition. However, the Petitioner in the rejoinder filed on 09.01.2024 stated that the default occurred on 10.06.2021 though the account was classified as NPA on 10.12.2021.
- (c) On account of the default committed by the Corporate Debtor, the Financial Creditor vide its letter dated 06.04.2022 issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and called upon the Corporate Debtor to repay the loan outstanding within 60 days from the date of receipt of the said letter.
- (d) The Corporate Debtor continued to default the payment/repayment of the loan and hence this Petition.

3. The averments and submissions made by the Corporate Debtor are summarised as under:

- (a) The Corporate Debtor denied each and every averment made in the Petition unless specifically admitted.
- (b) The Corporate Debtor contended that the Petitioner has only provided half-baked information with an intent to mislead this Tribunal and hence the Petitioner has approached this Tribunal with unclean hands and the Petition is liable to be dismissed.
- (c) The Respondent further contended that the Petitioner has failed to furnish any record of default maintained by Information Utility (NeSL) in gross violation of Regulation 20 (IA) of IBBI (Information Utilities) Regulations, 2017 read with Section 7 (3) (a) of the Code. Therefore, the Petitioner has failed to establish any occurrence of 'date of default', as mandated under Section 7 (5) of the Code read with Regulation 2(D) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (d) The Respondent further contended that the Petitioner failed to furnish the certified copy of entries in the relevant account maintained by the Financial Creditor in accordance with Regulation 2A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') read with Section 4 of the Bankers Book Evidence Act. Two statements of accounts are annexed to the Petition which show different entries in variance with each other, not certified as per the Bankers Books Evidence Act and the Indian Evidence Act, 1872.

(e) The Respondent, therefore, prayed for the dismissal of the Petition.

Analysis and Findings:

4. We have heard the Learned Counsels for the parties and perused the documents and materials on record.
5. The Financial Creditor submitted that the Corporate Debtor along with other co-borrowers availed a loan against property on the terms and conditions contained in the Sanction Letter dated 25.11.2019 and Facility Agreement dated 27.11.2019. The above loan is a takeover of loan from the Original Lender on the terms and conditions contained therein which provides the amount of loan, the rate of interest, details of security by way of mortgage and the dates of repayment fixed for repayment of the loan. The Corporate Debtor did not dispute execution of the loan agreement or availing of the loan nor creation of security in favour of the Financial Creditor. Though the Corporate Debtor contended that the Financial Creditor has only provided half-baked information, the Corporate Debtor has not stated any other information or another set of facts to doubt or disregard the contention of the Petitioner.
6. The Corporate Debtor vehemently argued that the statement of account annexed with the Petition cannot be relied upon as two different statements are attached along with the Petition. It is observed that two separate loan statements maintained in the name of each co-borrower for the same loan account no. 52307557 have been attached with the Petition. Though there are certain differences in the dates of each entry, both statements show the exact outstanding amount. On close examination of the entries contained in both

the statements, we observe that the mismatch of dates is not very relevant for the purpose of this Petition since outstanding amount after each entry appears to be same. It is pertinent to note that the Financial Creditor was categorical in the Reply Affidavit with respect to the date of default, 10.06.2021 and there is no dispute as regards declaration of the loan account as NPA on 10.12.2021.

7. The main contention of the Corporate Debtor is that the Petitioner has failed to furnish any record of default maintained by Information Utility and that the statement of account annexed to the Petition is not certified under the Bankers' Book Evidence Act and therefore, the Application is not maintainable. Clause (a) of Sub Section 3 of Section 7 of the Code states that the Financial Creditor shall, along with the Application furnish record of the default recorded with the Information Utility or **such other record** or evidence of default as may be specified. Thus, it is evident that three categories of evidence can be provided by the Financial Creditor and the term 'as may be specified' is applicable only to the third category. This is further supported by Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Adjudicating Authority Rules') which provides that a Financial Creditor either by itself or jointly, shall make an application for initiating the Corporate Insolvency Resolution Process against a corporate debtor under Section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Form 1 at part V (item 8) of the Adjudicating Authority Rules, 2016 specify to list out other documents in order to prove the existence of financial debt, the amount and date of default. From the above, it is evident that the record of default with the IU is not the only

document that can be relied upon for proving the existence of such default. In addition, the documents and records that can be resorted to prove the existence of financial debt and its default include financial contract supported by financial statements as specified in Regulation 8 of the CIRP Regulations. The Hon'ble Supreme Court in Swiss Ribbons (P) Limited also considered the above and observed that all eight classes of documents enumerated under Part V of Form 1 appended to Adjudicating Authority Rules have been held to be 'other sources' which evidence a financial debt.

8. On a close due diligence of the various provisions, including Section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules and Form 1 therein and Regulation 8 of the CIRP Regulations and observations of the Hon'ble Supreme Court in the case of Swiss Ribbons (Supra), it becomes clear that apart from the financial information of the Information Utility, other documents can be considered to establish a financial debt. In the present case, the Financial Creditor has submitted the financial contract (Facility Agreement) together with the financial statement showing the outstanding debt clearly establishes existence of debt and default. The Code only requires this Tribunal to ascertain and record satisfaction in a summary adjudication as to the existence of debt and occurrence of default before admitting the Petition.
9. No other points have been raised on behalf of the Corporate Debtor.
10. From the facts and circumstances and the documents produced by the Financial Creditor, we are of the considered view that the Petitioner has been able to establish that the Corporate Debtor was granted a loan of Rs. 5.31 crores vide letter dated 25.11.2019 and Facility Agreement dated 27.11.2019, and further that the Corporate Debtor committed default in repayment of the

loan with the result that the account of the Corporate Debtor was declared as NPA on 10.12.2021, and that the outstanding amount exceeds the threshold specified in Section 4 of the Code. It has further been proved that the Petition has also been filed within the period of limitation. Therefore, the Petition deserves to be admitted under Section 7 of the Code and it is ordered accordingly in the following terms:-

ORDER

- a. **The above Company Petition No. (IB) 252 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Four Care Hospital Private Limited.**

- b. This Bench hereby **appoints CA Rajan Garg, Registration No: IBBI/IPA-001/IP-P02397/2021-2022/13624** as the Interim Resolution Professional having his address at **Flat No. 202, Wing B, 2nd Floor, Safal Twins, Block Punjabwadi, Sion Trombay Road, Deonar, Mumbai Suburban, Maharashtra- 400088** and also at- **Suite No. 5,8th Floor, 207, Embassy Centre, Jamnalal Bajaj Marg, Nariman Point, Mumbai, Maharashtra- 400021** , to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** towards

the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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, 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 supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. 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.
 - g. 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.
 - 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 suspended directors and 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
11. **Accordingly, this Petition is admitted.**

12. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)