NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 14.12.2020 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 27/7/HDB/2019
NAME OF THE COMPANY	Shiva Medicare Ltd
NAME OF THE PETITIONER(S)	CH Mani Kumar
NAME OF THE RESPONDENT(S)	Shiva Medicare Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed vide separate sheets.

Member (T)

Member (J)

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THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.27/7/HDB/2019

U/s 7 of I&B Code, 2016read with Rule 4 of I & B (AAA) Rules, 2016

In the matter between:

CH Mani Kumar
S/o Michael, aged about 45 years
Occ. Pvt employee
R/o Flat No.G-104, Modi Apartment
S.R. Naik Nagar, Apuroopa Colony
Jeedimetla – 500 055. Ranga Reddy Dist.

.. **Petitioner**
Financial Creditor

VERSUS

Shiva Medicare Limited
8-2-676/A/A/A/1 & 2
Road No.13 Banjara Hills
Hyderabad – 500034
Telangana State.

.. **Corporate Debtor**

Date of order : 14.12.2020

Coram:

HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)
and
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,
MEMBER (TECHNICAL)

Parties / counsels present:

For the Petitioner : Shri Bojja Arjun Reddy, Advocate.

For the Respondent: Ms. Shireen Sethna Baria, Advocate.

Per: SHRI VEERA BRAHMA RAO AREKAPUDI,
MEMBER (TECHNICAL)

Heard on:
20.12.2019, 08.01.2020, 28.01.2020, 20.02.2020, 24.02.2020, 20.03.2020, 13.10.2020, 15.10.2020, 23.11.2020, 12.11.2020 and 07.12.2020.

AVERMENTS :

The petitioner/ Financial Creditor is an individual residing at the address described in Column No.4, Part-I of the petition, having PAN No.APNPC9356F.

2. The respondent/ Corporate Debtor is incorporated as a limited company on 02.12.1991 vide Certificate of Incorporation No.55-46608 of 1991-92 dated 02.12.1991 (ANNEXURE-2, Page 11), under the provisions of the Companies Act, 1956. Its authorised share capital is 10,00,00,000/- (Rupees ten crores only) being 10000000 shares of Rs.10/- each. It is, *inter alia,* engaged in manufacture, preparation, purchase, sale, import, export and to deal in all types of gloves, condoms, finger, cots, balloons, medical and non-medical tubes/ aids, industrial and medical bellow, diaphrama, etc. Its registered office is described in Column 5, Part-II of the petition.

3. The present application is filed by the financial creditor against the Corporate Debtor for default of financial debt of Rs.4,49,950/- (Rupees four lac forty nine thousand nine hundred and fifty only) plus interest amounting to Rs.9,83,526/-, at the rate of 18% P.A. from 17.10.2012 to 30.10.2018, aggregating to Rs.14,33,476/-. Computation of financial debt is attached at ANNEXURE-5 (Page 99) to the petition. Hence, this Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

4. It is averred that the promoters of the Corporate Debtor had approached the petitioner for borrowing money at commercial rate of interest of 18%, pursuant to which the said sum of Rs.4,49,950/- was lent to the Corporate Debtor on 17.10.2012. It is further averred that when the Corporate Debtor approached the Hon'ble High Court of Andhra

Pradesh for reduction of capital, the above amount has been shown in the Books and the petitioner's consent has been taken, which proves the debt.

5. The Corporate Debtor has issued letter dated 20.10.2012 to the petitioner confirming receipt of Rs.4,49,950/- via RTGS in the Bank Account of the Corporate Debtor. Vide the above letter the Corporate Debtor has agreed to pay interest at 18% on the said amount on annual basis. Further vide communication dated 01.10.2016 (ANNEXURE-7) the Corporate Debtor has confirmed the borrowed amount of Rs.4,49,950/- and acknowledged its inability to pay interest at 18% for the past many years. By the said letter the Corporate Debtor assured repayment thereof at the earliest.

6. It is further averred that the Corporate Debtor vide communication dated 03.07.2014 (ANNEXURE-8) had requested the petitioner to give NOC for the Scheme of Capital Reduction of the company filed before the Hon'ble High Court at Hyderabad. The petitioner had accordingly issued No Objection Certificate (NOC) dated 10.07.2014 (ANNEXURE-9). The Hon'ble High Court had taken cognisance of the said NOC given by the petitioner along with other 26 unsecured creditors in page 2 of its order dated 27.07.2015 in Company Petition No.256 of 2014 (ANNEXURE-10) and allowed the petitioner approving the proposed scheme of arrangement for reduction of share capital of the Corporate Debtor.

7. The said lending was unsecured one. As on 31.03.2018, the Corporate Debtor has defaulted in paying the principal amount plus interest amounting to Rs.14,33,476/-.

<u>COUNTER DATED 26.06.2019 FILED BY THE CORPORATE DEBTOR</u>.

8. The Corporate Debtor, through its Chairman/ Director contends that the petitioner is barred by limitation and disputes the amount due to the Financial Creditor.

9. In para 7 of the Counter it is averred that the present management has taken over the Corporate Debtor "Shiva Medicate Limited" from the erstwhile management through SEBI approved take over effective from 18.05.2016, which is the cut-off date on which date the authorised

signatory has joined the Board of Directors of the Corporate Debtor. Subsequently, vide Board Resolution dated 06.12.2016, the Board has appointed independent Directors with the present management. The Corporate Debtor mainly draws distinction between the erstwhile management and the present management and tries to avoid any liability on the part of the present management.

10. It is further averred in para 8 of the Counter that the previous management has not handed over the old records after takeover of the Corporate Debtor. On inquiry made with the erstwhile management, it was ascertained that the Corporate Debtor had transformed the following phases:

Date	Event
02.12.1991	The Corporate Debtor was incorporated with the RoC, New Delhi.
05.08.1993	Registered office of the Corporate Debtor was shifted from New Delhi to Tamil Nadu.
01.01.2009	Registered office again changed from Tamil Nadu to New Delhi.
05.06.2013	The registered office is shifted to Andhra Pradesh on 05.06.2013.

11. During the course of such shifting of office the old records have been misplaced in transit.

12. It is averred in para 9 of the Counter that Balance Sheets for Financial Years 2012-13 and 2013-14 filed by the erstwhile Management do not reflect any such unsecured loan having been obtained. It is contended by the Corporate Debtor that though letter dated 10.07.2014 (ANNEXURE-9) states an amount of Rs.4,49,950/- as due from the Corporate Debtor as on 10.07.2014, **it does not disclose any interest payable**.

13. The Corporate Debtor demands, in para 10 of the Counter, that the Financial Creditor be requested to furnish the Bank's certificate of debit to the effect that the amount claimed by the Financial Creditor has been deposited into the Bank Account of the Corporate Debtor.

14. The Corporate Debtor in para 11 contends that there is no record to show that the present management of the Corporate Debtor has either agreed to pay interest on the alleged amount or has given any commitment in favour of any unsecured creditor/ depositor.

15. However, the Corporate Debtor expresses willingness to pay the principal amount and requests the Corporate Debtor to provide proof of credit and acknowledgement of deposit from all those depositors/ creditors who may be approaching the Corporate Debtor for repayment. (Para 12)

IA No.921 of 2020.

16. The petitioner has filed IA No.921 of 2020 seeking urgent hearing of the petition. The said IA has been allowed vide order dated 13.10.2020.

17. The petitioner has submitted the following additional documents vide above IA No.921 of 2020.

(i) Notices dated 19.09.2019 and 26.09.2019 issued by the BSE for non-payment of listing fee payable to BSE and non-compliance with various clauses of Listing Agreement.

(ii) Intimation dated 14.02.2019 given by the Corporate Debtor to the BSE about resignation of the Company Secretary. [It is averred that no successor has been appointed]

(iii) STK-7 Notice issued by the RoC striking off the name of the Corporate Debtor.

MEMO DATED 20.12.2019.

18. The petitioner has submitted, through this Memo, statement of account issued by State Bank of India, Jubilee Hills Branch, Hyderabad, in original. Said statement shows a debit entry dated 17.10.2012 towards cheque no.002788 for an amount of Rs.450000/- through RTGS showing the name of Shiva Medicare Ltd.

OBSERVATIONS

19. We have heard the learned counsel for the Financial Creditor as well as the learned counsel for the Corporate Debtor through videoconference. Perused the documents filed by both the sides in

support of their respective contentions. We have examined the following documents:

(i) RTGS Slip dated 17.10.2012 (ANNEXURE-4, Page 97) showing an amount of **Rs.4,50,000/-** in favour of 'SHIVA MEDICARE LTD." Bank stamp dated 16.10.2012 is affixed thereon. The amount stated to have been lent is however, is **Rs.4,49,950/-**.

(ii) Letter dated 20.10.2012 (ANNEXURE-6, Page 100) addressed by the Corporate Debtor to the petitioner confirming receipt of Rs.4,49,950/-

(iii) Letter dated 01.10.2016 (ANNEXURE-7, page 101) addressed by the Corporate Debtor to the petitioner confirming the outstanding amount of Rs.4,49,950/- and stating that the interest at 18% could not be paid for the past many years.

(iv) Letter dated 03.07.2014 (ANNEXURE-8, page 102) addressed by the Corporate Debtor to the petitioner asking for NOC and assuring to settle the principal amount due Rs.4,49,950/- along with interest pending payable at 18% for the past 2 financial years.

(v) Statement of account issued by SBI, Jubilee Hills Branch, Hyderabad for the period from 17.10.2012 to 20.12.2012, which shows debit entry dated 17.10.2012 in favour of Shiva Medicate Ltd. Said document is submitted by the Financial Creditor vide Memo dated 20.12.2019.

20. The Corporate Debtor has contended in para 8 of the Counter that due to shifting of its registered office from one place to another old records got misplaced in transit. The Corporate Debtor has however, expressed willingness to pay the principal amount provided sufficient proof is submitted by the petitioner. Furthermore, the name of the Corporate Debtor has been struck off vide STK-7 Notice dated 17.10.2019 (Page 14 of IA No.921 of 2020). We are of the opinion that sufficient evidence has come on record about lending of money as unsecured credit and admission made by the erstwhile management of the Corporate Debtor to that effect. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor. The petition is accordingly admitted.

21. Hence, the Adjudicating Authority admits this petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) The 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 or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(B) 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.

(C) 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.

(D) That the order of moratorium shall have effect from the date 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, whichever is earlier.

(E) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(F) That this Bench hereby appoints Shri Kranthi Kumar Kedari having Reg. No. IBBI/IPA/ 001/IP- P00173/ 2017-18/ 10342, as Interim Resolution Professional, whose contact details are:

e-mail ID:	kranthikumar1980@gmail.com
Address:	Flat No.202, D. No.8-3-167/D/ 49 Balaji Kalyan Apts., Next to Axis Bank Kalyan Nagar, Hyderabad – 500038

Ph. : 8374799955.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(G) Proposed IRP filed Form-2 dated 15.11.2018. He has also filed Certificate of Registration dated 13.06.2017 issued by IBBI. Authorisation for Assignment is valid from 13.06.2017 to 22.01.2021. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

35. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

36. Accordingly, this Petition is admitted.

14.12.2020

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

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