

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 42 (IB)/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Bank of India

...Financial Creditor/ Applicant

v/s

Syncom Healthcare Limited

...Corporate Debtor

Order Dated 14.08.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv.Amit A. Tungare.

For the Respondent: Adv. Shyam Kapadia, Adv. Raghav Ganesh, Adv. Samiksha Manak, Adv. Jinal Shah.

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 42/2019 filed by **Bank of India**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Syncom Healthcare Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. Mr. Sunil Kumar Dhaka files this application, Chief Manager of the applicant Bank duly authorised vide the Inter-office memorandum dated 10.11.2018.
3. The Applicant had extended the loan for ₹25,00,00,000/- to the Corporate Debtor under various facilities viz. Working Capital Demand Loan, Working Capital Term Loan, Cash Credit, Letter of Credit and Bank Guarantee Limit vide its loan agreements dated 09.12.2005,08.03.2007 and sanction letters dated 13.12.2011 and 19.02.2013. The applicant offered restructuring of existing limits

and additional credit facilities to the Corporate Debtor vide the sanction letter dated 30.03.2015 amounting to ₹25,00,00,000/-.

4. The said loan facilities were secured by Hypothecation vide agreements dated 09.12.2005, 25.02.2013 and 31.03.2015 Equitable Mortgage vide agreement dated 10.12.2005, 08.03.2007, 20.03.2008, 15.12.2011, 25.02.2013 and 31.03.2015 Personal Guarantee vide deed dated 08.03.2007, 28.12.2007, 15.12.2011, 25.02.2013 and 31.03.2015.
5. The Applicant has annexed an overdue statement dated 23.03.2017 sent to the Corporate Debtor reflecting an outstanding amount of ₹24.3175crores. The Applicant has sent a legal notice dated 04.04.2017 as final recall notice demanding payment of ₹24.22crores. The Applicant subsequently sent a notice under section 13 (2) of SARFAESI Act, 2002 dated 17.04.2017 intimating that the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 31.03.2017 and recalling an outstanding amount of ₹24.2crore including interest as on 10.04.2017. The applicant submits that as on 30.06.2018, the total outstanding amount in default is ₹35.30crore, and the date of default is mentioned as 01.08.2016.
6. The Applicant has filed extracts of Commercial Credit Information Report(CIBIL) dated 03.12.2018reflecting the classification of the Corporate Debtor's account as sub-standard and doubtful and outstanding amount against the facilities extended by the Applicant. The Applicant has also submitted the certificate under the Banker's Book of Evidence Act, 1891 dated 18.12.2018.
7. The Corporate Debtor filed its Affidavit in reply on 12.06.2019, opposing the Application on the ground of it being filed with inappropriate authorisation and that the Applicant has not filed information with the Information Utility and similar other technical grounds.

8. However, in the light of the Judgment of the Hon'ble NCLAT in ***Palogix Infrastructure Private Limited vs ICICI Bank Limited, Company Appeal (AT) (Insol) No. 30 of 2017 dated 20.09.2017*** and also pursuant to the notification issued by Ministry of Corporate Affairs dated 27.02.2019, the objection of the Corporate Debtor regarding the insufficient authorisation of the Chief Manager of the applicant Bank to file the present application is not tenable. Further, the Applicant has submitted the Commercial Credit Report (CIBIL) of the Corporate Debtor that reflects the outstanding amount and classification of the account of the Corporate Debtor as doubtful and sub-standard. Thus, the contention regarding not informing the Information Utility about the default of the Corporate Debtor is also not tenable. It is pertinent to note that the Corporate Debtor has not raised any dispute regarding the debt being not due or payable.
9. On perusal of the documents submitted by the financial creditor, it is clear that debt amounting to around ₹24 crores is due and payable by the Corporate Debtor to the Applicant. The Loan approval letter dated 30.03.2015 prove the sanction and disbursement of funds; the CIBIL report and various legal notices further establishes the default in repayment of the debt. The outstanding debt amounting to around ₹24 crores is not disputed as due and payable by the Corporate Debtor in its affidavit in reply.
10. The application filed by the financial creditor is on proper form 1, as prescribed under the Adjudicating Authority Rules and application is complete. The default of more than ₹1,00,000/- is also proved.
11. The Applicant has proposed the name of Mr. Jagdish Kumar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00671/2017-18/11143] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
12. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed

Form No1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition 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

This petition filed under Section 7 of I&B Code, 2016, filed by **Bank of India**, against **Syncom Healthcare Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 assets 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 activity under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr Jagdish Kumar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00671/2017-18/11143] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
13. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

14th August 2019