



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

**CP(IBC)/22/KOB/2024**

*(Under Section 7 of the IBC, 2016)*

***In the matter of Attukal Devi Institute Of  
Medical Sciences Limited***

**MEMO OF PARTIES:**

**AYYAPPAN NAIR RAGHAVAN PILLAI**

T.C 6/773-1, Pranavam, Akkulam Road, Medical  
College P.O, Thiruvananthapuram, Kerala  
695011

**... Petitioner/ Financial Creditor**

**-Vs-**

**ATTUKAL DEVI INSTITUTE OF MEDICAL  
SCIENCES LIMITED**

Door T.C 22/935 (2 to 5), Attukal Manacaud,  
P.O, Thiruvananthapuram, Kerala- 695009

**... Respondent/Corporate Debtor**

**Order delivered on: 27.09.2024**

***Coram:***

**Hon'ble Member (Judicial) : TMT. Justice (Retd.) T Krishna Valli**

**Hon'ble Member (Technical) : Shri. Ravichandran Ramasamy**

***Appearances:***

**For the Applicant : Mr. Bijoy Pulipra, Advocate**

**For the Respondent : Mr. E Om Prakash, Advocate (Sr.)  
Mr. Sankar Panicker, Advocate**



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**ORDER**

**Per Coram**

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **ATTUKAL DEVI INSTITUTE OF MEDICAL SCIENCES LIMITED**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is the ex-managing director and shareholder of the Corporate Debtor who has advanced loans to CD. As per Part II of the application, the Corporate Debtor is a Public Limited Company with Corporate Identification Number: U85110KL2007PLC021403 and having its registered office at Door T.C 22/935 (2 to 5), Attukal Manacaud, P.O, Thiruvananthapuram, Kerala- 695009. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. CA Rajmohan R, IBBI Registration Number: IBBI/IPA-001/IP-P-02331/2020-2021/13517 as the Interim Resolution Professional.



3. Part IV of the application signifies the amount of debt to the tune of Rs. 2,80,79,917/- as on 30.03.2024. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- i. Ledger A/c of the Financial Creditor with the Corporate Debtor evidencing the advancement of money.
- ii. The bank account statement of the Applicant evidencing the disbursement of the loan of Rs. 1,25,50,000/- given to the Corporate Debtor
- iii. The minutes of the 8th Annual General Meeting held on 28<sup>th</sup> September, 2015
- iv. The Demand Promissory Note dated 24<sup>th</sup> August,2015
- v. Indemnity Deed dated 24<sup>th</sup> August,2015
- vi. The Ledger A/c of the Applicant from 1<sup>st</sup> April,2015- 29<sup>th</sup> February, 2016 with the Corporate Debtor
- vii. Acknowledgement letters issued by the Corporate Debtor dated 31.03.2018, 23.03.2019, 17.12.2020, 08.03.2022, 14.06.2022, 07.06.2023
- viii. Annual Report of the Corporate Debtor for the Financial Year ending 2015-2023
- ix. Email Demand dated 28.08.2023
- x. Demand Notice dated 15.03.2024

xi. Record of Default in Form D NeSI

4. Brief fact of the case is:

- i. The present application is filed by Mr. Ayyappan Nair Raghavan Pillai, a director cum shareholder of the CD, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Attukal Devi Institute of Medical Sciences Limited. The applicant was the MD cum chairman of CD from 2008 till 2016.
- ii. The Financial Creditor first made an advance of Rs.26,53,000/- to CD for business purposes. Thereafter in order to pay rent arrears decreed by Munsiff Court (Rent Control Court), Trivandrum, the applicant paid a further loan of Rs.1,25,50,000/-. The total principal amount paid is Rs 1,52,03,000/-. This principal amount was ratified in 8<sup>th</sup> AGM of CD on 28.09.2015 as directors loan along with a 12% p.a simple interest payable monthly. A demand promissory note and indemnity deed dated 24.08.2015 acknowledging debt was executed between CD and FC. The loan is shown in balance sheet of CD since FY 2015 onwards.
- iii. Since the demission of applicant as MD of company on 03.03.2016, the board froze all payments to applicant. The payment was resumed from 25.06.2022 onwards but without any interest payments. Applicant made request to CD on 28.08.2023 for payment of principal and interest. A

demand notice was sent on 15.03.2024 demanding 2,80,18,356/- total debt but same also remains unpaid.

- iv. It is stated that as on 31.03.2024, CD is in default of Rs. Rs. 2,80,79,917/- under directors' loan account. The applicant has submitted the default with NESL, information utility. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.
  - v. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
  - vi. The application was filed by the FC on 23.04.2024 and states that he has filed the petition within the period of limitation under the IBC.
5. On the respondent side, it is stated that CD is a service-oriented hospital business serving weaker sections of society with minimum charge. It is become profitable recently from FY 2021-22 onwards. It is stated that only liability CD has towards any financial institution is an overdraft of 5 lakhs. It is contended that the applicants' failure to conduct business of CD during his tenure properly resulted in heavy losses to CD and since 2022 CD has become a profitable venture under new administration. It is contended that the applicant while MD misused his position to pay out of pocket expenses to CD i.e for payment of rent arrears under the decree of RCC, Trivandrum for Rs.1,25,50,000/- on 30.12.2014 and 31.12.2014. The board was later forced to ratify the terms of

this loan at BM dated 27.01.2015 which was held without quorum and the pro note was executed on 24.08.2015, i.e., 8 months after date of loan for Rs.1,25,50,000/-. Again, at AGM on 28.09.2015, the members were forced by applicant to settle the terms with exorbitant interest of 12%. It is stated that these documents were made while applicant was MD and Chairman of CD. It is stated that at BM dated 08.07.2016, the board including the applicant himself, in order to safeguard CD, decided to freeze the interest till financial health of CD improved. The subsequent AGMS have ratified the freezing of interest portion and the accounts of CD have not provided for any interest on the loan. It is stated the CD has repaid 55 lakhs already to applicant from 2022 and a sum of 20 lakh paid on 02.05.2024 was returned by applicant at pretext of this section 7 application. It is stated that the intent of returning last tranche was to put CD into CIRP and only to recover the money and abuse of IBC process. It is further stated that the claim of applicant stands on his promissory note which is valid only for 3 years till 2018. Thus, an invalid claim is made in year 2024 which is barred by Article 21 and 35 of limitation act. It is stated that the decision to waive interest was supported by applicant and is evident as per minutes of BM dated 13.11.2019 and the present claim for interest is arbitrary. It is contended that the original advance of Rs. 26,53,000/- by applicant is made for business purposes is infact only an operational debt under section 5(21) of IBC. Applicant misused his position to make entries in ledger account to classify same as advance to CD. It is contended that adding this Rs.




26,53,000/- with other loan of Rs. 1,25,50,000/- is not correct as both are debts of different nature as per IBC. It is further contended that as interest portion is waived off vide resolution of board adjusting amount repaid of Rs. 55 lakh would put the petition not maintainable for want of threshold of Rs.1 crore and is one of the intention behind return of Rs.20 lakh to CD. It is stated that there is no arrangement that entire amount would be paid on demand and considering the pro note and indemnity bond is invalid as per law at present, there is no breach of terms in loan and the present claim does not qualify as a financial debt. It is stated that the AGM minutes show that there is no stipulated time period for payment of sum advanced and hence the repayment continues as per agreed and there exist no default. It is stated that as per applicant's email dated 17.05.2024, itself admit that the CD is solvent and repayment can be made but not as lumpsum on demand but in instalments as agreed among board. It is further contended that date of default is stated as 16 days from issue of Demand notice under IBC which is not an actual default date and if at all, it should be from execution of pro note which has also expired since 2018. The respondent further contend that the IBC envisage 'default' and not 'inability to pay', and default means nonpayment of debt once it becomes due and payable. In this case there is only a claim which has not become a 'debt' and the said claim is not clearly 'become payable' meaning that no default subsists. The decisions of Hon'ble apex court in **Swiss Ribbons Pvt Ltd & Anr v. Union Of India & Ors, Innoventive Industries Vs Sundaram Bnp Paribas Home**



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**Finance Ltd, And Vidarbha Industries Power Ltd v. Axis Bank Ltd** is relied on.

6. The applicant in their rejoinder states that he is the largest shareholder of the CD with 9.02% shares, and he saved CD from going bankrupt in 2014 due to non-payment of rent arrears. It is stated that 'debt' as per IBC is a claim due from any person includes a financial debt. The applicant paid the sum to boost the financial situation and it is customary to treat such sums as borrowings which has effect of time value of money. It is stated that the interest portion of the debt arises from the promissory note, indemnity deed, valid board and AGM resolutions dated 27.01.2015 and 28.09.2015 respectively, and acknowledgement letters. It is stated that applicant had abstained from board decision to pay interest @12% on the loan as he was interested and is evident in the minutes. It is stated that the validity of the resolutions passed by CD for the loan and interest is not disputed till date. It is stated that the documents executed are signed by other directors of CD and even the acknowledgement is signed by present director. Hence there was no forceful execution of any document. It is stated that CD used to pay smaller sums of money and total of Rs.35,00,000/- is paid out of principal excluding the interest and the last remittance on 26.07.2023. It is contended that the CD tried to reduce the CIRP threshold by remitting 20 lakhs after initiation of CIRP. It is contended that the entry in audited financial statements prove that the total principal forms a part of financial debt as 'loan from director'. It is stated that the loss in CD during applicants' tenure



was due to market situation. It is stated that the applicant had no involvement in decision of board to freeze the interest as he was hit by section 184 of Companies Act, 2013 to abstain from the resolution as an interested party. The said decision was a temporary freezing of interest till CD was put in to better financial position and the interest was not waived. The present board arbitrarily froze even the accrual and payment of interest. Now since financial position improved the applicant is lawful to ask the repayment of debt as per the earlier resolutions passed. It is also stated that CD had repaid the loans of many other directors but took a pick and choose method to the applicant alone and no steps to unfreeze the interest on loan against his demand dated 28.08.2023. It is stated that the payment of Rs. 20 lakh was made after CIRP petition filed and applicant requested that same be adjusted to salary arrears which was not agreed by CD and hence due to same it was refunded to CD on account of CIRP. It is stated that the acknowledgement of debt in balance sheet is sufficient to waive limitation period as per law. The effort of CD to paint applicant as a negative figure in growth of CD is baseless as he saved CD from eviction. The applicant has given sufficient time to CD which is now profitable to make repayment. The object of applicant is to only revive company not put to liquidation.

7. Heard the submissions, and perused the documents placed on record. The respondents contend that the alleged debt is split into two pieces, one Rs.26,53,000/- which is an operational debt and another Rs.1,25,50,000/- which is a financial debt. We go through



the CD's minutes and resolution no.8.07 of the AGM dated 28.09.2015 where it is clearly stated that total amount is classified as advance from director which is in nature of borrowings and an interest @12% also lies. The financial statements of CD also show the item as loan from directors. Hence it is answered that the debt which include the total amount of principal sum of Rs. Rs 1,52,03,000/- is clearly in nature of 'financial debt'.

8. Next issue is that that the interest portion i.e 1,28,76,917 w.r.t loan from directors is frozen by the CD since BM dated 08.07.2016 vide resolution no.2 stating that the payment of interest will be reconsidered when position of CD improves. Here also the intent is not to waive loan but only to temporarily give a relief to CD. Further the resolution itself is not disputed by any party and hence is validly approved. The contention of respondent CD that the interest is not part of the total debt which is why the interest is not provided for in Balance sheets and stands not payable is rejected.
9. The respondents further contend that the claim which the applicant rely on is barred by limitation on account of promissory note dated 24.08.2015 becoming invalid after expiry of 3 years and that the debt is since invalid. These objections are devoid of merit as the CD has acknowledged the debt in its balance sheets and the respondents also admit that only 55 lakhs have been repaid to the applicant out of which 20 lakhs has been paid back to CD by the applicant. Hence there exist a debt amounting to Rs. 2,80,79,917/- as on 31.03.2024 which is beyond the threshold limit stipulated

under the IBC, 2016 and that debt is in default within the limitation period.

10. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

11. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions envisaged under the code, we believe that this application, as submitted by the Applicant-Financial Creditor, deserves be admitted under Section 7(5) of the IBC, 2016.

12. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

A. The petition bearing CP (IBC)/22/ KOB /2024, by Mr. Ayyappan Nair Raghavan Pillai, the Financial Creditor, under section 7 of



Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Attukal Devi Institute of Medical Sciences Limited**, (CIN: U85110KL2007PLC021403), the corporate debtor is **ADMITTED**.

- B. There will be a moratorium under section 14 of the Code.
- C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
- D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- E. The Financial Creditor has proposed the name of one **Mr. CA Rajmohan R**, IBBI Registration Number: IBBI/IPA-001/IP-P-02331/2020-2021/13517, email: rajmohanip@gmail.com, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in



this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.

- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).



- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

**Sd/-**  
**RAVICHANDRAN RAMASAMY**  
**(MEMBER TECHNICAL)**

**Sd/-**  
**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this the 27<sup>th</sup> day of September, 2024.

Rohit.