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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IBA/26/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. SR Mediservices Private Limited.***

Mr. V. G. Murali

Flat FG-1, Casa-XS,
Manapakkam Main Road,
Manapakkam,
Chennai – 600 125

... Financial Creditor

-Vs-

M/s. SR Mediservices Private Limited

Reg. Off:-

Old No. 37, New No. 83,
Razack Garden Main Road,
MMDA Colony,
Arumbakkam,
Chennai - 600 106

...Corporate Debtor

Order Pronounced on 4th October 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : Ms. Prapti Mehta, Advocate
For M/s. Surana & Surana, Advocates*

For Corporate Debtor: Ex-parte

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an application which has been filed under Section 7 of the Insolvency & Bankruptcy Code 2016 ("hereinafter referred to as IBC, 2016") r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by an individual named one **Mr. V. G. Murali** (hereinafter referred to as '**Financial Creditor**') who is an ex-Director of the Corporate Debtor against **M/s. SR Mediservices Private Limited** (U74900TN2015PTC103470) (hereinafter referred to as '**Corporate Debtor**'). 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 an individual with Director Identification Number 07818620. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U74900TN2015PTC103470 and with registered office at Old No. 37, New No. 83, Razack Garden Main Road, MMDA Colony, Arumbakkam, Chennai - 600 106. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. S.



Kannan, Registration Number: IBBI/IPA-001/IP-P00755/2017-2018/11287 as the Interim Resolution Professional

3. Part IV of the application signifies the amount of debt to the tune of Rs.1,44,25,000/- as on 01.11.2019. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

- a) Business Agreement dated, 14.04.2017
- b) Shareholders Agreement dated, 15.12.2017
- c) Ledger Account of the Corporate Debtor in the books of the Petitioner
- d) Bank Statement of the Petitioner

4. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor vide a newspaper advertisement dated 26.03.2017 came across with a call for investors for the Corporate Debtor. On being satisfied, the Financial Creditor entered into a Business Agreement dated 14.04.2017 with one of the Directors of the Corporate Debtor, Dr.Sarasakavitha. It is further submitted that as per the said Business Agreement the Financial Creditor herein had joined as one of the Directors of the Corporate Debtor accordingly 37.5% of shares of Dr. Sarasakavitha have been transferred to the Financial Creditor i.e. 18,750 shares at Rs. 100 per share by way of execution of a Shareholders Agreement dated, 15.12.2017 between the Directors of the Corporate Debtor and the



Financial Creditor duly authorized vide Board Resolution dated, 11.12.2017 upon the payment for the same. Further the agreement also contains a clause exhibiting that funds brought into the Corporate Debtor would be eligible for interest and also that the deficits of the Corporate Debtor will be borne by the directors and be treated as loan from directors towards working capital with interest.

5. The Learned Counsel for the Financial Creditor submitted that between 06.07.2017 to 24.01.2018 the Financial Creditor herein had lent a sum of about Rs. 29,00,000/- to the Corporate Debtor towards the working capital of the Corporate Debtor duly having been authorised by the Board Resolution dated, 27.09.2017. It is also submitted that the Board Resolution dated 27.09.2017 authorised Dr. J Sarvana Moorthy (Director) and the Financial Creditor herein to jointly or severally do all such acts in this regard. It is further submitted that the money given by the Financial Creditor is also reflected in the balance sheet of the Corporate Debtor under the heading 'Loans and advances from related parties' thereby submitting that the money lent shall have the commercial effect of borrowing and time value of money.



6. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor was illegally terminated in his capacity as a director from the Board of the Corporate Debtor in the Extraordinary General Meeting dated 17.04.2017. Subsequent to which, it was also updated in the MCA vide Form DIR 12. It is further submitted that until the date of illegal removal of the Financial Creditor, a total sum of Rs. 1,79,00,000/- had been infused into the coffers of the Corporate Debtor. The details of the payment made by the Financial Creditor towards the Business Agreement, Transfer of Shares, Infusion and Loans advanced have been mentioned in the application. It is also submitted by the Financial Creditor that out of the payment made by the Financial Creditor to the tune of Rs. 1,79,00,000/-, Rs. 15,00,000/- was paid as advance under the Business Agreement and Rs. 18,75,000/- which was paid towards share capital are hereby not taken into consideration for the purpose of insolvency. Thereby only a sum of Rs. 1,44,25,000/- is being claimed as per the application.

7. The Learned Counsel for the Financial Creditor submits that he had issued a demand notice dated 24.08.2018 in order to bring on record inter alia, investments made by him into the Corporate Debtor, concealment of liability and various other acts of oppression and mismanagement being carried out by the other



directors of the Corporate Debtor which is also the subject matter in CP No. 77 of 2020 filed before this Tribunal. Subsequent to which, the resignation was updated in MCA vide Form DIR 11. However, no repayment of loan was made.

8. The Learned Counsel for the Financial Creditor, in order to elucidate that the applicant herein is a Financial Creditor and the claim herein is a Financial Debt has relied upon the following Judgments,

- a) *Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. (2017 SCC NCLAT 377)*
- b) *Rajesh Gupta Vs. Dineshchand Jain and others (Company Appeal (AT) (Insolvency) No. 317 of 2018)*
- c) *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Others (MANU/SC/0279/2021)*
- d) *Shailesh Sangani Vs. Joel Cardoso and another (Company Appeal (AT) (Insolvency) No. 616 of 2018)*

9. In relation to the Corporate Debtor, it is seen that they have already been set ex-parte by this Tribunal vide order dated 07.01.2021 and till date no Application has been filed by the Corporate Debtor to set aside the said ex-parte order. In such circumstances, the matter was heard in the absence of the Corporate Debtor.



10. Heard the Counsel for the Financial Creditor and perused the documents placed on record. 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. It is manifest and seen from the Balance sheet, 31.03.2017 annexed along with the application in page number 32 that money advanced by the Financial Creditor herein as such reflected under the heading Long Term Borrowings as Loans and Advances from related parties, would have the commercial effect of borrowing on the part of the Corporate Debtor. Thereby, on verification of the bank statement and the balance sheet annexed between page numbers 20 to 32 and also on cross verification of the payment details with the date, amount and Cheque number in page number 19 of the application it is clear that the amount is due and payable to the applicant.

11. Thus, 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)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said 'financial debt' which is due and



payable to the Financial Creditor. Under the said circumstances, in view of any objections raised by the Corporate Debtor this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

12. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016

13. The Financial Creditor has proposed the name of one **MR. S. KANNAN**, having Registration Number **(IBBI/IPA-001/IP-P00755/2017-2018/11287)** 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 proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in



terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. 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.

14. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action 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 the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

15. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going



concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

16. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the



date of such approval or Liquidation Order, as the case may be.

17. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond