



S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
13-09-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No. 243/7/HDB/2021
U/s 7 of IBC, 2016

IN THE MATTER OF:

M/s. Arcom Medical Devices Pvt Ltd

... Financial Creditor

Vs

B & A Best Health Care Pvt Ltd

... Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders pronounced, recorded vide separate sheet. In the result CIRP is initiated against the Corporate Debtor as per the terms mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 243/7/HDB/2021

Under Section 7 of the Insolvency and Bankruptcy
Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority Rules), 2016.

In the matter between

M/s. Arcom Medical Devices Private Limited
3-6-140/A, Flat No.402,
City Centre, Himayath Nagar,
Hyderabad, 500 029.

... Financial Creditor

VERSUS

M/s. B&A Best Health Care Private Limited
Flat No.118, Block B,
Modi Gulmohar Garden Shakti Sai Nagar,
Mallapur, Hyderabad, Telangan-500076.

... Corporate Debtor

Date of order:13.09.2022



Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)

Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Petitioner : Shri Vivek Jain, Advocate

For the Respondent: Shri T.Natraj, Advocate

PER: BENCH

1. The is a Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016, by the Financial Creditor seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon alleging non-payment of the admitted dues to the tune of Rs.2,80,20,580/- inclusive of interest.

2. Facts of the Case:

a. The petitioner/Financial Creditor, states that the Respondent/Corporate debtor has approached the financial creditor and initiated talks for investment in the corporate debtor. Pursuant to the negotiations , the financial creditor made an initial investment of Rs.40,00,000/- for a duration of 3 months @ 12% per annum. The directors of the corporate debtor i.e Mr.Arvind Narsing Kandi and Mr.B.Balakrishna, stood as



guarantors for the loan agreement which is annexed vide Exhibit no.1 to the petition.

- b.** The Corporate Debtor again approached the financial creditor for a further investment of Rs.85,00,000/- through an unsecured loan and Rs.75,00,000/- through subscription of shares. Both the parties entered into MOU by recording the entire loan amount advance to the corporate debtor by the financial creditor i.e Rs.1,25,00,000/- for which the Directors mentioned above stood as personal guarantors to the loan availed, which is annexed as Exhibit No.2 to the petition. Further the corporate debtor and the two directors of the corporate debtor executed a promissory note for payment of Rs.1,25,00,000/-, which is annexed as Exhibit No.5 to the petition.
- c.** Further, the financial creditor also entered into a share subscription cum shareholders agreement, dated 24.10.2017, vide Exhibit No.3, and subscribed 7,50,000 of equity shares at Rs.10/- per share, thereby totalling to Rs.75,00,000/-.
- d.** According to the Financial Creditor at the request of the corporate debtor the managing Director of the Financial Creditor Mr.Sanjeev Kumar Gupta, has been appointed as director of the corporate debtor, thereafter due to personal reasons Mr.Sanjeev Kumar Gupta, resigned as director from the corporate debtor and there was no Board meetings called and that he had no access to any of the records or details of the Company in his tenure.



- e. Financial creditor has submitted that the total interest for unsecured Loan of Rs.1,25,00,000/- as on 31.03.2019 was Rs.21,83,523/- out of which Rs.9,00,000/- was paid by the corporate debtor on 30.07.2019 and 01.08.2019.
- f. It is stated that the Financial creditor and the Corporate debtor entered into a further understanding through their respective directors whereby the financial creditor was made to invest a sum of Rs.1,00,00,000/- as interest free advance to the corporate debtor on the condition that all the finished goods sales will be supplied by the financial creditor subject to the payment of 3% margin on the sale amount. The details are annexed as Exhibit No.6. later on due to operational convenience the corporate debtor has discontinued supply and billing by the financial creditor and after adjusting credit note, commission etc., the financial creditor was entitled to receive back a sum of Rs.89,12,338/-.
- g. It is averred by the Financial Creditor that corporate debtor vide letter dated 10.09.2020 acknowledged the entire debt i.e an unsecured loan of Rs.1,25,00,000/- @12% per annum and an unsecured loan of Rs.89,12,338/- @12% per annum.
- h. Financial creditor has submitted that corporate debtor has paid part payment of interest i.e Rs.14,00,671/- in respect of total loan amount of Rs.2,14,14,338 on various occasions.
- i. Thereafter, the representatives of the financial creditor requested for the payments but corporate debtor has failed to



pay the interest or the principal amount as well. The financial creditor thereafter issued legal notice for payment of Rs.2,14,12,338/- along with interest of Rs.66,08,842/- as on 31.03.2021, which was replied by the corporate debtor on 16.08.2021. The details of legal notice and reply are annexed as Exhibit no.9-12 to the petition.

- j.** Financial creditor denied the averments made by the corporate debtor in his reply and stated that the contents in the reply are created to suit the convenience of the corporate debtor.
- k.** Financial creditor further averred that corporate debtor has made false allegations in his reply that financial creditor is not party to the “Sole selling Stockist Agency Agreement” dated 13.09.2017 and has failed to reach the target sales of finished goods worth Rs.1,00,00,000/- taken from the corporate debtor. Further corporate debtor submits that Rs.1,00,00,000/- advanced is not financial debt but it is an operational debt.
- l.** Further, it has come to the notice of the Financial creditor that corporate debtor has closed its office and factory without informing any of the investors or shareholders and is not responding to any calls or emails of the financial creditor. Corporate debtor has failed to pay the due amount of Rs.2,80,20,580/- as on 31.03.2021.
- m.** Thus, financial creditor submits that the petition is not barred by the law of limitation and prays the Hon’ble Tribunal to admit the application under Section 7(5)(a) of the Code.



3. Despite sufficient opportunity besides being represented by the counsel, the corporate debtor did not choose to file any counter in the Company petition.
4. In the above backdrop the point that emerges for consideration by this Tribunal is:

Whether a financial debt as claimed by the Applicant is due and payable by the corporate debtor to the applicant, If so, whether the Corporate Debtor defaulted in payment of the same?

Point.

5. Whether a financial debt as claimed by the Applicant is due and payable by the corporate debtor to the applicant, If so, whether the Corporate Debtor defaulted in payment of the same?
6. We have heard learned counsel for financial creditor Shri Nikunj Dugar, and perused the record.
7. At the outset it may be stated that despite availing sufficient opportunity and being represented by a Counsel, the corporate debtor did not choose to file any counter in the Company petition, hence, this Tribunal vide order dated 22.02.2022 forfeited the of the Corporate debtor right to file counter. Thereafter the corporate debtor has not taken any steps to file counter. In this back drop the contentions and allegations as made in this application by the financial creditor remain un-rebutted by the corporate debtor.
8. Therefore, in the above back drop it is to be seen whether there is financial debt due and payable by the corporate debtor and if so



whether corporate debtor has committed default in repayment of the same to the financial creditor. In support of the plea that corporate debtor had availed loan facilities from the financial creditor, the financial creditor relied on loan agreement dated 27.06.2014 , Memorandum of Understanding dated 27.06.2017, promissory note dated 24.10.2017 and the Memorandum of Understanding dated 18.07.2018 and contended that pursuant to the negotiations the corporate debtor has availed financial facilities from the Financial Creditor to the tune of Rs. 2,80,20,580/- and the same were disbursed, and later the corporate debtor has committed default in repayment to the same.

9. It is further contended that demanding payment for the said sum, the financial creditor got issued legal notice dated 04.08.2020 which has been received by the corporate debtor. The corporate debtor had sent reply dated 16.08.2021 raising certain contentious pleas. In the light of the reply we have carefully examined the record examined and found that the pleas as put forth in the reply notice dated 16.08.2021 which remain unsubstantiated are unsustainable.
10. A perusal of the balance confirmation letter dated 10.09.2020 acknowledging the debt of an unsecured loan Rs. 21,412,338/- with an interest payable @12% i.e. 66,08,242/- together of Rs.2,80,20,580 payable thereon, the Annual Tax Return FORM 26AS for the financial year 2019-20 also discloses lending by the Financial creditor and the tax deducted on the amount credited to the account of the corporate debtor from the financial creditors account. Therefore, we are fully



convinced that financial debt of sum over one crore was due and payable by the corporate debtor stands established and as there is no material placed before us by the corporate debtor discharging the debt we hold that existence of a Financial debt and its default by the corporate debtor has been established.

The point is answered accordingly.

11. Hence, in view of the reasons stated as above, the Adjudicating Authority is inclined to admit the petition. Accordingly, this Company Petition under Section 7 of IBC, 2016, is hereby admitted 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.
- (A) That this Bench hereby appoints Shri Pavan Kankani, having registration no. IBBI/IPA-002/IP-N00368/2017-2018/11062 with e-mail [ippavankankani\[at\]gmail\[dot\]com](mailto:ippavankankani@gmail.com), , as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (B) Proposed IRP filed Form-2 on 1st September, 2021. Authorisation for assignment is valid upto 10.11.2022. 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.

- (f) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the initial CIRP expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- (g) The 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.
- (h) Registry is directed to send a copy of this order to the Financial Creditor and IRP appointed in this case.
- (i) Accordingly petition is admitted.
- (j) The Financial Creditor is directed to communicate this order to the IRP appointed in this case.
- (k) The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

Sd/-

Veera Brahma Rao Arekapudi
Member Technical

Sd/-

Dr. N.V.Ramakrishna Badarinath
Member Judicial

Pavani