

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-605(ND)/2022**

**IN THE MATTER OF:**

**Axis Trustee Services Limited**  
**(In the capacity of Debenture Trustee)**  
Axis House Bombay Dyeing Mills Compound,  
Pandurang Budhkar Marg,  
Worli, Mumbai-400025

**...Applicant/Financial Creditor**

**VERSUS**

**Fortis Healthcare Holdings Private Limited**  
**Registered Office at :**  
G-16 Marina Archade,  
Connaught Circus  
New Delhi-110001

**...Respondent Corporate Debtor**

**Section: 7 of IBC, 2016**

**Order Delivered on: 16.12.2022**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant** : Mr. Sumesh Dhawan, Ms. Vatsala kak,  
Mr. Shaurya Shyam, Advs

**For the Respondent** : None



## ORDER

### PER SHRI L. N. GUPTA, MEMBER (T)

M/s Axis Trustee Services Ltd. (for brevity, the '**Applicant/ Financial Creditor**') has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Fortis Healthcare Holdings Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Fortis Healthcare Holdings Private Limited is a Company incorporated on 27.12.2001 under the provisions of the erstwhile Companies Act, 1956 with CIN U65993DL2001PTC152641, having its registered office at G-16 Marina Arcade, Connaught Circus, New Delhi-110001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.370,00,00,000/- and Paid-up Share Capital is Rs. 91,48,35,020/- as per the Master Data annexed with the Application.

3. The Applicant has filed the present Application in the capacity of the Debenture Trustee and stated that the Respondent borrowed funds by issuing a Term Sheet with respect to Secured Redeemable Non-Convertible Debentures of face value of Rs 1000/- each aggregating to



Rs. 12,50,00,000/- (hereinafter, referred to as “**NCD-1**”) on 24.08.2016 by way of private placement. The Applicant has further stated that -

3.1. It had entered into the Debenture Trustee Agreement with the Applicant on 23.08.2016 and vide Debenture Trust Deed dated 14.10.2016, a Trust was created for the benefit of Debenture holders and the Applicant has been appointed as the Debenture Trustee for the 1,25,000 Debentures.

3.2. Out of the total 1,25,000 NCD-1, the Applicant is holding 79,745 NCDs. The following are the features of these NCD-1:

- (a) The interest @ 1.25% was payable on NCDs.
- (b) The tenure of the NCDs was 3 years and four days from the date of deemed date of allotment with maturity date being 28.08.2019.
- (c) The interest on the NCDs was payable annually on 24.08.2017, 24.08.2018, 24.08.2019 and on maturity.
- (d) A premium of Rs.440.479 per debenture ("Redemption Premium") was payable on the NCDs along with interest on maturity.
- (e) The NCDs were to be listed on the Mumbai Stock Exchange within 15 days from the deemed date of allotment and were freely transferable in accordance with the law.
- f) The NCDs were to be secured by pledge of certain equity shares of the company, namely, Fortis Healthcare Ltd. and M/s Religare Enterprises Ltd. Further the charge was to be created on the current assets of the Corporate Debtor.

3.3. As per Clause 9 of the Debenture Trust Deed, if at any time, after NCDs have become repayable and not been repaid, the Applicant/



Debenture Trustee may, at its discretion and without any further notice, initiate such proceedings against the company as it may think fit to enforce repayment together with accrued interest and all other monies in respect thereof.

3.4. The Central Government vide Gazette Notification no. S.O. 1091(E) dated 27.02.2019 has permitted the Debenture Trustee to file an Application under Section 7(1) of IBC, 2016

3.5. It is further stated by the Applicant that in order to further raise money, the Respondent issued another tranche of Debentures by way of Secured Redeemable Non-Convertible Debentures-2 for the face value of Rs. 1,000 each aggregating to Rs. 5,00,00,000/- on 14/27.10.2016 **(hereinafter referred to as NCD-2)** by way of Private Placement. It is stated that out of the total issue size of 50,000 of the NCD-2, the Applicant is holding 39,349 NCDs of the Respondent. The Respondent had executed a Debenture Trustee Agreement dated 25.10.2016 for appointment of the Applicant as the Debenture Trustee for the benefits of debenture holders of NCD-2 and for creation of security in favour of the Applicant. Information Memorandum dated 27.10.2016 was issued in respect of issuance of NCD-2 containing the terms contained in the Terms Sheet. The key features of the NCD-2 are as given below -

- a) The interest @ 1.25% was payable on the NCD-2.
- b) The tenure of the NCDs was 3 years and 54 days from the date of deemed date of allotment with maturity date being 20.12.2019.
- c) The interest on the NCDs was payable annually on 27.10.2017, 27.10.2018, 27.10.2019 and on maturity.



d) A premium of Rs. 440.338 per debenture ("Redemption Premium") was also payable on the NCDs along with interest on maturity.

e) The NCD-2 were to be secured by pledge of one third equity shares of the company, namely, Fortis Healthcare Ltd. and M/s Religare Enterprises Ltd. as well as charge on one third cover of the current assets of the Corporate Debtor.

f) The NCD-2 were also to be listed on the Mumbai Stock Exchange within 15 days from the deemed date of allotment and were freely transferable in accordance with the law.

3.6. It is stated that the Applicant had, prior to the present Company Application, filed another Company Petition (IB) No. 276 of 2022 under Section 7 of the IBC, 2016 before this Adjudicatory Authority, which was dismissed vide its Order dated 04.05.2022 due to an inadvertent error of the Financial Creditor in mentioning the wrong date of default under Part IV of the said Petition.

4. The particulars of the total amount of default and the date of default are mentioned in Column 2 of Part IV of the application. The relevant extracts of the Part IV are reproduced below, for the sake of convenience:

a) As against NCD-1, the following sums are due as on 30.09.2021		
Principal		7,97,45,500
Interest/ Redemption Premium		7,07,077,056
Default Interest	Penalty	36,46,340



		<b>Total</b>	<b>15,41,68,895</b>
		b) As against NCD- 2 the following sums are due as on 30.09.2021	
		Principal	3,93,49,000
		Interest/ Redemption Premium	3,33,15,970
		Default Penalty Interest	17,60,276
		<b>Total</b>	<b>7,44,25,246</b>
		Copy of the Calculation Sheet has been annexed herewith as <b><u>ANNEXURE A-</u></b>	
		Total: <b>Rs. 22,85,94,141/-</b>	
		Date of default: <b>12.09.2019</b>	

5. As per Part IV of the Application, the Applicant has claimed an amount of Rs. 22,85,94,141/- as an unpaid financial debt and relied on 12.09.2019 as 'the date of default'. The Applicant has annexed the following documents to prove existence of the financial debt -

- a) Copy of the term sheet for issuance of NCD-1.
- b) Copy of the Debenture Trustee Agreement dated 23.08.2016.
- c) Copy of the Debenture Trustee Deed dated 14.10.2016.
- d) Copy of deed of hypothecation.
- e) Copy of form CGH-9 along with Certificate of Registration of Charge.
- f) Copy of the Term Sheet for issuance of NCD-2
- g) Copy of the Debenture Trustee Agreement dated 25.10.2016
- h) Pledge Agreements dated 14.12.2016 & 18.07.2017.



6. The Applicant has submitted that the Respondent defaulted in the payment of interest/Coupon on NCD-1 & NCD-2 and also failed to redeem them on the respective redemption date of 28.08.2019 & 20.12.2019. Even on issue of Recall Notice dated 12.09.2019, no payment is made by the Respondent. Basing on these documents and facts, the Applicant prays for initiation of CIRP against the Respondent

7. No one appeared on behalf of the Respondent despite the notice served through e-mail as well as the speed post, therefore, the Respondent was proceeded ex-parte vide order dated 03.10.2022.

8. We have heard the submissions made by the Counsel on behalf of the Applicant and perused the paper book and written submissions. It emerges from the record that the Respondent had issued the Non-Convertible Debentures in two tranches i.e., NCD-1 and NCD-2 and the applicant was appointed as the Debenture Trustee through Debenture Trustee Agreements dated 23.08.2016 and 25.10.2016 respectively. In support of its entitlement to file the present application, the Applicant has relied on the following notification dated 27.02.2019 issued by the Ministry of Corporate Affairs (MCA):

2

THE GAZETTE OF INDIA EXTRAORDINARY

[PART II—SEC. 3(i)]

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 27th February, 2019

**S.O. 1091(E).**—In exercise of the powers conferred by sub-section (1) of section 7 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

- (i) a guardian;
- (ii) an executor or administrator of an estate of a financial creditor;
- (iii) a trustee (including a debenture trustee); and
- (v) a person duly authorised by the Board of Directors of a Company.

[F. No. 30/25/2018-Insolvency Section]  
GYANESHWAR KUMAR SINGH, Jr. Secy.

(IB)-605(ND)2022

Axis Trustee Ltd. Vs. Fortis Healthcare Holdings Pvt. Ltd.



9. From the aforesaid notification of the MCA, it is clear from the entry at serial no. (iii) that “a trustee (including a debenture trustee)” is eligible to file the application under Section 7 of IBC, 2016. Hence, in our view, the applicant, being “a debenture trustee” is entitled to file the present application.

10. The Applicant has also provided the computation of Financial Debt, which is reproduced below:

<u>NCD 1</u>		<u>Coupon 1.25%</u>		<u>Aug-24-2019 maturity</u>					
Instalment Date	24-08-2016	24-08-2017	16-09-2017				<i>Actual IRR</i>	<i>Needed IRR</i>	
Amount (₹)	-7,97,45,500	9,96,819	9,02,31,470				13.50%	13.50%	
Payment Dates	24-08-2016	24-08-2017	24-08-2018	24-08-2019	28-08-2019	30-09-2021	<i>Actual IRR</i>	<i>Needed IRR</i>	
Payout/Payin (₹)	-7,97,45,500	9,96,819				15,05,22,555	13.50%	13.50%	
Date of Default	16-09-2017						Penalty Interest	36,46,340	
Days in Default	1,475							1%	
							Principal	7,97,45,500	
							Interest/Redemption Premium	7,07,77,055	13.50%
							Default Penalty Interest	36,46,340	1%
							<b>Total Payout</b>	<b>15,41,68,895</b>	

<u>NCD 2</u>		<u>Coupon 1.25%</u>		<u>Dec-20-2019 maturity</u>					
Instalment Date	26-10-2016	27-10-2017	16-09-2017				<i>Actual IRR</i>	<i>Needed IRR</i>	
Amount (₹)	-3,93,49,000	4,93,210	4,35,59,365				13.50%	13.50%	
Payment Dates	26-10-2016	27-10-2017	27-10-2018	27-10-2019	20-12-2019	30-09-2021	<i>Actual IRR</i>	<i>Needed IRR</i>	
Payout/Payin (₹)	-3,93,49,000	4,93,210				7,26,64,970	13.50%	13.50%	
Date of Default	16-09-2017						Penalty Interest	17,60,276	
Days in Default	1,475							1%	
							Principal	3,93,49,000	
							Interest/Redemption Premium	3,33,15,970	13.50%
							Default Penalty Interest	17,60,276	1%
							<b>Total Payout</b>	<b>7,44,25,246</b>	

<b>Grand Total</b>	<b>22,85,94,141</b>
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11. On perusal of the case records, it is seen that the Applicant has sent the Demand/Recall Notice dated 12.09.2019 to the Respondent demanding payment of the entire amount, however, the Respondent neither raised any objection nor paid the amount. Furthermore, during the present proceedings, the respondent neither filed any reply nor any one appeared on behalf of the Respondent, therefore, it can be presumed that the respondent has nothing to say in the matter.

12. At this juncture, we refer to the definition of “default” in terms of Section 3(16) of IBC, 2016:

*“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;*

Thus, while adjudicating an application under section 7 of IBC, 2016, what this Authority has to see that there is a financial debt, which has not been paid.

13. In the instant case, existence of the financial debt is already established. As regards the default, we observe that the interest was required to be paid annually in terms of the term sheet of NCD-1 on 24.08.2017, 24.08.2018, 24.08.2019 and on maturity. Further, in terms of the term sheet of NCD-2, the interest was required to be paid on 27.10.2017, 27.10.2018, 27.10.2019 and on maturity. Neither any document in support of payment is on record nor the Respondent has



controverted the contentions of the Applicant. Hence, its occurrence of default is established beyond doubt.

14. In the given facts and circumstances, the Applicant having established the default on the part of the Respondent in payment of financial debt being above the minimum threshold and the application being complete, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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 Corporate Debtor.”



15. As proposed by the Financial Creditor, this Bench appoints Mr. Ashish Singh (Email ID: ashishsinghcs@gmail.com) having Registration No. IBBI/IPA-002/IP-N00416/2017-2018/11230 as IRP, subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority orders that:

*“Mr. Ashish Singh (E-mail: ashishsinghcs@gmail.com) as having Registration No. IBBI/IPA-002/IP-N00416/2017-2018/11230, IRP is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”*

16. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. A copy of this Order shall immediately be communicated to the Financial Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal.

18. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their record.



**(L. N. GUPTA)**  
**MEMBER (T)**



**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**