

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

\*\*\* \*\*

**TCP (IB) No. 54/7/AMR/2019  
[CP (IB) No. 370/7/HDB/2018]**

**IN THE MATER OF SMILECARE MULTI SPECIALITY  
HOSPITALS INDIA PRIVATE LIMITED**

*(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*

Between:

**Reliance Commercial Finance Limited**

Registered Office at Reliance Center,  
6<sup>th</sup> Floor, South Wing, Off. Western Express Highway,  
Santacruz (East), Mumbai,  
Mumbai City – 400 055.

... Petitioner

and

**Smilecare Multi Speciality Hospitals India Private Limited**

Registered Office at: D.No. C-13, Panchavathi Township,  
Akkireddipallem,  
Visakhapatnam - 500 012,  
Andhra Pradesh.

... Respondent

**Date of Order: 17.12.2019**

**CORAM:**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

**Appearance:**

For Financial Creditor : Mr. G.P. Yashvardhan, Advocate

For Corporate Debtor : Mr. Srikanth Hariharan, Advocate.

**ORDER**

The Financial Creditor (FC) of the Corporate Debtor (CD) seeks Corporate Insolvency Resolution Process (CIRP) against it in this Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code).

2. The brief facts leading to the petition are follows.

The Respondent was incorporated on 19.08.2013 under the Companies Act, 1956 as a Private Limited Company. It *inter alia* carried on the business to purchase, lease or otherwise acquire, establish, maintain, operate, run, manage or administer hospitals, medicare, daycare and healthcare centers, nursing homes, clinics for in-door and out-door patients and facilities for reception and treatment of persons suffering from injuries and illness, disabilities and deficiencies of any kind or nature whatsoever and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation and to provide for free treatment to a reasonable number of patients belonging to economically weaker sections of society in the speciality and Multi Speciality departments, etc. The Respondent approached M/s Reliance Capital Limited (RCL) for loan to finance its projects. The RCL sanctioned three loans i.e. (i) Loan Account No, RLMRVIZ000294594 dated 25.02.2015 for Rs. 70,70,000/-; (ii) RLMRVIZ000317731 dated 25.01.2016 for Rs. 55,52,000/-; and (iii) RLMRVIZ000333927 dated 16.12.2016 for Rs. 2,15,00,000/- totalling Rs. 3,41,22,000/-, under Facility-cum-Hypothecation Agreements entered into between the RCL and the Respondent on 08.12.2014; 25.01.2016 and 15.12.2016 respectively. The Hon'ble High Court of Bombay vide order dated 09.12.2016 sanctioned the

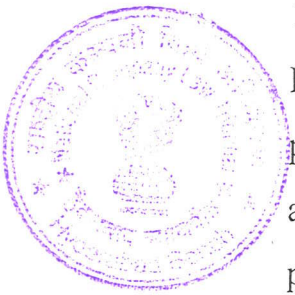


Scheme of Arrangement between RCL and the Petitioner. Wherein the rights and obligations of RCL under the loan agreements have been transferred to the Petitioner. The Respondent defaulted in repayment of the loans. Since the Respondent committed default the petitioner came up with the present application on 11.06.2018 seeking CIRP. The Petition filed before the NCLT, Hyderabad Bench was transferred to this Tribunal, after its establishment.

3. The Respondent appeared in response to the notice and contested the petition by filing Counter Affidavit on 28.01.2019. It is contended that, there is a material defect in the Part IV of Form I of the Petition i.e. total disbursed amount pursuant to Loan Account No.RLMRVIZ000294594 mentioned as Rs. 7,07,00,000/- but sanctioned loan amount is Rs. 70,70,000/- because of which the entire liability is not Rs. 9,77,25,000/- as shown in the Form I. Thus Form 1 is defective. Further no document or statement of account is filed from the Banker of the Petitioner stating that no funds from the Respondent has been received by the Financial Creditor. Hence, the petition is liable to be dismissed in limine.

4. It is further submitted that the Company Petition is defective in as much as a single petition under Section 7 of the Code for three separate financial debts is contrary to the statutory mandate. The Petitioner had initiated arbitration proceedings in respect of recovery of an amount of Rs. 49,23,599/-. The Petitioner however claimed Rs. 2,88,11,946/- in the present petition. Therefore, there is a serious dispute as to the amount of liability, if any, owed by the Respondent. The said Arbitration proceeding is pending. The present proceeding is initiated solely to frustrate the Arbitration

proceedings and legitimate defence of the Respondent before the learned Arbitrator. It is accordingly vexatious and malicious. Further, the Petitioner calls upon this Tribunal to adjudicate upon dispute, which is already a subject matter of arbitration before the Arbitral Tribunal. Hence NCLT has no jurisdiction to entertain the present Petition. The Petitioner is not competent to initiate the present proceedings against the Respondent as no contract has been entered into between them. The purported assignment of debt in favour of Petitioner by RCL by virtue of the order of the Hon'ble High Court of Bombay, is also untenable as it does not contain details of the specific transfer of debt of the Respondent to the Petitioner. No notice of assignment was issued to the Respondent pursuant to the purported assignment or transfer of debt and no stamp duty is paid in respect of the said assignment of debt by the Petitioner as applicable under the Indian Stamp Act, 1899. Hence there is no assignment of debt in the eyes of law. The Respondent is running a hospital. Interests of the patients is of paramount consideration. Any attempt by the Petitioner to seek appointment of an Insolvency Resolution Professional would be a process in vain, as it would seriously jeopardize the interests of the patients. The IRP is not a specialized personnel to understand the nitty gritty of running a hospital. Therefore, public interest would outweigh the interest of the Petitioner, being private interest. The Petition therefore deserves to be rejected.



5. The Petitioner filed Rejoinder on 03.09.2019, stating that the Respondent with a view to obfuscate the real issue involved in the Company Petition has come with so many irrelevant and inappropriate allegations which do not have any basis on the subject matter before this Tribunal. Due to typographical error in

the Petition, the figures with respect to the amount disbursed to the Respondent have been wrongly mentioned, which has led to the variation in the amount disbursed by the Petitioner to the Respondents. The Petitioner has filed an Interlocutory Application No. 513/2019 seeking amendment to that effect and this Tribunal vide its order dated 13.08.2019 allowed the IA and subsequently, an amendment was carried out by the Petitioner. Section 238 of IBC, stipulates that the provisions of the Code shall have an overriding effect over anything inconsistent therewith in any law. The pendency of proceedings before the Arbitral Tribunal and DRT would not preclude or bar the Financial Creditor from filing a Petition under Section 7 of IBC to initiate CIRP against the Corporate Debtor. Part V(2) of the Petition mandates the Petitioner to disclose particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any, as on date of filing a Petition under Section 7. As on date of filing the Company Petition i.e. 11.06.2018, no Award has been passed by the Arbitrator, adjudicating on the default. The Arbitrator passed an Award only on 16.03.2019 that is much after the date of filing the Company Petition and the Award was in favour of Petitioner and against the Respondent. The Respondent has not disputed nor denied the availing of Financial Assistance and the amount payable by it to the Petitioner. The petition therefore needs to be admitted.



6. The parties have been heard. Perused the pleadings and documents filed by the parties.
7. In an application under Section 7 of the Code the reason for the inability of the Respondent in paying off the debt is not required to be looked into by the Adjudicating Authority. What is required to

be seen is the default. It is not in dispute that the Respondent has availed three credit facilities from RCL. The liability has subsequently transferred to the Petitioner by the order of a competent court. The objection by the Respondent with regard to such transfer accordingly cannot be accepted. In this case the default has been satisfactorily proved. Besides there is an Award by the Arbitrator in favour of the Petitioner passed during the pendency of the present petition. Thus the petition needs to be admitted. The Petitioner has suggested the name of Shri Rachamalla Ramachandra Reddy, an Interim Resolution Professional (IRP) and has also enclosed his written consent. No disciplinary proceeding is pending against the proposed IRP as ascertained from the website of the IBBI. Hence ordered.

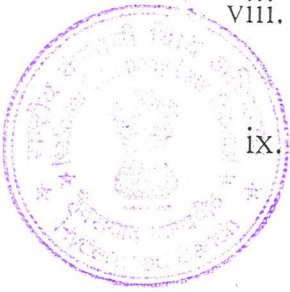
### ORDER

The Company Petition is admitted on contest.

- i. The Corporate Insolvency Resolution Process of the respondent shall commence from this date and shall be completed within 180 days hence, as provided under Section 12(1) of the Code.
- ii. Shri Rachamalla Ramachandra Reddy, Chartered Accountant [Registration No. IBBI/IPA-001/IP-P01472/2018-2019/12270] having office at Flat No. 508, Block A1, TVS Lake View Apartments, Road No.10, Panchavati Colony, Manikonda, Hyderabad – 500 089; e-mail ID: umarachamalla12081961@gmail.com is appointed as the Interim Resolution Professional.
- iii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of IBC and Rules made thereunder.



- iv. Moratorium under Section 14 of the IBC in respect of the Respondent is hereby declared.
- v. The Directors, Promoters or any other person associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effective discharge of his functions thereunder.
- vi. The Registry is directed to communicate the order to the Petitioner/Financial Creditor and the Respondent/Corporate Debtor.
- vii. The Registry shall send a copy of this order to the Registrar of Companies, Andhra Pradesh for effecting necessary alterations in the status of the Respondent/Corporate Debtor in relevant records for general information.
- viii. The petitioner/OC and the Registry are also directed to send the copy of this order to IRP for necessary compliance.
- ix. There would however be no order as to costs.



sd/-

**MOHAMMED AJMAL**  
**MEMBER JUDICIAL**

  
Regt./Asst. Regt./C  
National Company Law Tribunal

प्रमाणित प्रति TCP (IB) NO 54/7/AMR/19  
**CERTIFIED TRUE COPY**  
केस संख्या CASE NUMBER..... CP/IB/NO 370/7/HDB/18  
निर्णय का तारीख DATE OF JUDGEMENT..... 17/12/19  
प्रति देवार दिना मथा तारीख 20/12/19.  
COPY MADE READY ON.....