

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

**CP (IB) No. 21/CB/2021**

**In the matter of:**

An application under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

**In the matter of:**

**Central Bank of India**

**...Financial Creditor**

**Chandulal Chandrakar Memorial Hospital Private Limited**

**... Corporate Debtor**

***Appearances (through video conferencing)***

For the Applicant : Mr. Umesh Chandra Sahoo. Advocate.

For the Respondent : Mr. Sandeep Bajaj,  
Mr. Devansh Jain. Advocates.

**Order reserved on: 05.04.2022  
Order Pronounced on: 06.05.2022**

Coram:

Shri P. Mohan Raj : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

**ORDER**

*Per: P. Mohan Raj, Member (Judicial)*

1. This application under section 7 of Insolvency and Bankruptcy Code 2016 with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, has been filed by the Central Bank of India through its authorised person

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Chief Manager, Central Bank of India Civic Central Bhilai Branch, District Durg- Chhattisgarh thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of Chandulal Chandrakar Memorial Hospital Private Limited a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act, 2013 having its Registered Office at Nehru Nagar Chowk, Bhilai, District Durg, Chhattisgarh 490020. (Herein and after referred as the corporate debtor).

2. It is submitted in the petition that the corporate debtor has been banking with Petitioner. The Central Bank of India had sanctioned credit facilities in the form of term Loan and secured overdraft working capital loan. On 26.07.2012 a consortium Term Loan to corporate debtor executed between Indian Bank, Central Bank and the corporate debtor with an aggregate limit of Rs.130 crores. On the same date interest agreement also executed between the Indian Bank and Central Bank of India. On various dates loans were disbursed to the corporate debtor. When the corporate debtor committed default, its account was declared as NPA on 30.05.2019. As on 30.05.2019 a sum of Rs.24.47 crores towards term loan and a sum of Rs.3.20 crores towards secured over draft, in total a sum of Rs. 27,67 cores were due along with interest till the date of realisation of dues. On the respondent side not disputed the due amount, further no reply has been filed. The right to file reply was forfeited.

3. On the respondent side argued the case, challenging the maintainability of the petition filed in the absence of consent of the lead bank i.e., Indian Bank. On the respondent side relies upon sub clause (C) of clause 6 of Inter-se agreement dated 26.07.2012 (page 59 of petition) entered between the lead bank, Indian Bank and Central

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Bank of India. The corporate debtor is not a party to the said inter-se agreement. Further clause 4 of inter-se agreement clearly defines the rights and obligations of each of the lenders under the Agreement and the other transaction documents are several. The loans were individually sanctioned by the financial creditor as such it has every right to enforce its rights. On the corporate debtor side relies upon the NCLAT order passed in Park Energy Limited vs Syndicate Bank CA.No.270 Of 2020 dated 27.08.2020. The facts of the said case are entirely different from case in our hands. In the said cited case under the debt restructuring scheme corporate debtor's deposit would go to the Trust Retention Account, the corporate debtor barred to discharge its liability without approval of lead Bank Punjab National Bank , when the financial creditor syndicate Bank demand payment the lead bank insisted the financial creditor to issue Letter of credit, when the financial creditor decline to issue LC the financial creditor made the account of Corporate debtor as NPA and initiated proceeding under section 7 of IBC. In that situation the NCLAT observed as follows: -

“The default cannot be attributed to the Corporate Debtor as the money deposited with the TRA Account was already available for release but its release was regulated in terms of the ‘Punjab National Bank Consortium Inter-se Agreement’ r/w ‘Trust Retention Account (TRA) Agreement’. May be the Lead Bank was not justified in insisting upon issue of Letter of Credit as a precondition for release of payment in favour of Respondent No.1, but that does not in any manner be read as an act of default on the

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part of Corporate Debtor who has, in compliance of the terms of the aforesaid agreements made over its entire collection in the TRA Account as per terms of the Agreement. It would therefore be difficult to hold that a default has occurred on the part of the Corporate Debtor. Non-release of money out of the entire collection of Corporate Debtor does not render the Corporate Debtor liable for default who has performed his part of the contract. The fault lies somewhere else. In the inter-se dispute of Financial Creditors, Respondent No. 1 may have faced discrimination as regards release of money from TRA Account but that would not render the Corporate Debtor accountable for default. In these circumstances, triggering of Corporate Insolvency Resolution Process at the instance of Respondent No. 1 is unwarranted. This is not the case where the Corporate Debtor is invoking Inter Creditor Agreement to wriggle out of its liability.”

4. In the supra citation it is specifically clarified that it is not the case where corporate debtor not invoking the inter-se agreement to get out its liability. Hence the citation relied on the respondent side in no way helpful to the respondent/corporate debtor herein. The NCLAT in Amitabh Kumar Jha vs Bank of India&anr. on 22 May,2020 <https://indiankanoon.org/doc/93893821/> held that the inter party

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agreement between the creditors would not override the statutory mechanism and right created and enforceable under statute. It is held as follows: -

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed.

5. In view of the settled position of law discussed above the contention of the respondent is turned down as unsustainable.

6. On the respondent side further submitted that the medical college run by the corporate debtor is taken over by the Government of Chhattisgarh, hence the present proceeding under section 7 IBC 2016 is not maintainable. On the petitioner side stated that medical college is one of the assets of corporate debtor taken over by the Government of Chhattisgarh on the requisition of the corporate debtor themselves on 03.09.2021. The mere taken over the administration of college by the Government will not stand on the way, to the financial creditor to exercise his legal right to recover the loan amount from the corporate debtor from other remaining assets.

7. Another objection made on the corporate debtor side is relating to the discrepancies appeared in the documents. The Chief Manager Mr. Vishnu Kumar

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Sharma was authorised by the financial creditor Bank to file this petition under section 7 IBC 2016 by authority letter dated 31.12.2020 (page 21 of petition). The said authorised officer had sworn affidavit on 04.11.2020 (page 20), prior to the date of authority letter. On the petitioner side said that on the oral instruction of higher officials, he had sworn the affidavit, then the letter of authority sent. Further it is stated that the petition was presented into the Authority on 13.01.2020 after the receipt of authority letter dated 31.12.2020. No doubt there is discrepancy, but it is not a material defect, further it has not prejudiced the case of the respondent in any manner.

8. On perusal records shows that the petition is filed time Debt and Defaults are there, they are not disputed. The requisite of an application under section 7 of IBC are available on record and duly proved.

9. The financial creditor has suggested Mr. Jagadish Kumar Parulkar for appointment of an interim resolution professional, and taken his consent and obtained From No.2, that no disciplinary proceedings are pending against him with the Board or IIPICAI.

10. We therefore consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor.

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

(a) The petition bearing CP (IB) No.21/CB/2021 M/s Central Bank of India, 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

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for initiating CIRP against M/s Chandulal Chandrakar Memorial Hospital Pvt. Ltd. (CIN: U85110CT1997NPL011769), 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) Mr. Jagadish Kumar Parulkar, registration No. IBBI/IPA-001/IP-P00671/2017-2018/11143 having office at GS-2, CSIDC Commercial Complex, Mahadev Ghat Road, Raipur Chowk, Raipur, Chhattisgarh-492001 is hereby appointed as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 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 15,17,18,19,20 and 21 of the Code.

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(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.2,00,000/- (Two 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 or WhatsApp 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, Chhattisgarh, 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.

12. CP (IB) No.21/CB/2021 to come up on 10.06.2022 for progress report.

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,

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14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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**Satya Ranjan Prasad**  
**Member (Technical)**

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**P. Mohan Raj.**  
**Member (Judicial)**

Signed on this 6<sup>th</sup> day of May, 2022.

Supriya p.s