



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 521/Chd/Hry/2019

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

**Corporation Bank
through its Attorney, Sh. Kishan Kumar, Chief Manager
having its Registered Head Office at:
Mangladevi Temple, Pandeshwar,
Mangalore**

And

**Branch Office at:
5E/3BP, Neelam Railway Road,
Faridabad-121001, Haryana**

....Petitioner-Financial Creditor

Vs.

M/s SRS Healthcare & Research Centre Limited

**having its Registered Office at:
Sunflag Hospital, Sector-16A,
Faridabad, Haryana-121002
CIN No.U85190HR2013PLC049113**

...Respondent-Corporate Debtor

Judgment delivered on: 01.03.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner-Financial Creditor : Mr. DK Gupta, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 02.02.2023.



PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Corporation Bank** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Attorney, Sh. Kishan Kumar, Chief Manager under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s SRS Healthcare & Research Centre Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Sh. Kishan Kumar with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 10.05.2013 incorporated under the Companies Act. The company having its Registered Office at: Sunflag Hospital, Sector-16A, Faridabad, Haryana-121002, CIN No.U85190HR2013PLC049113. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-A-3 of the petition.

3. Brief facts of the case are that the vide sanction letter reference No.CO/DLI/CSI/CLCC/M301015/AO6/347/2015-16 dated 30.10.2015 the Term Loan of Rs.25 Crores was sanctioned and granted by the financial creditor. The Financial contract was executed in favour of members of the consortium (corporate debtor being one of them) in pursuance to the Board Resolution dated 23.11.2015. The loan documents were executed and security interest was created, paripassu charge by way of hypothecation of medical equipment, lifts, AC and



other moveables for the estimated value of Rs.86,09,00,000/- (Rupees Eighty Six Crores Nine Lakhs Only). The share of the corporate debtor was Rs.21,52,00,000/- (Rupees Twenty One Crores Fifty Two Lakhs Only) i.e., 25%. The account of corporate debtor was classified as Non-performing Asset on 31.03.2017. The notice under Section 13(2) of SARFAESI Act was served upon corporate debtor on 19.06.2017. Thereafter, Original Application being OA No.338 of 2018, case title Corporation Bank Vs. M/s SRS Healthcare & Research Centre Limited had been filed before DRT-II, Delhi, for recovery of Rs.6,19,72,465.92/- (Rupees Six Crores Nineteen Lakhs Seventy Two Thousand Four Hundred Sixty Five and Paise Ninety Two Only), which is still pending.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 21,07,22,947/- (Rupees Twenty One Crore Seven Lakhs Twenty Two Thousand Nine Hundred and Forty Seven Only as on 05.08.2019) and date of default is 31.03.2017 i.e. when the corporate debtor was classified as Non-Performing Asset. Copy of Computation of amounts (Annexure A-4), Board Resolution dated 23.11.2015 (Annexure A-7), Sanction Letter dated 18.11.2015 (Annexure A-8), Letters ceding paripassu charged (Annexures A-9, A10 & A-11), Escrow Agreement dated 05.12.2015 (Annexure A-12), Inter-se agreement dated 05.12.2015 (Annexure A-13), Facility Agreement (Annexure A-14), Joint deed of hypothecation (Annexure-A15) & Statement of Accounts (Annexure A-17) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavits of service were filed vide Diary Nos. 7081 dated 13.12.2019 and 01345/02 dated 07.12.2022. However, none appeared on behalf of the respondent-corporate debtor from the



very beginning of the filing of this case nor any reply was filed, therefore, the respondent-corporate debtor proceeded against ex parte vide order dated 02.02.2023 of this Adjudicating Authority. The short written submission/synopsis was filed by the petitioner-financial creditor vide Diary No.01345/3 dated 06.01.2023.

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 31.03.2017 i.e. when the corporate debtor was classified as Non-Performing Asset. The present petition is filed vide diary No.4267 dated 22.08.2019. It can be said that the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. The compliance affidavit was filed by the petitioner vide diary No.01345/7 dated 10.02.2023, wherein it is stated that the petitioner has not received any notice from the respondent-corporate debtor about the dispute of the claim. It is observed from the record that in the present case, the default is evidenced by the Computation of amounts (Annexure A-4), Board Resolution dated 23.11.2015 (Annexure A-7), Sanction Letter dated 18.11.2015 (Annexure A-8), Letters ceding paripassu charged (Annexures A-9, A10 & A-11), Escrow Agreement dated 05.12.2015 (Annexure A-12), Inter-se agreement dated 05.12.2015 (Annexure



A-13), Facility Agreement (Annexure A-14), Joint deed of hypothecation (Annexure-A15) & Statement of Accounts (Annexure A-17) are attached with the main petition. As per the financial records, it is evident that an amount of Rs.21,07,22,947/- (Rupees Twenty One Crore Seven Lakhs Twenty Two Thousand Nine Hundred and Forty-Seven Only as on 05.08.2019) is still pending which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated requests by petitioner-financial creditor.

10. In Part-III of Form No. 1, Mr. Sanjay Kumar Aggarwal, Interim Resolution Professional (IRP) has been proposed by the petitioner. The form-2 along with certification of registration issued by the Insolvency and Bankruptcy Board of India is submitted with the main petition. Further, vide Dairy No. 01345/06 dated 06.02.2023, Form-B dated 14.09.2022 in which AFA Certification is valid till 13.09.2023 is submitted. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sanjay Kumar Aggarwal, there is nothing adverse against him. In view of the above, we appoint Mr. Sanjay Kumar Aggarwal, RegistrationNo.IBBI/IPA-002/IP-N00126/2017-18/10295, Email:sanjayaggarwal.fcs@gmail.com, Mobile No. 9876105414, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Sanjay Kumar Aggarwal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall



be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in



managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records



at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.



- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and



- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.



14. The petition is admitted accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

March 01, 2023

SD/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)