



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-I**

C.P. (IB) No. 749/2024

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

In the matter of

Axis Trustee Services Limited (in its
capacity as the Debenture Trustee for
Blacksoil Capital Private Limited and
Blacksoil India Credit Fund)

...Financial Creditor/ Applicant

Versus

Redkenko Health Tech Private Limited
CIN: [U85100MH2020PTC335670]

...Corporate Debtor/Respondent

Order Delivered on: 16.12.2024

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Sh. Justice V.G Bisht

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

:

Mr. Nausher Kohli a/w Dhruv Vaishya
i/b Dhruve Liladhar & Co.

For the Corporate Debtor

:

None Present



ORDER

1. This Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) by Axis Trustee Services Limited (*in its capacity as the Debenture Trustee for Blacksoil Capital Private Limited and Blacksoil India Credit Fund*) (**"Financial Creditors"**) against Redkenko Health Tech Private Limited (**"Corporate Debtor"**) pertaining to the issue of failure to comply with the material financial covenants as per the Debenture Trust and Hypothecation Deed, regarding the disbursal of 200 debentures having a face value of Rs. 5,00,000/- (**"Debentures"**) against a total debt of Rs 10,00,00,000/-, hence seeking to initiate Corporate Insolvency Resolution Process (**"CIRP"**) against Corporate Debtor.

Brief Facts of the case:

2. The **Financial Creditor, Axis Trustee Services Limited** (*in its capacity as the Debenture Trustee for Blacksoil Capital Private Limited and Blacksoil India Credit Fund*) is a company incorporated under the Companies Act, 1956 having its registered office at Axis House, Bombay Dyeing Mills Compound, Pandhurang Budhkar Marg, Worli Mumbai - 400025.
3. The **Corporate Debtor, Redkenko Health Tech Private Limited** is a private company incorporated on 08.01.2020 under the Companies Act, 2013, having its registered office at 16th Floor, 1608, B & C Wing C/66, G Block One BKC, Opposite Bank of Baroda, Bandra(E), Mumbai, Mumbai City, Mumbai, Maharashtra, India, 400051. The Corporate Debtor is engaged in the business of health analytics, providing recommendations for healthy behaviors and options to its members or subscribers and it offers third-party products and services in exchange for consideration, commission, or remuneration. Therefore, this Bench has territorial jurisdiction to deal with this petition.
4. The present Petition was filed on 01.10.2024 before this Tribunal for claiming an aggregate amount of Rs.5,65,35,993/- (Rupees Five Crore, Sixty-Five Lakhs, Thirty Five Thousand Nine Hundred and Ninety three only) as on May 2024 comprising of Rs. 5,40,25,043/- as the loan balance, interest amounting to Rs. 8,95,484/- calculated

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at 13.75% p.a., Default interest amounting to Rs 15,83,313/- calculated at 24% p.a. and delayed interest amounting to Rs. 32,153/- calculated at 13.75% p.a., arising out of the Debenture Trust and Hypothecation Deed dated 14.09.2023 executed by the Debenture Trustee (acting on behalf of the Financial creditors) and the Corporate Debtor. The Date of Default as specified in part IV is 27.03.2024.

Summary as on 14 May 2024 (BCPL and BICF)		
Particulars		Amount (INR)
Loan balance as on April 2024		5,40,25,043
Interest at 13.75% p.a (Gross)		8,95,484
Default Interest @ 24% p.a (Gross)		15,83,313
Delayed Interest @ 13.75% (Gross)		32,153
Total payable by Redkenko on 14 May 2024		5,65,35,993

Submissions made by the Financial Creditor:

5. The Financial Creditors submit that the Axis Trustee Services Limited (**“Debenture Trustee”**) was appointed as the Debenture Trustee by the Financial creditors with respect to the issue of 200 debentures, as per the Debenture Trustee Agreement dated 14.09.2023. Subsequently on the same date, the debenture trustee and Corporate debtor executed a Debenture Trust and Hypothecation Deed (**“Agreement”**) with a purpose of issuing 200 secured, redeemable, unrated and unlisted debentures having a face value of Rs 5,00,000/- (**“Debentures”**) each against the total debt of Rs. 10,00,00,000/- (Rupees Ten Crore only) and entitling the Debenture trustee to act on behalf of the Financial creditors with respect to the said debentures.
6. It is further submitted by the Financial creditor that, in furtherance of the aforesaid transaction a total of Rs. 10,00,00,000/- was disbursed collectively against the Financial Creditors on 15.09.2023. Blacksoil India Credit Fund disbursed Rs. 5,00,00,000/- against the allotment of 100 secured, redeemable, unrated and unlisted non-convertible debentures having face value of Rs. 5,00,000/- (**“BICF Debentures”**) each by the Corporate debtor. Additionally, Blacksoil Capital Private Limited also disbursed Rs. 5,00,00,000/- against the allotment of 100 secured, redeemable, unrated and unlisted non-convertible debentures having face value of

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Rs. 5,00,000/- ("**BCPL Debentures**") by the Corporate debtor itself as given below:

Sr. No.	Particulars of Financial Creditors	Value of Debenture (In Rupees)	Debentures Allotted
1	Blacksoil India Credit Fund	5,00,00,000/-	100
2	Blacksoil Capital Private Limited	5,00,00,000/-	100
	Total	10,00,00,000/-	200

7. The Financial creditor further submits that the Financial Creditors had shared an email dated 13.12.2023 to the Corporate debtor reflecting the Corporate debtor's default in complying with the covenants and conditions set out in the Agreement especially with respect to the financial covenants and submission of essential documents related to the Debenture allotment. Thereafter vide letter dated 21.03.2024, the Debenture Trustee addressed the default in fulfilling the terms of the Agreement by the Corporate Debtor and provided a cure period to fulfill of 7 days to cure the same, failing which default interest and other actions as per Clause 12.3 would be levied as further action as specified by the Financial creditor in the aforesaid letter. The Financial creditor reports that the Corporate debtor in response to the letter dated 21.03.2024, shared a letter as on 22.03.2024 addressing the concerns raised.
8. It is further submitted by the Financial creditor that, as a reply to the letter shared by the Corporate debtor, they shared a notice dated 23.03.2024 addressing an acceleration of redemption of debentures by the Corporate debtor and further calling them upon to rectify the default within 3 days. The Corporate debtor responding to the said notice, shared a letter dated 24.03.2024 had admitted their default in fulfilling the liabilities under the Agreement and expressed their incapacity to repay the same. As a further course of action, the financial creditor submits that, the said response letter by the Corporate debtor was responded by the Debenture Trustee exercising its rights under the Hypothecation Power of Attorney, specifically addressing the Corporate debtor, its promoters and wholly owned subsidiaries as on 27.03.2024.



Findings:

1. Heard learned Counsel for the Financial Creditors and perused the records.
2. The Bench upon perusal of the record takes note the proof of service by the counsel for the Financial Creditors whereby it is stated that the present company petition along with its exhibits was served upon the Corporate Debtor via an email attachment as on 15.03.2024 and that the hard copy will be dispatched to the Corporate debtor's office. It is also noted that the Financial creditors had dispatched the hard copies of the Company petition and its exhibits to the Corporate debtors, however the same returned back to the Financial creditor with a remark "*Addressee moved*".
3. The Bench had vide order dated 11.10.2024, had directed the "*Registry to issue notice to the Respondent clearly intimating the next date of hearing by speed post/regd. post and requiring them to file reply within two weeks after duly serving the copy to the other side at least two days before the next date of hearing*". Upon perusal of record, the Registry has placed on record the proof of service that in compliance to the said order, the Registry had sent the notice via Speed-Post dated 17.10.2024 however, the same also returned back to the Registry stating that the "*Addressee moved*".
4. Upon perusal of records, it has been observed by this Bench that the Financial Creditors have served the copy of the Company petition to the Insolvency and Bankruptcy Board of India ("**IBBI**") via email dated 24.06.2024. The Financial creditors have also placed on record Form 1A(IAAA) dated 06.08.2024.
5. Thereafter vide order dated 12.11.2024, this Bench had directed the Financial creditors "*to take out substituted service of notice by way of Paper Publication*" since the notice issued by the Registry also returned. Thus, in compliance of the aforesaid order the Financial Creditor had published a public notice on 30.11.2024 in Free Press Journal newspaper (English) and Navshakti Newspaper, Free press Journal (Marathi) and have placed on record the affidavit of service for the same.
6. It has been observed by this Bench that the Corporate Debtor have already been granted various opportunities to appear in person/ or through counsel and to file and



place on record their reply to the present petition but neither the Corporate Debtor filed any reply nor their Counsels appeared, thus this Bench decided to proceed ex parte vide the same order. The matter is thus decided on merits based on material available on record.

The following facts are not in dispute:

7. That an Agreement was executed between the Debenture Trustee who are acting on behalf of the Financial Creditors and the Corporate Guarantor on 14.09.2024. The total amount of Rs 10,00,00,000 was extended to the Corporate Debtor for a consideration in time value of money on the basis of the said Agreement and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.
8. It has been observed that the Corporate Debtor has issued 100 debentures each of face value of Rs. 5,00,000/- to the Financial creditors and the same is placed on record through the Transaction Statements and the Bank accounts of both the Financial creditor. It has also been observed upon perusal of the Bank statements of the Financial Creditors that there was a disbursal in the form of subscription to the debentures and part payments by the Corporate debtors towards redemption thereof from the period between October 2023 and March 2024. Hence, it can be understood that the amount after the part redemption of debentures along with the applicable interests amounts to Rs. 5,65,35,993/- as on May 2024 that also directs to the fact there was a debt and a default on the Corporate debtor.
9. Hence, there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.
10. Upon perusal of the records it can be observed that there has been communication between the Financial Creditor and the Corporate debtor with respect to the debt amount, the default on the part of the Corporate debtor in fulfilling its financial covenants with respect to the Agreement and the cure periods given by the Financial creditors on multiple occasions namely in the emails dated 21.03.2024, 23.04.2024 and 27.03.2024. The Bench has also taken note of the email responses by the

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Corporate debtor especially email dated 24.03.2024 that provides an acknowledgment of the debt amount by the Corporate debtor and their inability to repay the liability due to financial constraints, the excerpt of the same is given below:

We sincerely appreciate that you have been gracious enough to grant us 3 more days to make payment of the Outstanding Amounts. However, as informed to you in our response notice dated March 22, 2024, the Company is in critical financial health due to which the Company may not be able to pay the Outstanding Amounts. We are extremely disappointed to inform you of this unfortunate financial situation and the paucity of funds being faced by the Company; but it is our moral responsibility to give you a clear and accurate picture of the present situation of the Company. Nonetheless, we are actively making endeavours to explore various avenues to revert this ill-fated situation.

11. That there is also no dispute that the Petition is within limitation period in accordance to Article 137 of Limitation Act, 1963 since the petition this company petition was filed on 01.10.2024 and the date of default is given as 27.03.2024 in the Part IV of the petition. Hence, the application falls within the limitation period of three years.
12. That upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Hence, the debt due and default is established. Hence, this Company Petition is liable to be admitted.
13. The Financial Creditor has proposed the name of Mr. Hemanshu Kapadia, Registration No: IBBI/IPA-002/IP-N00318/2017-2018/10923, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
14. It is, accordingly, hereby ordered as follows: -
15. We are hereby directing the Suspended Board of Directors to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.
16. There shall be a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("Code"), in regard to the following:

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- (i) *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;*
- (ii) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;*
- (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

Notwithstanding the above, during the period of moratorium:

- (i) *The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;*
- (ii) *That the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;*

17. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Section 31(1) of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

18. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. **Mr. Hemanshu Kapadia, Registration No: IBBI/IPA-002/IP-N00318/2017-2018/10923**, Email Id: hemanshu@hkacs.com and Phone: 9821412675 having registered address at Office no. 201, 2nd Floor, A-Wing, Jeevan Prabha Society, Chandavarkar Road, Borivaii (West), Mumbai - 400092, is hereby appointed as

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Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India ("IBBI"). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

20. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
21. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC) and the amount deposited by the financial creditor shall be refundable in priority over the other debts out of funds available with the Corporate Debtor.
22. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
23. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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 Court within seven days from the date of receipt of a copy of this order.

Order

In the above circumstances the petition bearing CP (IB) 749/MB/2024 filed by **Axis Trustee Services Limited** (*in its capacity as the Debenture Trustee for Blacksoil Capital*

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Private Limited and Blacksoil India Credit Fund), the Financial Creditor, under section 7 of the Code r/w Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Redkenko Health Tech Private Limited**, the Corporate Debtor, is **Admitted**.

Sd/-

Sh. Prabhat Kumar
Member (Technical)

Sd/-

Sh. Justice V.G Bisht
Member (Judicial)

/JJ/