

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
CP(IB)/3(MP)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Sukhkarta Medicoose
V/s
M/s Greater Kailash Hospitals Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 30/07/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

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CHITRA RAM HANKARE
MEMBER (JUDICIAL)

ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/03/MP/2024

(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Sukhkarta Medicose

A Partnership Firm
Having its address at:
Shop No. 1, 11 Old Palasia,
Indore- 452018
Madhya Pradesh

.....Petitioner/Financial Creditor

Versus

M/s Greater Kailash Hospitals Private Limited

CIN No.: U85110MP2008PTC021307

Having its registered address at:
11/2 Old Palasia Greater Kailash,
Indore- 452001
Madhya Pradesh

.....Respondent/Corporate Debtor

Order Pronounced On: 30.07.2024

Coram: Chitra Ram Hankare, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For Petitioner: Ld. PCA Ms. Ayushi Patidar

For Respondent: Ld. Adv. Mr. Prashant Upadhyay

ORDER

1. This petition was filed on 19.01.2024, by Mr. Punit Lal, authorized representative of Sukhkarta Medicose (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Greater Kailash Hospitals Private Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 2,28,90,000/-. The date of default stated by the financial creditor is 30.06.2023.

2. The averments made by the financial creditor in its petition and presented/argued by the learned PCA for the financial creditor are summarized hereunder:

(i) The financial creditor entered into an agreement in the year 2017 with the corporate debtor, for the right to use shop premises owned by the corporate debtor for operation of a pharmacy and medicine business. A security deposit of Rs 2,10,00,000/- was deposited by the financial creditor, which was to be refunded upon agreement termination.

(ii) The said agreement was valid for a period of three years from the date of agreement i.e. 25.12.2017 or termination of agreement.

(iii) It came to the knowledge of the financial creditor that the corporate debtor is facing financial difficulty and which in turn impacted footfall and business operations of the financial creditor as well.

(iv) Owing to which the financial creditor decided to terminate the agreement and demanded back the security deposit held by the corporate debtor. A notice dated 31.01.2023 in this regard was sent to the corporate debtor.

(v) Corporate debtor in its reply to the said notice informed the financial creditor about the utilisation of the said amount in the commercial operations of the hospital and repayment to lenders and sought time for repayment of the amount. Thereafter, another letter was

issued by the financial creditor to the corporate debtor after the expiry of the time sought by the corporate debtor, demanding back the deposit amount.

(vi) In response to the said letter, the corporate debtor proposed for treatment of the security amount as loan to be repaid in instalments along with the interest component. Thereafter, it was mutually consented to enter into a fresh agreement with changes in terms of deposit.

(vii) A fresh agreement dated 02.04.2023 was executed between the parties, with changes in terms of the deposit amount held by the corporate debtor, clearly documenting terms of repayment along with the interest.

(viii) Further, various reminder letter and notices were issued to the corporate debtor by the financial creditor. The corporate debtor has failed to meet its repayment obligations as outlined in the modification agreement.

3. In this context, defence placed by the corporate debtor in its affidavit in reply and submissions made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

(i) The corporate debtor admits that it had accepted the amount as loan utilized in the operation of hospital. The amount claimed by the financial creditor is payable by the corporate debtor in instalments together with interest @12% per annum as per the agreement executed between the parties. However, the corporate debtor could not repay its loan liability within stipulated time on or before 30.06.2023 (when the first instalment was due) which was unintentional as the corporate debtor could not generate the cash flow required for the same due to ongoing financial crisis.

(ii) The corporate debtor has also approached the financial creditor to make One-Time Settlement (OTS) for Rs 125 Lakhs as a full and final payment, which was payable in five quarterly instalments of Rs 25

Lakhs each. The proposal was given to the financial creditor on 08.02.2024 which was not accepted by the financial creditor.

(iii) A revised OTS proposal was also submitted on 15.02.2024 with the financial creditor for Rs 150 Lakhs. Despite the efforts made, the financial creditor rejected the revised OTS proposal on 17.02.2024.

4. We have heard the learned PCA for the financial creditor as well as the learned counsel for the corporate debtor on the issue of admission of petition filed under section 7 of the Code and have perused the relevant records and documents. It is noted that an agreement dated 25.12.2017 was executed between the parties to use and run the business of pharmacy by financial creditor in the premise owned by the corporate debtor. The financial creditor has deposited an amount of Rs 2,10,00,000/- as a security deposit through several cheques. The said agreement was valid for a period of three years or termination of agreement and the same was renewed from time to time. Further, vide letter dated 31.01.2023 the financial creditor terminated the agreement between the parties and asked for the repayment of the security deposit held by the corporate debtor. The corporate debtor vide letter dated 15.02.2023 replied and showed its inability to make the repayment and requested time for the same. On 03.03.2023, the financial creditor issued a second notice to the corporate debtor for repayment of the security deposit. The corporate debtor replied to the said notice vide letter dated 31.03.2023 and proposed to treat the security deposit as a loan taken by the corporate debtor and to start the repayment from 01.04.2023. A board resolution for the same was passed in the board meeting of the corporate debtor to treat the security deposit as a loan. Subsequently, a modification agreement dated 02.04.2023 was executed between the parties whereby it was mutually agreed between the parties to treat the security deposit as a loan and to repay the loan in three quarterly instalments of Rs 70,00,000/-.

5. Upon failure in repayment of the loan instalments, the financial creditor issued various reminders through letter dated 28.07.2023, 31.10.2023 & 15.11.2023. The corporate debtor replied vide letter dated 01.12.2023 and asked for further time of two months.

The corporate debtor has admitted the debt amount and has also submitted that two OTS offer has been made to the financial creditor, the same was rejected by the financial creditor.

6. As per the above observations, it is clear that the corporate debtor has defaulted in repayment of its debts which was to be repaid on the due date i.e. 30.06.2023, as per the modification agreement dated 02.04.2023 executed between the parties. The petition was filed on 19.01.2024, and the same is well within the limitation period and the amount claimed to be in default meets the threshold limit as prescribed under section 4 of the Code, as such the petition deserves to be admitted. Hence, we pass order as under:

ORDER

(i) Corporate debtor M/s Greater Kailash Hospitals Private Limited is admitted in the Corporate Insolvency Resolution Process under section 7 of the Code.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

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 Securitisation 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.

- (iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- (iv) As proposed by the financial creditor, we appoint Mr. Mangesh Vitthal Kekre having registration No. IBBI/IPA-001/IP-P00539/2017-2018/10964, having address at: Office No. 607, Chetak Center, RNT Marg, Indore, Madhya Pradesh- 452001, Email: ca.mangesh@gmail.com, to act as an Interim Resolution Professional (IRP) under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Code r.w. Regulations made thereunder.
- (v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.
- (vi) 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. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-

operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

7. Accordingly, CP(IB)/03/MP/2024 stand admitted.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

CHITRA RAM HANKARE
MEMBER (JUDICIAL)

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