

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

**IBA/240/2019**

*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*

**In the matter of M/s. Raihan Healthcare Private Limited**

**M/s. Union Bank of India**

...Financial Creditor

**-Vs-**

**M/s. Raihan Healthcare Private Limited**

...Corporate Debtor

**Order delivered on: 20.03.2019**

**Coram:**

**B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Financial Creditor:     *Mr.T.K. Bhaskar, Advocate*  
  *Mr. Srinath Sridevan, Advocate*  
  *Mr. K. Harishankar, Advocate*

For the Corporate Debtor :     *Mr.Zakhier Hussain, Advocate*

**ORDER**

**Per: S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**Order Pronounced on: 20.03.2019**

The Applicant 'M/s. Union Bank of India (in short  
"Financial Creditor") has furnished Form No. 1 under Rule 4 of

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**) in the capacity of “**Financial Creditor**” on 29.01.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (**Code**) against ‘M/s. Raihan Healthcare Private Limited’ (“**Corporate Debtor**”). The registered address of the Corporate Debtor is stated to be EP-4/744-C, Murikkolil, Nadackal PO, Erattupetta, Kottayam, Kerala – 686 124.

2. In the requisite Form, under the head “Particulars of Financial Debt”, the total amount of debt granted is ₹47.08 crores and the total amount claimed to be in default is stated to be ₹34,68,44,480 (Rupees Thirty Four Crores Sixty Eight Lakhs Forty Four Thousand Four Hundred and Eighty only) with interest applicable to each facility and other charges as against the loans availed by the Corporate Debtor. The Date of Default is stated to be 23.10.2018.

3. On perusal of the record, it appears that since June 2016, the Corporate Debtor availed various credit facilities in accordance to

the sanctioned terms and conditions under the heads Term Loans, Letter of Credit/Letter of Guarantee/Bank Credit, Cash Credit, Over Draft Facility renewed/granted afresh or enhanced from time to time, in aggregate, it comes to ₹34,68,44,480 (Rupees Thirty Four Crores Sixty Eight Lakhs Forty Four Thousand Four Hundred and Eighty only) as on 23.10.2018.

4. To support this claim, the Creditor Bank filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No.	DATES	EVENTS
1.	01.08.2014	General Term Loan Agreement (page 06)
		Letter of Continuity/Guarantee signed by Corporate Debtor (page 10-12)
		Letter of Undertaking not to alienate movable goods (page 115)
2.	18.09.2015	Letter sanctioning additional credit limit (page 193)
3.	19.09.2015	Debit Balance Confirmation Letters signed by Corporate Debtor (from page 99 to 103)
4.	25.09.2018	Legal Notice issued by the FC (page 166)
5.	02.06.2018	Reply to Legal Notice (page 173)
6.	04.06.2018	Demand Notice u/s.13(2) of SARFAESI Act (page 175)

7.	02.11.2018	Possession Notice (page 183)
8.	24.01.2019	Corporate Debtor's Account outstanding due as on date (page 201)
		Certificate under Banker's Book Evidence Act, 1981 (page 202)

5. Looking at the dates and events as well as the annexures to the Application, we hereby hold that the Financial Creditor has furnished material disclosing the Creditor Bank providing credit facilities as mentioned above, the Corporate Debtor, in turn, defaulted in repaying the same.
6. The learned counsel for the Financial Creditor (Union Bank of India) submitted that the Bank has sent legal notice on 11.05.2018 to the Corporate Debtor demanding repayment of outstanding financial debt. In the reply notice dated 02.06.2018, the Corporate Debtor acknowledging credit facilities availed from Creditor Bank, contended that the statement of accounts shown was not correct and to declare the account as Non-Performing Asset (NPA) was malafide. However, the Corporate Debtor sought time till 30.06.2018 to clear off the arrears. Since the Corporate Debtor is

unable to pay its debts, the Financial Creditor has no other option except approaching this Adjudicating Authority under I & B Code seeking an order for commencing the Corporate Insolvency Resolution Process. It is further submitted that the notice of filing the instant case was sent to the Corporate Debtor on 04.02.2019 and proof of service has been placed before this Bench.

7. On looking at the material furnished by the Financial Creditor, the Tribunal observes that there is a debt due and payable by the Corporate Debtor and that a default has occurred for which the Corporate Debtor was liable to pay. Therefore, we are of the opinion that the Applicant Bank has established that the amount in default committed by the Corporate Debtor is a fact and it is supported by the documentary evidence placed before this Adjudicating Authority.

8. In the present case, by not replying to the classification of Corporate Debtor's account into an NPA, sent by the Financial Creditor, and by not filing an affidavit in reply to this petition for

contesting its liability, the Corporate Debtor has admitted its liability. Moreover, there is an acknowledgement of the Corporate Debtor for admission of its liability on record. The Corporate Debtor has not placed any material to prove the claims made in its reply notice dated 02.06.2018.

9. In view of the reasons aforementioned, as long as there is a '**Debt**' and a '**Default**' occurred this Bench hereby holds that it is a fit case for admission. The Financial Creditor has also filed consent letter given by the Interim Resolution Professional. We hereby declare moratorium with the following directions:

- I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

- 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 a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

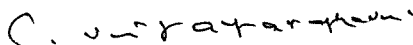
II. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

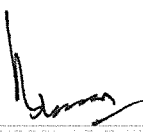
III. That the provisions of Sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from the date of issue of order till the completion of the corporate insolvency resolution process or until this Bench 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 IBC, as the case may be.

- V. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints **Mr. Shanmugam Rajendran, Reg. No: [IBBI/IPA-002/IP-No.00098/2017-2018/10241No.188/87], Habibullah Road, 2<sup>nd</sup> Floor, Evalappan Mansion, Near Kodambakkam Railway Station, T. Nagar, Chennai-600017**, as Interim Resolution Professional (IRP), as proposed by the Financial Creditor, to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

10. Accordingly, the IBA/240/2019 is hereby admitted.

  
**(S. VIJAYARAGHAVAN)**  
**MEMBER (Technical)**

  
**(B.S.V. PRAKASH KUMAR)**  
**MEMBER (Judicial)**

TJS/KNP