

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB)2948/MB/C-IV/2019

Under section 7 of the I&B Code, 2016

In the matter of

Bank of India

[CIN: U99999MH1906PL000243]

...Financial Creditor

v/s.

**Way 2 Health Diagnostics Private
Limited**

[CIN: U85190MH2014PTC253002]

...Corporate Debtor

Order Delivered on: 20.12.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Mr. Manoj Kumar

For the Respondent: Adv. Risha Alva i/b Pan India Legal Services LLP

ORDER

Per: Rajasekhar V. K. Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Bank of India** ("the Financial Creditor"), a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, duly represented

by its Chief Manager Mr. Sanjay Kumar Srivastav, through Power of Attorney dated 27.10.2017 (**Annexure '1'** to the petition at pp.16-35), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Way 2 Health Diagnostics Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a Private Company limited by shares and incorporated on 10.02.2014 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U8519MH2014PTC253002. Its registered office is at Shop No. 3&4, Ground Floor, Om Neelkanth CHS, Plot No. 31, Sector-42A, Seawoods, Nerul (W), Navi Mumbai-400706 within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 05.08.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 1,21,10,123.52 (Rupees one crore twenty-one lakh ten thousand one hundred twenty-three and fifty-two paise only) as the total claim amount consisting of ₹ 1,13,23,631.00 (Rupees one crore thirteen lakh twenty-three thousand six hundred thirty one only) as principal and ₹ 23,79,824.36 (Rupees twenty-three lakh seventy-nine thousand eight hundred twenty-four and thirty-six paise only) as total interest inclusive of ₹ 21,83,009.76/- (Rupees twenty-one lakh eighty-three thousand nine and seventy-six paise only) as uncharged interest @ 11.15% as per the then prevailing bank rate and a further sum of ₹ - 1,96,814.60/- (Rupees one lakh ninety-six thousand eight hundred fourteen and sixty paise only) as penal interest at the rate of 2% p.a. as

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stated at pp. 5-6 of the Petition. Date of default is 31.07.2019, as stated at p.5 of the petition.

4. The Financial Creditor has sanctioned Term Loan Facility to the Corporate Debtor of an amount of ₹ 1,85,00,000/- (Rupees one crore eighty-five lakh only) (at page 1 of the Petition). Details of credit facilities as _____ per _____ part-IV of Form-1 are as follows:

Sr. No	Nature of Credit Facility	Principal Outstanding as on 31.07.2014	Uncharged Interest from 21.01.2019 to 31.07.2019 p.a.	Penal Interest from 21.01.2019 to 31.07.2019 @ 2%	Total Claim amount
1.	Term Loan (A/c No. 01417381000001)	71,03,698.00	4,16,616.48	74,734.79	75,95,079.27
2.	Term Loan (A/c No. 01417381000002)	16,13,335.00	94,625.41	16,973.16	17,24,933.57
3.	Cash Credit (A/c No. 014130110000020)	26,09,598.00	1,53,058.28	27,454.40	27,90,110.68
	Grand Total	1,13,23,631.00	21,83,009.76	1,96,814.60	1,21,10,123.52

5. The Financial Creditor also submitted the particulars of Deed of Guarantee as follows:

- i) Deed of Guarantee dated 01.10.2014 in respect of Cash Credit for ₹ 25,00,000/-. (**Annexure '5'** p. 76-87 of the Petition).

- ii) Deed of Guarantee dated 01.10.2014 in respect of Cash Credit for ₹ 1,30,00,000/-. (**Annexure '10'** p. 91-103 of the Petition).
- iii) Deed of Guarantee dated 01.10.2014 in respect of Cash Credit for ₹ 1,30,00,000/-. (**Annexure '10'** p. 91-103 of the Petition).

6. The Financial Creditor further submitted the Demand Promissory Note drawn by the Corporate Debtor dated 01.10.2014 for ₹ 25,00,000/- (**Annexure '6'** p. 88 of the Petition), ₹ 30,00,000/- (**Annexure '7'** p. 89 of the Petition) and ₹ 1,30,00,000/- (**Annexure '8'** p. 90 of the Petition). The Financial Creditor also submitted the Acknowledgements of Debt dated 19.09.2017 duly signed by the Directors/Guarantor of the Corporate Debtor as follows:

- i) Acknowledgement for ₹ 20,36,100/- plus interest thereon in respect of A/c No. 01417381000002 (**Annexure '17'** pp. 161-164 of the Petition);
- ii) Acknowledgement for ₹ 25,00,000/- plus interest thereon in respect of A/c No. 014130110000020 (**Annexure '18'** pp. 165-168 of the Petition); and
- iii) Acknowledgement for ₹ 88,84,570.12 plus interest thereon in respect of A/c No. 014173810000001 (**Annexure '19'** pp. 169-172 of the Petition).

7. The Financial Creditor has stated that the Corporate Debtor's account was classified as Non-performing Asset on 31.01.2019 as the Corporate Debtor failed to pay the amount due to the Financial Creditor. But the proof of the same is not attached to the Petition.

8. Ms. Risha Alva, i/b Pan India Legal Services LLP, Advocate, appeared on behalf of the Corporate Debtor and made submissions.
9. The Corporate Debtor filed its reply on 04.10.2019 and admitted that the Corporate Debtor had availed a loan facility for an amount of ₹ 1,85,00,000/- towards the equipments on 01.09.2014. The Corporate Debtor submitted that it has made the payment of instalments as per the schedule of loan agreement and have made payments aggregating to a sum of ₹ 72,42,686.11 to the Financial Creditor.
10. The Corporate Debtor submitted that from month of October, 2018 the Corporate Debtor was facing financial trouble in its business and despite of trying every possible way, was unable to make the payments of salaries of its employees and the professional fees of the doctors who were visiting the centre managed by the Corporate Debtor. Further it was submitted that there are other financial debts which the Corporate Debtor was unable pay due to losses incurred during the course of the business and was unable to infuse any funds from the investors despite of its efforts.
11. Therefore, the Corporate Debtor has requested this Adjudicating Authority to appoint an Interim Resolution Professional (IRP) for reviving the Corporate Debtor.
12. We have heard the arguments of the Learned Counsel for both sides and perused the records.
13. It is noticed from the documents placed on record that there is unequivocal admission of liability on the part of the Corporate Debtor in its Acknowledgement dated 19.09.2017 (para 5 at p. 4 of the petition). The date of default is 31.07.2019.

14. The Financial Creditor has proposed Mr. Kamal Kishor Gurnani, Registration No. **IBBI/IPA-001/IP-P-01463/2018-19/12338** as Interim Resolution Professional (IRP) in the matter.
15. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC; the Petition of the Financial Creditor is complete; an amount of more than Rupees One Lakh is due and payable and in default, and the liability is admitted by the Corporate Debtor. There are disciplinary proceedings pending against the proposed resolution professional.
16. Therefore, the Petition of the Financial Creditor is completed in all respects and there is no reason to deny the admission of the Petition.
17. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB) 2948/MB-IV/2019** filed by **Bank of India**, the Financial Creditor, under section 7 of the IBC of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Way 2 Health Diagnostic Private Limited [CIN: U85190MH2014PTC253002]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Financial Creditor 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 Financial Creditor 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 Financial Creditor in respect of its property including any action under the Securitisation and Reconstruction of Operational 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.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the Financial Creditor, 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 IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Financial Creditor under section 33 of the IBC, as the case may be.

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- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Kamal Kishor Gurnani, registration No. IBBI/IPA-001/IP-P-01463/2018-19/12338, having address at Flat No. 1301, Building No. 23E, Palazzio CHS Ltd., Mahada Housing Society, Powai, Mumbai-400076, is hereby appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Financial Creditor shall vest in 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of ₹1,00,000/- (Rupees one lakh only) 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).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and

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email immediately, and in any case, not later than two days from the date of this Order.

- (j) A copy of this Order be sent 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.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

20.12.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)