

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.458/ALD/2019

*(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule, 2016)*

IN THE MATTER OF

ALCHEMIST ASSET RECONSTRUCTION COMPANY LTD

.....Applicant/Financial Creditor

IN THE MATTER OF

SIEMENS FINANCIAL SERVICES PRIVATE LIMITED

.....Financial Creditor

VS.

PANACEALIFE HEALTHCARE PVT. LTD.

.....Respondent/Corporate Debtor

ORDER DELIVERED ON :03.09.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

**For the Applicant/ Financial Creditor: Ms. Sonia Dubey alongwith
Mr. Shatadru Chakraborty, Mr. Anurag Singh
and Mr. Vivek Srivastava, Advocates.**

**For the Respondent/ Corporate Debtor: Mr. Shailenda Singh alongwith
Mr. Rupendra Kumar Porwal and
Mr. Samir Agarwal, Advocates.**

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") i.e. "**Siemens Financial Services Pvt. Ltd**" under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e. "**Panacealife Healthzone Private Limited.**" on grounds of its inability to liquidate its financial debt.

2. As per averments made in the petition, the Corporate Debtor had approached the applicant and requested to grant Financial

—sd—

Facilities. Subsequently, the applicant had entered into a finance Agreement dated 30.09.2015 which has been sanctioned to the Corporate Debtor vide sanction letters dated 23rd December, 2015 and 29th December, 2015. Thereafter the applicant has entered into Finance Agreement dated 31st December, 2018 in favour of the applicant.

3. Subsequently the corporate Debtor had issued Guarantee agreements dated 30th September, 2015 and 31st December, 2015 and also issued Promissory Notes. Further submitted the total amount outstanding is Rs.3,60,25,409/- and inspite of repeated demand, the payment has not been made by the respondent.



4. The corporate Debtor has been duly served and the counsel appeared on behalf of the corporate debtor and seeks time to file reply in the matter .

5. Meanwhile two substitution application was filed as IA No. 148/2020 and IA No. 164/2020 by “ Alchemist Asset Reconstruction Company Ltd.” as applicant.
6. IA NO. 148/2020 was filed under Sec 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT, Rules, 2016 seeking substitution of name of the financial creditor/ applicant in the CP No. (IB) 458/ALD/2019 from “M/s Siemens Financial Services Pvt. Ltd” to “ Alchemist Asset Reconstruction Company Ltd”.

—sd—

7. It was submitted that the debt owed by the respondent to the petitioner has been assigned to the applicant by virtue of a deed of assignment dated 28.04.2020, thus the applicant has stepped into the shoes of the said financial creditor i.e M/s Siemens Financial Services Pvt. Ltd and upon such assignment, the said financial creditor has ceased to have any right, title and interest over the debt in question and the applicant stands subrogated in its place.
8. Further IA No. 164/2020 was also filed under Sec 60(5) of IBC, 2016 read with Rule 11 and Rule 32 of NCLT Rules, 2016 seeking substitution of the name of Interim Resolution Professional. It is submitted that the petition under Sec 7 IBC was filed proposing the name of Mr. Tarun Batra as IRP but in view of assignment of debt in favour of the applicant, there is the change in circumstances and in the premises, thus applicant prays to substitute the name of IRP and proposes Mr. Devendra Singh IBBI Registration No. IBBI/IPA-002/IP-N00001/2016-2017/10001 to be appointed as IRP.
9. In spite of seven opportunities being granted to the corporate debtor, the corporate debtor choose not to file reply in any of the substitution application nor in the main petition.
10. Thus in view of the submission made by the counsel for the applicant and referring to the deed of assignment dated 28.04.2020, this Adjudicating Authority allows the substitution applications i.e IA No. 148/2020 and IA. No. 164/2020 filed by Alchemist Asset Reconstruction Company Ltd.(herein referred to as "Applicant") allowing substitution of the name of the Financial creditor as "Alchemist Asset Reconstruction Company Ltd." and substitution of

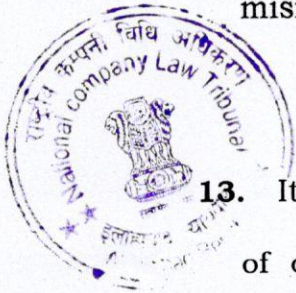


—sd—

the name of IRP as “ Mr. Devendra Singh” in CP No.(IB)458/ALD/2019.

11. Further in regard to CP No. (IB) 458/ALD/2019; it was brought to the notice of the tribunal that the shareholders and directors of the respondent company are involved in proceedings for oppression and mismanagement of affairs of respondent company and a company petition i.e CP No. 31/ ALD/2019 has been filed under Sec 241/242 of the Companies Act, 2013 before this Tribunal.

12. Further it is the matter of record that vide order dated 23.06.220, this tribunal directed that the proceeding of Oppression as mismanagement will be heard with the present matter.



13. It is contended on behalf of the applicant that filing of the petition of oppression and mismanagement and its pendency will not hamper the proceeding under Sec7 of IBC and in support of his arguments has referred to the judgment of NCLAT in the matter of **Jagmohan Bajaj v. Shivam Fragrances Private Ltd. & ors. Company Appeal (AT)(INSOLVENCY)No. 428 of 2018** which has also been upheld by the Hon'ble Supreme Court by order dated 04.02.2019 in Civil Appeal No. 853 of 2019.

14. It is further argued that the respondent has admitted their liability toward the corporate debtor in the petition filed for oppression and mismanagement i.e CP NO.31/ALD/2019 stating ***“that the demand of loan from Seimens limited is due on the***

—sd—

company which need to pay but Resondent No2 and 3 are not serious about this, which shows there ill intention”.

15. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.)Whether there is duly established financial debt.

ii.)Whether there is default in payment by the corporate debtor.

iii.)Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.



6. Referring to the decision of Hon'ble Supreme court in Innoventive Industries Ltd. v. ICICI Bank ,(2017)205 Comp Cas 57(SC) it was held that

“..... The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.....”

Further in the matter of Karan Goel v. M/s Pashupati Jewellers & Anr. Company Appeal (AT) (Insolvency) No. 1021 of 2019 dated 01.10.2019 stated:

“..... it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application.”

16. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in 22.10.2019 is well within limitation and the date of default is 30.03.2017., in which date the corporate

—sd—

debtor declared as NPA is much prior to the amendment made in Insolvency and Bankruptcy Code on 05th of June, 2020 whereby Sec 10A was inserted which states as follows:

“Suspension of initiation of Corporate Insolvency Resolution Process”

“10A. Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate Insolvency Resolution Process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for the period of six months or such months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a corporate debtor for the said default occurring during the said period.

Explanation- For the removal of doubt, it is hereby clarified that the provisions of this Section shall not apply to any default for the said sections before 25th March, 2020.”



17. Therefore, in the present application the date of default in the present application is 13.03.2017, thus the amendment made will not be applicable in the present petition.

18. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

sd

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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 (54 of 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate



—sd—

debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the 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, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

19. The Financial Creditor has proposed the name of **Mr. Devendra Singh Registration Number IBBI/IPA-002/IP-N00001/2016-17/10001** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps

sd



as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

20. The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

22. List on **07.10.2020** for the filing of the progress report.

—sd—

JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 03.09.2020

Swati Gupta
(LRA)

FREE OF COST

Compared by Me
Mahesh Sabat
8/9/2020

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**



08/09/2020
S.A. MEHDI
DESIGNATED REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD U.P.