

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH
(Video Conference)**

**PRESENT: Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA – MEMBER (J)
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.03.2024 AT 03.00 P.M.**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
	Main Case	7 of IBC	Axis Bank Ltd Vs Seven hills Healthcare Pvt Ltd
	IA(IBC)/(PLAN)/1/2024	U/s 30(6) & 31(1) of IBC, 2016 U/Reg 36B(6A) of IBBI (Insolvency Resolution Process for corporate Persons) Reg 2016	Mr. Abhilash Lal, RP of Seven hills Healthcare Private Limited Vs COC (Through JM Financial Asset Reconstruction Company Limited)
	IA(IBC)/432/2023	U/sec-60(5) of the IBC 2016 R/w. Rule11 of the NCLT Rules 2016.	Dr.Renuka Rani Maganti Vs. Mr. Abhilash Lal (RP) & COC of M/s. Seven hills Health Care Pvt. Ltd.
	IA(IBC)/360/2023	U/s 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Bhumireddy Gari Mohan Reddy, Consortium Member of Prospective Resolution Applicant Vs. Abhilash Lal, RP of Seven Hills Healthcare Private limited and Ors.
	IA(IBC)/338/2023	U/s 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Renuka Rani Maganti, Suspended Director of CD Vs. Abhilash Lal, RP of Seven Hills Healthcare Private Limited and Committee of Creditors of CD
	IA (IBC)/324/2023	U/s 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Abhilash Lal, RP of Seven Hills Healthcare Private Limited Vs. Registrar of Companies, Vijayawada & Ministry of Corporate Affairs (Office of Director General of Corporate Affairs)
TCP(IB)/32/7/AMR/2019	IA(IBC)/265/2023	60(5) of IBC,2016	Sahajanand Medical Technologies Ltd Vs. Mr. Abhilash Lal, RP & M/s. Seven hills Healthcare Pvt Ltd
	IA(IBC)/196/2022	23(2) of IBC	Abhilash Lal, Resolution Professional Vs. Sri Sai Swagraha Mess (In the matter of M/s Seven Hills Healthcare Pvt. Ltd)
	IA No.63/2020	60(5)	SHANKAR KRISHNAMURTHY AND 30 OTHERS VS ABHILASH RP IN THE MATTER OF SEVENHILLS HEALTHCARE PVT LTD
	IA(IBC)/228/2023	Rule 11 of NCLT Rules, 2016	Abhilash Lal, RP of Seven Hills Healthcare Pvt ltd Vs. Municipal Corporation of Greater Mumbai
	IA(IBC)/10/2023	U/S 60(5) of the IBC, 2016	Abhilash Lal, Resolution Professional of Seven Hills Healthcare Pvt Ltd. Vs. Municipal Corporation of Greater Mumbai and Committee of Creditors.
	IA(IBC)/372/2022 in IA(IBC)/52/2021	Rule 56 r/w 11 of NCLT Rules	Mr. Abhilash Lal, RP Vs. Maganti Trust (in the matter of Seven Hills Healthcare Pvt. Ltd)
	MA(IBC)/1/2022 in IA(IBC) NO.52/2021	S.424(3) of Companies Act r/w Rule 56 of NCLT	Abhilash Lal vs. Maganti Trust (In the matter of Seven hills Healthcare Pvt Ltd)
	IA(IBC)/2/2022	43(1)	Abhilash Lal, RP Vs Jitendra Das Maganti
	IA No.661/2018		Abhilash Lal, RP Vs Jitendra Das Maganti

ORDER

Sl.No.1

IA(IBC)/(PLAN)/1/2024: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for the Applicant and Ms. Jinal Shah, Ms. Palak Nenwani, Mr Ronit Chopra & Ms. Rishika Kumar, Ld. Counsels for the Respondent/CoC present. Orders not pronounced. *Suo moto* reopened. Orders reserved.

Inv.P (IBC)/2/2024 in IA(IBC)/(PLAN)/1/2024:

Mr. Varun Byreddy, Ms. Meghna Rajyadaksha, Mr. Soummo Biswas, Ms. Kriti Kalyani, Mr. Yugal Jain & Ms. Aditi Tomar, Ld. Counsels for the Applicant, Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for R1 and Ms. Jinal Shah, Ms. Palak Nenwani, Mr Ronit Chopra & Ms. Rishika Kumar, Ld. Counsels for the Respondent/CoC present.

During the pendency of IA(IBC)/(PLAN)/1/2024, an Inv.P(IBC)/2/2024 has been filed by MCGM, in which arguments were heard and now stands listed on 01/04/2024 for orders. It is stated that written submissions in Inv.P(IBC)/2/2024 will be filed today. Since the outcome of the Inv.P (IBC)/2/2024 has a bearing on IA(IBC)/(Plan)/1/2024, I am of the opinion that orders in Inv.P (IBC)/2/2024 needs to be pronounced prior to passing of orders in IA(IBC)/(Plan)/1/2024. Inv.P (IBC)/2/2024 is therefore, *suo moto* advanced from 01.04.2024 to this day and orders reserved.

IA(IBC)/432/2023: Mr. M.Sridhar, Ld. Counsel for the Applicant, Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for R1/RP and Ms. Jinal Shah, Ms. Palak Nenwani, Mr Ronit Chopra & Ms. Rishika Kumar, Ld. Counsels for R2/CoC present. The outcome of this application since has bearing on IA (IBC)/(Plan)/1/2024, this IA, is *suo moto* reopened. Heard. Orders

will be pronounced along with the orders in IA(IBC)/(Plan)/1/2024. Orders reserved.

IA(IBC)/360/2023: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for R1/RP and Ms. Jinal Shah, Ms. Palak Nenwani, Mr Ronit Chopra & Ms. Rishika Kumar, Ld. Counsels for R2/CoC present. The outcome of this application since has bearing on IA (IBC)/(Plan)/1/2024, this IA is *suo moto* reopened. Heard. Orders will be pronounced along with the orders in IA(IBC)/(Plan)/1/2024. Orders reserved.

IA(IBC)/338/2023: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for R1/RP and Ms. Jinal Shah, Ms. Palak Nenwani, Mr Ronit Chopra & Ms. Rishika Kumar, Ld. Counsels for R2/CoC present. Since the IA(IBC)/159/2023 is already disposed of, the cause in this application does not survive. Hence this IA(IBC)/338/2023 is dismissed as infructuous. Accordingly, IA(IBC)/338/2023 is disposed of.

IA (IBC)/324/2023: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for the Applicant/RP present. Order pronounced. In the result, the Application is allowed and the direction as prayed for has been issued. Accordingly, IA(IBC)/324/2023 is allowed and disposed of.

IA(IBC)/265/2023: Ms. Muskan Jain, Mr. Prasanth Pratap & Ms. Kinjal Agarwal, Ld. Counsels for the Applicant and Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for the Respondent/RP present. Order pronounced. In the result, the Application is allowed and the directions as prayed for has been issued. RP shall comply the directions within 15 days and

file a memo compliance. Accordingly, IA(IBC)/265/2023 is allowed and disposed of.

IA(IBC)/196/2022: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for the Applicant present. None Appears for the Respondent. Matter needs to be reopened as clarity on when the access to the subject property has been prevented allegedly by the Respondent and from when the Petitioner is prevented from using this, and who is currently in use of this property. Photographs of the property shall also be filed, within one week. Matter *suo moto* reopened. Orders reserved.

IA No.63/2020: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for the Respondent present. Orders pronounced. IA (IBC)/ 63/2020 is allowed and disposed of.

IA(IBC)/228/2023: Mr. Prakshal Jain, Ms. Kaazvin Kapadia & Mr. Vishal Pathak, Ld. Counsels for the RP and Ms. Meghna Rajyadaksha, Mr. Soummo Biswas, Ms. Kriti Kalyani, Mr. Varun Byreddy, Mr. Yugal Jain, Ms. Aditi Tomar, Ld. Counsels for the Respondent present. It is submitted that written submissions on behalf of Petitioner/CoC already been filed. Ld. Counsel representing MCGM R1 submits that written submissions filed during the course of the date. Orders reserved.

IA(IBC)/10/2023: Mr. Prakshal Jain, Ms. Kaazvin Kapadia, Mr. Vishal Pathak, Ld. Counsels for the RP and Ms. Meghna Rajyadaksha, Mr. Soummo Biswas, Ms. Kriti Kalyani, Mr. Varun Byreddy, Mr. Yugal Jain, Ms. Aditi Tomar, Ld. Counsels for R1 and Ms. Jinal Shah, Ms. Palak Nenwani, Mr Ronit Chopra &

Ms. Rishika Kumar, Ld. Counsels for R2/CoC present. It is submitted that written submissions on behalf of Petitioner/CoC already been filed. Ld. Counsel representing MCGM submits that written submissions filed during the course of the date. Orders reserved.

IA(IBC)/372/2022 in IA(IBC)/52/2021: Mr. Prakshal Jain, Ms. Kaazvin Kapadia, Mr. Vishal Pathak, Ld. Counsels for the RP present. For filing written submissions, if any, within one week. Orders reserved.

MA(IBC)/1/2022 in IA(IBC) NO.52/2021: Mr. Prakshal Jain, Ms. Kaazvin Kapadia, Mr. Vishal Pathak, Ld. Counsels for the RP present. For filing written submissions, if any, within one week. Orders reserved.

IA(IBC)/2/2022: Mr. Prakshal Jain, Ms. Kaazvin Kapadia, Mr. Vishal Pathak, Ld. Counsels for the RP present. Pleadings are completed. For hearing, list the matter on 29.04.2024.

IA No.661/2018: Mr. Prakshal Jain, Ms. Kaazvin Kapadia, Mr. Vishal Pathak, Ld. Counsels for the RP present. For hearing, list the matter on 29.04.2024.

Sd/-
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI SPECIAL BENCH**

**IA (IBC)/324/2023
IN
TCP (IB)/32/7/AMR/2019**

**[Under section 60(5) of the Insolvency and Bankruptcy Code,
2016 Read with Rule 11 of National Company Law Tribunal
Rules, 2016]**

In the matter of
M/s. SEVENHILLS HEALTHCARE PRIVATE LIMITED

BETWEEN:

Mr. Abhilash Lal
Resolution Professional of
Seven hills Healthcare Private limited
C-192, Belvedere Towers, DLF Phase II,
Gurgaon- 122002.

...Applicant/ Resolution Professional

AND

1. Registrar of Companies, Vijayawada
29-7-33, First Floor,
Vishnuvardhanarao Street,
Suryaraopet, Vijayawada,
AndhraPradesh-520002

2. Ministry of Corporate Affairs
Office of Director General of Corporate Affairs
Kota House Annexe, 1, Shahjahan Road,
NewDelhi-110011.

...Respondents

Order dated: 28.03.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member (J)

Parties/Counsels Present:

For the Applicant/RP : Mr. Niranjan Reddy, Ld. Sr.Counsel along with Mr. Siddarath Ranade, Mr. Kaazvin Kapadia, Mr. Prakshal Jain, Mr. Vishal Pathak & Ananya Bajpai, Ms. Anjali, Ms. Ananya Bajpai, Mr. Atif Salar.

For the Respondent/ RoC: none appeared

ORDER

1. This application is filed by the Applicant/Resolution Professional under section 60(5) of the Insolvency Bankruptcy Code, 2016 Read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking to direct the respondents for taking appropriate actions for updating the names of erstwhile Directors on the MCA Website of Ministry of Corporate Affairs.

AVERMENTS BY PETITIONER:

1. This Tribunal admitted the company petition on 13th March 2018, Pursuant to which the Applicant was appointed as the Interim Resolution Professional, and subsequently, confirmed as the Resolution Professional of the Corporate Debtor during the first meeting of the committee of creditors (CoC) dated 12th April 2018.
2. The Applicant conducted the first round of issuance of invitation of expression of interest (IEOI) and floated a request for resolution plan (RFRP), basis which a resolution plan submitted by one Dr. B.R Shetty through his entity Shetty's New Medical Centre Private Limited (SNMC Resolution Plan) was submitted for due

consideration of the CoC. Subsequently, the CoC accepted and approved the SNMC Resolution Plan by a majority vote. The applicant herein accordingly put up the SNMC Resolution Plan for final approval before this Hon'ble Tribunal on 7 September 2018.

3. The SNMC Resolution Plan was initially supported by the MCGM, but later opposed it and submitted a memo before this Tribunal, this Tribunal dismissed and approved the SNMC Resolution Plan vide order dated 26 July 2019 (SNMC Plan Approval Order).
4. It is stated that the appropriate actions were taken to update the names of four directors i.e., Dr. B. R. Shetty, Dr. C. R. Shetty, Mr. Binay Shetty and Mr. Shishir Shetty (jointly referred to as the SNMC Directors), as the new directors of the Corporate Debtor (basis the SNMC Resolution Plan) on the MCA website. Accordingly, the erstwhile directors Corporate Debtor i.e., Dr. Jitendra Das Maganti, Dr. Rekha Rani Maganti, Mr. Kuchela Babu, and Mr. Ashok Asthana (Erstwhile Directors) ceased to be directors of the Corporate Debtor by virtue of the SNMC Plan Approval Order.
5. Subsequently, the Hon'ble Supreme Court rejected the SNMC Resolution Plan vide order dated 15th November 2019 owing to certain disputes and pending litigation, the order directed fresh issuance of IEOI and RFRP, and the resolution plans to be in accordance with requirements of MCGM (Supreme Court Judgment), and the corporate insolvency resolution process

(CIRP) of the Corporate Debtor was restarted to the extent of inviting fresh IEOI's.

6. Consequently, the SNMC directors ceased to be directors of the CD and the Erstwhile directors of the CD were reinstated accordance with Supreme Court order Thereafter, necessary forms, being Form DIR-12 were filed to update the change in directorship on the MCA Website. Notably, as on date Dr, Kuchela Babu and Dr. Ashok Asthana have resigned as directors of the Corporate Debtor.
7. Thereafter, the CD attempted to file Form DIR-12 for appointment of the Erstwhile Directors. while uploading the documents, an error report was generated on the MCA website with the comment “ *The Count of Directors is less than the requirement on date 28.12.2019, kindly update the number of directors as per the Minimum requirements.* “ as the number of directors had been reduced below the statutory due to cessation of directorship of SNMC Directors.
8. The applicant filed a complaint with the MCA, ticket bearing No. SR1383861 regarding the attempt to appoint the Erstwhile Directors. The MCA acknowledged through email dated 29th December 2019. The MCA Service Desk sent an e-mail on 1st January 2020 stating that the said service request had been resolved by it.
9. The Company Secretary of the Corporate Debtor attempted to file e-form DIR-12 in MCA Website along with requisite fees and

additional fees as applicable after insertion of name of Dr. Jitendra Das Maganti (DIN 00085118), Mrs. Renuka Rani Maganti (DIN 00085209), Dr, Vankineni Kuchel Babu (DIN 00085187) and Mr. Ashok Asthana (DIN 07462056) as Directors of the Corporate Debtor and requested the Registrar of Companies, Vijayawada (RoC) to restore the name of the Erstwhile Directors from back end Same was prepared an affidavit in respect of the above and couriered the same to RoC.

10. It is averred that on 24.01.2020 Company Secretary of the CD prepared an affidavit in respect to the restoration of the names of the Erstwhile Directors in MCA website and couriered the same to RoC, The RoC responded to the affidavit through email dated 5th February 2020 by stating that physical application of the Form DIR-12 will not be processed by them. In case of any difficulty in filing the e-form a ticket may be raised to e-governance cell of the MCA.
11. As per ROC email a ticket bearing no. SR1408743 dated 6th February 2020 was raised to e-governance cell, MCA. When the matter was followed up on the MCA Website, it was mentioned that *“Please note that we are not authorized to make any changes in this regard.* You are requested to please contact the concerned Registrar of Companies office to seek necessary guidance for the reported case and hence, the Company Secretary issued an email dated 15.02.2020 to the RoC seeking its guidance for resolving the matter. But there is no response.

12. Therefore, in the light of the averments as above the short point that arises my consideration is whether the Applicant is entitled for the direction to update the names of the Erstwhile Directors in the MCA website?
13. I have heard Mr. Niranjana Reddy, Ld. Sr. Counsel along with Mr. Siddharath Ranade, Mr. Kaazvin Kapadia, Mr. Prakshal Jain, Mr. Vishal Pathak & Ananya Bajpai, Ms. Anjali, Ms. Ananya Bajpai, Mr. Atif Salar for the Applicant. Perused the record.
14. According to the applicant consequent to the rejection of Resolution Plan submitted by the Shetty's New Medical Centre Private Limited (SNMC), it became essential for the revival of the names of the erstwhile directors of the CD in the register of directors the Applicant had submitted Form DIR-12, to the RoC and represented the update of the changes by the RoC, AP. However, as the same was not accepted by the RoC AP, the Applicant approached the 2nd Respondent and the 2nd Respondent in turn directed vide E-mail dated 01.01.2020 to approach the concerned RoC. Pursuant thereto, the Company Secretary of the CD attempted to file E-form DIR-12 in MCA website, for insertion of the names of Dr. Jithendra Das Maganti (DIN 00085118), Mrs. Renuka Rani Maganti (DIN 00085209), Dr. Vankineni Kuchela

Babu (DIN 00085187) and Mr. Ashok Asthana (DIN 07462056) as Directors who are the erstwhile directors of the CD and accordingly requested the RoC, AP to restore the names of these Erstwhile Directors. However, the RoC vide E-mail dated 05.02.2020 “*Please note that we are not authorized to make any changes in this regard.*”

15. Here, I usefully refer to section 170(2) of Companies Act, 2013 and rule 18 which is stated as below:

A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.

Rule 18 of Companies (Appointment and qualification of Directors) Rules, 2014. Return containing the particulars of directors and the key managerial personnel .- A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form DIR-12 along with such fee as may be provided in the Companies (Registration Offices and Fees)

Rues, 2014 within thirty days of such appointment or change, as the case may be.

16. A perusal of the above procedure, makes clear that every company is required to file Form DIR-12 with registrar of companies within 30 days from the date of appointment, cessation and changes taken place in their designation. In compliance of the above procedure, the applicant has submitted the return containing particulars of directors and changes among them. According to the applicant the required statutory procedure has been complied with by RP, by submitting Form DIR-12.
17. Despite service of notice, none appeared from the office of RoC AP.
18. Therefore in the above backdrop, having examined the record since, compliance of section 170 of Companies Act, 2013 is statutory and essential in the interest of the Corporate Debtor, I hereby direct the RoC, AP to accept Form DIR-12 filed by the Applicant in respect of CD, and make necessary changes in the Register of Directors, by restoring the names of Dr. Jithendra Das Maganti (DIN 00085118), Mrs. Renuka Rani Maganti (DIN 00085209), Dr. Vankineni Kuchela Babu (DIN 00085187) and

Mr. Ashok Asthana (DIN 07462056), within 15 days from the date of the receipt of the copy of this order.

Accordingly, IA (IBC)/324/2023 in TCP (IB)/32/7/AMR/2019 is allowed.

Sd/- Dated 28.03.2024
**(DR. VENKATA RAMAKRISHNA BADARINATH
NANDULA)**
(MEMBER JUDICIAL)

Pavani, LRA

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
AMARAVATI BENCH AT MANGALAGIRI**

**IA (IBC)/265/2023
In
TCP (IB)/32/7/AMR/2019**

Under section 60(5) of the Insolvency and Bankruptcy code, 2016 read with
rule 11 of the National Company Law Tribunal Rules, 2016.

**In the matter of
M/S. SEVENHILLS HEALTHCARE PRIVATE LIMITED**

Between:

Sahajanand Medical Technologies Limited
(Formerly known as Sahajanand Medical Technologies Private Limited)
Registered office at Sahajanand Estate, Wakhariawadi,
Near Dabholi, Ved Road, Surat, Gujarat – 395004
Through its authorized signatory/representative.

.....**Applicant/Operational Creditor(s)**

AND

1. Mr. Abhilash Lal, Resolution Professional
Alvarez & Marshal India Private Limited,
Units 703 & 704, 7th Floor, Tower A,
Peninsula Corporate Park, Ganpatrao Kadam Marg,
Lower Parel (West), Mumbai – 400013

.....**Respondent No. 1/ Resolution Professional**

2. M/s. SevenHills Healthcare Private Limited,
Registered office at: Marol Maroshi Road,
Near Marol Bus Depot, Andheri (East), Mumbai - 400059.

..... **Respondent No.2/Corporate Debtor**

DATE OF ORDER: 28.03.2024

CORAM:

**Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER
(JUDICIAL)**

Parties/Counsels present:

For the Applicant : Dr. Prashant Pratap, Advocate

For the Respondent : Mr. Niranjana Reddy, Ld. Sr. Counsel along with
Mr. Siddarth Ranade, Mr. Kaazvin Kapadia, Mr.
Prakshal Jain, Mr. Vishal Pathak & Ananya Bajpai,
counsels

ORDER

Under consideration is the Interlocutory Application bearing IA No. 265 of 2023, filed by Sahajanand Medical Technologies Limited (“**Applicant/Operational Creditor**”) against the Mr. Abhilash Lal, Resolution Professional (“**Respondent No.1/RP**”) and M/s. SevenHills Healthcare Private Limited (“**Respondent No. 2/CD**”) Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (IBC Code, 2016) read with Rule 11 of National Company Law Tribunal Rules, 2016 (NCLT Rules), seeking:

1. To direct the Respondent No.1 to release the payment of pre-CIRP period (before 13.03.2018) INR 01,96,11,650/- (Rupees One Crore Ninety-Six Lakhs Eleven Thousand Six Hundred and Fifty only) with 18% interest on the principal amount that is INR 91,23,591/- (Rupees Ninety One Lakhs twenty Three Thousand Five Hundred and Ninety One only) which in total due towards the Applicant and
2. To direct the Respondent No.1 to release the payment of post-CIRP period (from 13.03.2018 till today) INR 01,51,046/- (Rupees One Lakh Fifty One Thousand and Forty Six only) with 18% interest on the principal amount

that is INR 90,874/- (Rupees Ninety Thousand Eight Hundred and Seventy Four only) which in total due towards the Applicant.

I. The averments, leading to the instant Application, as stated by the Applicant, are as follows:

- a. The Applicant is a leading developer and manufacturer of minimally invasive coronary stent systems which comes under essential commodities and in the year 2014 Applicant and Respondents entered into business relationship in which the Applicant had to supply cardiac instruments, such as coronary stents and other related items to the Respondent.
- b. Following a few transactions, the respondent continued to order products from the applicant, who began providing the goods on credit. The respondent agreed to pay the applicant within ninety days, however this was never done. The responders have never filed any complaints of any kind, nor have they returned or exchanged any items that were delivered based on quantity and quality standards and are still being used by the respondent today. Because of the applicant's good relations with the respondent, the respondent took unfair advantage of the applicant's trust and faith. The respondent was inconsistent in their payments from the beginning, but the applicant was lenient towards them.
- c. As per the ledger account of the Applicant the total outstanding amount from supply of goods of pre-CIRP and post-CIPR period along with 18% interest, which respondents owe towards the Applicant is specified in the table below:

Period			Total Amount
--------	--	--	--------------

(as per new ledger amount)	Principal Amount due (in INR)	Interest Accrued	(Principal Amount + Interest)
Pre-CIRP period till 13.03.2018	91,23,591	1,04,88,059	1,96,11,650
Post-CIRP period (13.03.2018 till 31.03.2023)	90,874	60,171	1,51,046
TOTAL	92,14,466	1,05,48,230	1,97,62,696

- d. Through letters, emails, and other correspondence, the Applicant had repeatedly demanded of the Respondent that they pay the outstanding debts. However, the respondent had consistently been late to comply. The authorized signatory of the Respondents acknowledged in an email dated September 21, 2017, that they owed the application INR 87,12,163 as of September 2017. The signatory also offered to pay the applicant INR 1,00,000 per month starting in January 2018, but the applicant refused the offer.
- e. During their meeting, the applicant proposed that the respondent pay the outstanding debt in equal installments over the course of 12 months by issuing postdated cheques. The respondent accepted this offer, and there would be a penalty of 18% interest per annum if the terms were broken. However, the respondent later failed to follow through on their agreement. In accordance with Section 8 of the IBC, 2016, the applicant also served the respondents with a legal/demand notice on November 22, 2017, to which they did not respond.
- f. This Tribunal vide order dated 13.03.2018 initiated CIRP against the Respondent. The applicant filed Claim Form under Regulation 7 of IBBI

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 22.03.2018.

- g. The applicant's company is included in the list of essential commodities under the Drug and Cosmetics Act. DCA will govern the use of all medical devices for patient treatment, including needles, syringes, knee implants, cardiac stents, digital thermometers, and more. According to multiple gazette notifications, coronary stents are included in the National List of Essential Medicines (NLEM) 2015, indicating their necessity for public health. Even in the absence of these problems, the nature of these devices and the ability to set their own prices would lend support to their classification and acknowledgement as necessities, placing the responsibility on their suppliers to guarantee continuous supply, even in the face of unresolved payment disputes with purchasers such as healthcare facilities and hospitals.
- h. M/s Tata Power Company Limited had filed an application (IA (IBC)/34/2021). This Adjudicating Authority vide its order dated 17.08.2022 held that the

“If the supply of essential services is to keep the Corporate Debtor as an ongoing concern, the assumption is that the Corporate Debtor would be deriving income from out of which the charges incurred for supply of essential services can be paid. If the Corporate Debtor cannot be sustained as an ongoing concern, no income derivation can be expected and hence, the supply of essential services, for the bare necessities of the personnel and the burden arising therefrom would form a part of the CIRP costs.”

i. The relevant provisions under IBC are extracted hereunder :

“Section 14:

(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 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.

Regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

31. Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32;

(aa) fee payable to authorized representative under [sub- regulation (8)] of regulation 16A,

(ab) out of pocket expenses of authorized representative for discharge of his functions under [section 25A]

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d),

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33,

(d) expenses incurred on or by the resolution professional fixed under Regulation 34, ' and

(e) Other costs directly relating to the corporate insolvency resolution process and approved by the committee.

Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

32. Essential supplies.

32. The essential goods and services referred to in section 14(2) shall mean-

(1) electricity, '

(2) water;

(3) telecommunication services, and

(4) information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

- j. Basing on the above facts, the Applicant prayed that the Respondent may be directed to clear the outstanding amounts against the goods provided by the Applicant.

II. The averments, as made in the counter of the Respondent No.1/RP are as below:

- a. The Respondent contended that the Hon'ble National Company Law Tribunal (Hyderabad Bench) (Hon'ble NCLT) vide order dated 13 March 2018 commenced CIRP of the CD, on account of an application filed under Section 7 of the Code, thereby declaring the moratorium prohibiting transferring, encumbering, alienating or disposing off by the CD any of its assets or any legal right or beneficial interest therein.

- b. Subsequently, Respondent No. 1 prepared a list of creditors on the basis of claims received. Accordingly, the claim of the Applicant for an amount of INR 91, 82,292/- was admitted as operational debt, and the Applicant was confirmed as an operational creditor of the CD.
- c. The Applicant has claimed INR 1,96,11,650/- in the Application, as operational dues pertaining to the period before commencement of CIRP of the CD (Pre-CIRP dues) and the payment of any pre-CIRP dues is prohibited in terms of Section 14(1)(b) of the Code.
- d. Section 14(1) (b) prohibits transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein. The moratorium under the Code refers to the period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, can be instituted or continued against the CD. It is submitted that the moratorium mechanism facilitates the continued operation of the business and allows the CD a breathing space for re-organizing its affairs.
- e. There cannot be an exceptional or special treatment to the Applicant in the CIRP. Moreover, once CIRP is initiated against the Corporate Debtor and a moratorium is imposed, the provisions of the Code take precedence over all other laws of the country. Hence, payment of any Pre-CIRP Dues of the Applicant is prohibited under the provisions of the Code.
- f. The Applicant had claimed INR 1,13,14,501/- under Form B as per Regulation 7 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Claimed Amount). In this regard, the claim of Applicant for INR 1,96,11,650/- is

not in consonance to its own Claimed Amount and therefore, cannot be paid as the Applicant has failed to provide a detailed break-up, of outstanding dues as per the Application and its difference with the Claimed Amount. Furthermore, the Respondent has already admitted the claim of the Applicant to the extent of INR 91,82,292/- as per the updated list of creditors as on 31 March 2023 and the Applicant will be paid in accordance with the resolution plan approved by this Tribunal.

- g. As per Section 53(1) (a) of the Code, the insolvency resolution process costs (CIRP Costs) are paid in accordance with the resolution plan submitted by the successful resolution applicant. With regards to the alleged claim of the Applicant about the CIRP Costs, such claim can be submitted to Respondent No. 1 who will then verify the claim and categories such claim to be paid as CIRP Costs under the resolution plan approved by the Tribunal.
- h. Similar to the exorbitant being claimed as Pre-CIRP Dues, it is submitted that INR 1, 51,046/-, claimed by the Applicant as CIRP Costs is also incorrect and inflated. As per the CD's records, the amount due to the Applicant is INR 30, 291, /- payable as part of the CIRP Costs, however, the Applicant has increased his claimed amount to INR 1, 51,046/- without providing any substantial proof and/or any invoices in this regard.
- i. Furthermore, it is submitted that the CIRP of the CD is in its penultimate stage and the payment of CIRP Cost, at this stage of the CIRP will be done under the approved resolution plan by the successful resolution applicant.
- j. The Respondent No. 1 is merely conducting his duties as per the provisions of the Code and any violations of such duties for payment of pre-CIRP dues in favor of any creditor can amount as preferential treatment which

would be in violation of Regulation 7 (2) (a) and 7(2) (h) of IBBI (Insolvency Professional) Regulations, 2017 (IP Regulations) read with Clause 1, 2, 3, 5 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

k. The objective of Code is time bound resolution of the CD while maximizing the value of the assets of the CD. It is in best interests of all stakeholders that the CIRP of the CD is conducted without any encumbrances, so as to yield maximum value for the assets of the CD for its revival. On this ground, the captioned Application is liable to be rejected.

III. The exact same events that the Applicant stated in his application have been reiterated in his Rejoinder.

IV. **The Applicant counsel filed written submission, inter-alia stating that:**

a. It stated that the Coronary stents which were purchased by the Respondent are classified under National List of Essential Medicines (NLEM) 2015 vide various gazette notifications, regarding the essentiality of Coronary stents and being essential for public health.

b. It is stated that as per Regulation 32 of CIRP Regulations, essential services include the services to the extent that those are not a direct input to the output produced or supplied by the Corporate Debtor.

c. The Applicant relied on the NCLAT judgment, *Executive Engineer Uttar Gujarat VIJ Company Ltd vs. Mr. Devang P Samapat RP of M/s Kanoovi Foods Pvt Ltd*, the Hon'ble NCLAT held that

"11. Illustration of Regulation 32 makes the distinction clear. If the electricity consumption was for manufacturing and output

of the Biscuits which is the normal operation of the Corporate Debtor, in that case dues arising from such supply of electricity during moratorium would have to be paid during moratorium. Sub-section 2A of Section 14 read with Regulations referred above makes it clear that if the supply is for managing the operations of the Corporate Debtor the supply cannot be interrupted during moratorium except where Corporate Debtor has not paid dues arising from such supply during the moratorium period. In present matter the consumption is stated to have been for running of office and security of Corporate Debtor. In that case, the same will be part of the CIRP Costs which can be recovered when the Resolution Plan is approved or would form part of Section 53 if the Liquidation has been initiated.”

- d. It is further stated that the Applicant is not entitled to claim any interest amount on its dues. The applicant has not be able to point at any document and/or agreement that would entitle the Applicant to charge any interest on its dues. The Hon’ble NCLAT in the case of *SS Polymers v. Kanodia Technoplast Limited*, has settled that the interest cannot be claimed as a matter of right when there is no agreement between the parties for the same. Relying on the same, the Hon’ble NCLAT has also held that interest cannot be claimed when the document has been signed by a single party unilaterally such as invoice.

V. The Respondent counsel filed written submissions, inter-alia stating that:

- a. It is stated that the Hon’ble NCLAT in *Uttarakhand Power Corporation Limited v. ANG Industries Limited*, (Company Appeal (AT) (Insolvency)

No. 298 of 2017) where in it has concluded that, even in case of essential services, it is not open for a creditor to claim recovery of dues prior to CIRP in view of the moratorium imposed under section 14.

- b. It is stated that the Applicant is not entitled to claim any interest amount on its dues. The applicant has not be able to point at any document and/or agreement that would entitle the Applicant to charge any interest on its dues. The Hon'ble NCLAT in the case of *SS Polymers v. Kanodia Technoplast Limited*, has settled that the interest cannot be claimed as a matter of right when there is no agreement between the parties for the same. Relying on the same, the Hon'ble NCLAT has also held that interest cannot be claimed when the document has been signed by a single party unilaterally such as invoice.
- c. It is further stated that the RP does not have authority under the IBC to make payment of pre-CIRP dues to any operational creditor or statutory creditors. The IBBI, vide its order No. IBBI/DC/136/2022 dated 28.10.2022 in the case of *Anil Mehta: in the CIRP of Pratibha Industries Limited*, has imposed a monetary penalty on a resolution professional for authorizing payments of pre-CIRP dues to the govt. authorities during the ongoing CIRP process under the grab of "essential services". Basing on this, the relief sought in the Application is in direct contravention to the position as interpreted by the IBBI.

VI. Therefore, in the light of the afore stated contest, the points that emerge for consideration of this Tribunal are:

Whether the 1st Respondent can be directed to release the payment to the Applicant for the Pre and Post CIRP Period? If so, together with interest at 18% Per Annum?

1. I have heard, Dr. Prashant Pratap, Ld. Counsel for the Applicant & Mr. Kaazvin Kapadia, Mr. Prakshal Jain & Mr. Vishal Pathak, Ld. Counsels for the Respondent and perused the record.
2. At the outset, it is to be stated that there is no dispute as to the supply of “Minimally Invasive Coronary Stent Systems”, by the Applicant herein, to the Hospital run by the 2nd Respondent, and the same constitute Insolvency Resolution Process Costs as defined under Section 5 (13) (e) of IBC. Here I usefully refer to Regulation 31 (a) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is as below:

Regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

33. Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32;

(aa) fee payable to authorized representative under [sub-regulation (8)] of regulation 16A,

(ab) out of pocket expenses of authorized representative for discharge of his functions under [section 25A]

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d),

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33,

(d) expenses incurred on or by the resolution professional fixed under Regulation 34, and

(e) Other costs directly relating to the corporate insolvency resolution process and approved by the committee.

3. The legal position as regards the entitlement of payment in respect of the supplies of essential goods and services can be well traced from the ruling in *M/s. Tata Power Company Limited vs Mr. Abhilash Lal & another* (IA (IBC)/34/2021), where in it is stated that:

“If the supply of essential services is to keep the Corporate Debtor as an ongoing concern, the assumption is that the Corporate Debtor would be deriving income from out of which the charges incurred for supply of essential services can be paid. If the Corporate Debtor cannot be sustained as an ongoing concern, no income derivation can be expected and hence, the supply of essential services, for the bare necessities of the personnel and the burden arising therefrom would form a part of the CIRP costs.”

4. So much so, I have no difficulty in holding that the 1st Respondent is bound to release the amount claimed by the Applicant for the supplies made during the CIRP of the CD.
5. In so far as, the claim for release of the amount in respect of the similar supplies, however covering the Pre-CIRP period is concerned, the direction as pray, cannot be given as the remedy for the Applicant is to raise a claim before the RP/1st Respondent in accordance with the provisions of the Code, in respect of the pre-CIRP dues.
6. Now coming to the claim for payment of interest at 18% P.A on the sum claimed is concerned, it is to be stated that claim for payment of interest being contractual, can be allowed only when there is an agreement to that effect between the parties. Reliance in this regard can be placed on the ruling of the Hon’ble NCLAT in *SS Polymers vs. Kanodia Technoplast Limited* [Company Appeal (AT) (Ins.) No. 1227 of 2019] where in it was held that:

“20.The Hon’ble NCLAT held that not every interest can be treated as a debt. If in terms of the agreement, interest is payable to the operational or financial creditor, then the debt will include interest; otherwise, the principal amount is to be treated as debt which is the liability in respect of the claim that can be made from the corporate debtor.

21. in view of above, we are satisfied that in the present case to the principal amount had already been paid, also, there is an absence of any agreement stating the interest to be charged. Hence, this bench, respectfully following the precedent set by Hon’ble NCLAT, is of the view that, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer”.

7. Therefore, in the light of the aforesaid ruling, it has to be seen whether in the case on the hand any agreement between the parties for payment of interest for the supplies made by the Applicant exists. The only document which connects to the supply of “Minimally Invasive Coronary Stent Systems” are invoices dated 25.06.2019 and 02.07.2019.
8. A bare perusal of these invoices clearly discloses that the parties have not agreed for payment of interest on the supplies made. So much so, the claim for interest cannot be allowed.
9. Therefore, in the light of my discussion as above, this Application is partly allowed, by directing the Respondents to pay the amount covering the CIRP period as claimed in the Application to the

Applicant, however without interest, within 15 days from the date of receipt of the copy of this order. Rest of the claim is hereby rejected.

In the result, the Application is allowed to the extent indicated above, however without costs.

Sd/- dated 28.03.2024

**Dr. VENKATA RAMAKRISHNA
BADARINATH NANDULA,
(MEMBER JUDICIAL)**

Chandu, LRA

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

**IA (IBC)/63/2020
IN
TCP (IB)/32/7/AMR/2019**

[Under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of
the National Company Law Tribunal Rules, 2016]

In the matter of
M/s. SEVENHILLS HEALTHCARE PRIVATE LIMITED

BETWEEN:

- 1. Mr.Shankar Krishnamurty**
2108, Type-II, Staff Quarters
SevenHills Hospital, Marol Maroshi Road,
Andheri East, Mumbai – 400 059
- 2. Mr.Indranil Mitra,**
2108, Type-II, Staff Quarters
SevenHills Hospital, Marol Maroshi Road,
Andheri East, Mumbai – 400 059
- 3. Dr. Renita,**
208, B Wing, Sani Park CHS,
Jai Bhavani Mata Rd,
Ramesh Nagar,
Amboli, Andheri West, Mumbai 400 058
- 4. Dr. Pooja Bharti**
Flat No 3105, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road,
Andheri East, Mumbai 400 059
- 5. Dr. Khusboo Kataria**
A303, Eden 2 CHS,
Old Hiranandani Market,
Hiranandani Gardens, Powai – 400 076

6. **Dr. Dev Laksheesh**
208, B Wing, Sani Park CHS,
Jai Bhavani RD, Ramesh Nagar, Amboli
Andheri West, Mumbai – 400 058
7. **Dr. Parag Paluskar**
Flat No. 2304 Type 2 Building
SevenHills Hospital, Marol Maroshi Road,
Marol, Andheri East, Mumbai – 400 059
8. **Dr. Suyash Sharma**
Flat No. 803, Green Acres 3, Building 2,
Waghbil Road, Thane 400 615
9. **Dr. Shikha Giri**
Flat No 2804, Type 2 Building
SevenHills Hospital
MarolMaroshi Road, Marol, Andheri East
Mumbai – 400 059
10. **Dr. Satyaprasad. V.**
Flat No 3506, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059
11. **Dr. Roopali Telang**
Flat No 3405, Type 3 Building
SevenHills Hospital, Marol Maroshi Road,
Marol, Andheri East, Mumbai – 400 059
12. **Dr. Geeta Gandhi**
Flat No 3607, Type 3 Building
SevenHills Hospital
Marol Maroshi Road,
Marol, Andheri East, Mumbai – 400 059
13. **Dr. Devadatta Desai**
Flat No 1608, Corona B,
Dosti Imperia, Ghodbunder Road,
Manpada, Thane (W) – 400 607

- 14. Dr. Satinath Mohanty**
Flat No 3707, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059
- 15. Dr. Harshad Jadhav**
Flat No 3503, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059
- 16. Dr. Siddharth Yadav**
Flat No 3305, Type 3 Building
SevenHills Hospital
Marol Maroshi Road, Marol, Andheri East
Mumbai 400 059
- 17. Dr. Rima Sansi**
Flat No 3305, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai - 400 059
- 18. Dr. Kanchan Gupta**
Flat No 3304, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059
- 19. Dr. Dilipkumar. B.**
Flat No 3303, Type 3 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059
- 20. Dr. Mihir Shah**
Flat No 1003, Aradhya One,
PestomSagar, Near Amar Mahal
Chembur, Mumbai

- 21. Dr. Ritesh Karche**
2910, Type 2 Building
SevenHills Hospital,
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059

- 22. Dr. Hemlata Arora**
3406, Type-III, Staff Quarters
SevenHills Hospital
Marol Maroshi Road, Marol, Andheri East
Mumbai – 400 059

- 23. Dr. Manjari Avdhani**
14, Pragati CHS Ltd
Junction of Daftary Road,
Malad East, Mumbai – 400 097

- 24. Dr. G.N. Mahapatra**
Flat No. 801, Dheeraj Gurav Heights
III, Adarsh Nagar
Next to Mainland China Hotel,
Andheri West, Mumbai – 400 053

- 25. Dr. Sonal Sunil Rambhad**
Flat No. 506, Royale Building
Ashar Residency, Pokharan Road No.2
Thane West- 400 601

- 26. Dr. Adrian D'Silva**
2905, Type-II, Staff Quarters
SevenHills Hospital, Marol Maroshi Road,
Marol, AndheriEast, Mumbai 400 059

- 27. Dr. Jaini Lodha**
401, Alka Housing Society,
Near WEH Metro Station
Chintamani Plaza, Andheri Kurla Road
Andheri East, Mumbai – 400 099

28. Mr. Ashok Tiwari
3507 TYPE-III
Staff Quarters, SevenHills Hospital
Marol, Andheri East, Mumbai 400 059

29. Sanjay Kumar Rai
2202- TYPE –II
Staff Quarters, SevenHills Hospital
Marol, Andheri East, Mumbai 400 059

30. Dr. Iqbal Singh
G-403, Lloyd estate
P.O. Antop Hill, Wadala East
Mumbai – 400 037

31. Dr. Manvendra Singh
3706, Type-III, Staff Quarters
SevenHills Hospital
Marol Maroshi Road,
Andheri East, Mumbai – 400 059

(Applicants No. 2 to 31 are being represented by
Applicant No. 1 Mr. Shankar Krishnamurty)

...Applicants

-AND-

1. Seven Hills Healthcare Private Limited
(Under CIRP process and being represented by Resolution Professional)
11-4-4/A, Rockdale layout,
Walter Main Road, Vishakhapatnam,
Andhra Pradesh – 530 002.

... Respondent /Corporate Debtor

2. Abhilash Lal
Resolution Professional of
Sevenhills Healthcare Private Limited
C 192, Belvedere Towers, DLF Phase II,
Gurgaon 122 002

...Respondent/Resolution Professional

3. Committee of Creditors, (CoC)
(Through JM Financial Asset Reconstruction Company Limited)

...Respondent/CoC

Date of Pronouncement of Orders: 28.03.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member (J)

Parties/Counsels Present:

For Applicant : Mr. S Rama Krishna, Advocate

For Respondent : Mr. Niranjan Reddy, Advocate along with
Ms. Siddharth Rade, Mr. Prakshal Jain, Ms. Kaazvin
Kapadia, Mr. Vishal Pathak, Ms. Ananya Bajpai, Ms. Jinal
Shah, Ms. Palak Nenwani (Advocates)

ORDER

[Per: Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (J)]

1. This Application is filed by Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, Amaravati Bench ("Hon'ble Tribunal") seeking, inter-alia, an interim order directing the COC to release the pending monthly salaries of the Applicants above named and to continuously infuse funds to keep the Mumbai Hospital operational as a going concern during the pendency of the corporate insolvency resolution process ("CIRP") of the Corporate Debtor and to allow staff representation at COC meetings.

2. **Facts leading to filing of the present Application are as follows:**

- i.* The present application is being filed by the Applicants above named who are senior doctors and senior management staff employed by

SevenHills Healthcare Private Limited (“**Corporate Debtor**”). The Corporate Debtor has two hospitals, one in Mumbai and one in Visakhapatnam.

- ii.* It is submitted that the insolvency petition against the Corporate Debtor was admitted on 13 March 2018 by the Hon’ble Tribunal and the resolution plan for the Corporate Debtor was approved by the Hon’ble tribunal in exercise of its powers under Section 31 of the Insolvency and Bankruptcy Code (“**the Code**”) by an order dated 26 July 2019 (“**the Approval Order**”)
- iii.* It is submitted that the Approval Order was first challenged before the Hon’ble National Company Law Appellate Tribunal (“**Hon’ble NCLAT**”), which dismissed the said Appeal. The order of the Hon’ble NCLAT was impugned before the Hon’ble Supreme Court. The Hon’ble Supreme Court vide its judgment dated 15 November 2019 set aside the order of the Hon’ble NCLAT effectively setting aside the Approval Order passed by the Hon’ble Tribunal.
- iv.* The Resolution Professional herein, moved to this Hon’ble Tribunal seeking appropriate extension of the Corporate Insolvency Resolution Process (“**CIRP**”) on the ground that both the hospitals of the Corporate Debtor at Visakhapatnam and Mumbai were being managed by the Resolution Professional as going concerns basis and that the

Committee of Creditors and the Resolution Professional were exploring options to maximize the value of the Corporate Debtor in order to achieve successful resolution. This Hon'ble Tribunal vide its order dated 25 November 2019 extended the CIRP period by 90 days.

- v. It is submitted that in the month of October 2019, the Resolution Professional failed to honour its commitments this Hon'ble Court in running this organization on going concern by failing to pay full salaries to the applicants herein.
- vi. It is further submitted that only the nursing staff with salary levels below Rs. 35,000/- for the month of January 2020 were paid and that the Applicant at several instances sought to draw the attention of the Resolution Professional towards the dire predicament being faced by them due to the discriminatory behaviour and decision making of the Resolution Professional.
- vii. It is submitted that delay in release of the funds would further deplete the value of the assets, resulting in vitiation of the entire process and that the Applicants should also be considered as the assets of the company and not just as employees. It is further submitted that the conduct of the Resolution Professional and CoC has already resulted in resignation of doctors, nurses and support staff in the past few months and that the daily OPD count of 120 or more and average bed

occupancy of 35 to 40 have come down drastically to 10 and nil respectively. The operation theatres, the intensive care units and dialysis centres which are the backbones of any tertiary care hospital are shut.

viii. The Corporate Debtor has significant capacity to accommodate 310 beds in the hospital at Vishakhapatnam and 300 operational beds (out of 1500 beds) in Mumbai which provide state-of-the-art multi-speciality healthcare services, including an entire segment for patients hailing from economically weaker classes of society. Between the years 2018-2019, the hospital treated over 120 patients daily in Mumbai in the outpatient department and over 50 patients in the emergency ward daily. The Mumbai hospital during this period has treated over 15,000 patients. It is averred that the non-payment of remuneration to the Applicants for more than 5 months amounts to more than INR 4.50 crores and the uncertainty in the payment of salaries, created a precarious financial and uncertain position, jeopardizing the lives of their families.

ix. It is submitted that there are more than 100 families being accommodated in the hospital-provided staff quarters for more than 8 to 12 years which consist of both elderly people as well as school/college-going children who have adapted to the community and

vicinities that they are put up and that they have no alternative source of income impacting the lives of them and their families.

- x.* It is averred that the non-payment of the salaries of the applicants would lead to a grinding halt and revival of the hospital would be difficult unless remedial measures are taken.
- xi.* It is further averred that the EoI received by the Resolution Professional have been received on the pretext that the Corporate Debtor's hospital is operational and functional and that even the EoI received will have no bearing if the Resolution Professional does not take corrective measures by running the Mumbai hospital optimally and failure to do the same would result in the Corporate Debtor being liquidated.
- xii.* It is humbly submitted that non disbursal of the funds to the applicants would not only impact the applicants and their families but also have an adverse impact on the smooth functioning and operation the Mumbai hospital as going concern. Hence this Application.

3. The 3rd Respondent/CoC (Committee of Creditors of SevenHills Healthcare Private Limited) filed Short Affidavit in reply, denying all the allegations made by the Applicant and contending that:

The respondent has accepted some of the facts mentioned by the applicant in the application and has contended the following:

- i.* It is contended that at no point of time, CoC has acted contrary to and/or violated any order of this Hon'ble Tribunal, as alleged.
- ii.* Further submits that the Municipal Commissioner of the Municipal Corporation of Greater Mumbai (“**MCGM**”) in exercise of the powers conferred upon him under the Maharashtra Covid-19 Regulations, 2020 has directed the Resolution Professional of the Corporate Debtor (“RP”/ “Respondent No. 2”) to permit usage of the Mumbai Hospital of the Corporate Debtor, for the purpose of containment and treatment of patients affected by the COVID-19 pandemic. Accordingly, Mumbai Hospital facilities of the Corporate Debtor are being utilized by MCGM exclusively for COVID-19 related purposes since 15.03.2020 and accordingly, the salaries of the employees (some of whom are the Applicants herein) who were reporting to their duties were being paid regularly by the MCGM. Hence, to that extent, submits that the Applicants cannot allege any grievance.
- iii.* Further submits that the Government of India (“**GOI**”) announced a nationwide lock down on account of Covid-19 pandemic with effect from 25.03.2020. In view thereof, the Hon'ble NCLAT vide its order dated 30.03.2020 (passed on its own motion) in Suo Moto Company Appeal (AT) (Insolvency) No. 1 of 2020, ordered that the period of lockdown ordered by the Central Government (and the State

Governments including the period as may be extended either in whole or part of the country,) shall be excluded for the purpose of counting of the period for resolution process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where “**Corporate Insolvency Resolution Process**” has been initiated and pending before any bench of the Hon’ble National Company Law Tribunal or in Appeal before the Hon’ble NCLAT. In view thereof, the CIRP of the Corporate Debtor is ongoing.

- iv.* Further submitted that that the Corporate Debtor operates multi-speciality hospitals at Mumbai and Vishakhapatnam and that the Mumbai hospital is presently making operational losses i.e. fixed cost required to keep the hospital operating far exceeds the income generated from healthcare services and accordingly there is dire shortage of funds and liquidity issues. The present condition of the Mumbai hospital is also known to the Applicants and further submitted that the RP, with the assistance of the interim finances already availed, has/was so far able to maintain the running of these hospitals.
- v.* It is submitted that, with the issue of running the hospitals as going concern even after the then stipulated maximum of 270 days for completion of CIRP, which expired on 08.12.2018, the RP had earlier raised interim finance of INR 60,00,00,000/- (Indian Rupees Sixty

Crores only) from one of the constituents of CoC of the Corporate Debtor. In order to aid the RP to ensure that the hospitals which provide essential services continue running and the Corporate Debtor remains a going concern and does not lose value. CoC further submits that the aforesaid interim finance of INR 60,00,00,000/- (Indian Rupees Sixty Crores Only) was utilised by the RP towards the operating expenses of the Corporate Debtor to keep the Corporate Debtor as a going concern and that the above mentioned interim finance was also expended towards making payment salaries and bonuses and increments to the employees and/or staff of the Corporate Debtor including the Applicants.

- vi.* The CIRP of the Corporate Debtor has prolonged due to factors beyond the control of the RP and the CoC and the RP was constrained to raise additional interim finance in order to keep the Corporate Debtor as a going concern and for the benefit all stakeholders including the Applicants. Accordingly, by way of resolution dated 20.05.2018. CoC approved raising of further interim funding to an extent of INR 120,00,00,000 (Indian Rupees One Hundred Twenty Crore Only). Accordingly, RP raised additional interim funding from one DB International (Asia) Limited (“**DB Limited**”) by way of a Bond Trust Deed dated 11.06.2019 (“**BTD**”).

vii. Under the BTD, DB Limited has provided only a sum of INR 80,00,00,000 (Indian Rupees Eighty Crores Only) as additional interim finance, whereas as per the terms and conditions of the BTD, provisioning of another INR 40,00,00,000/- (Indian Rupees Forty Crores Only) in two separate equal instalments was also made, RP has continuously been in discussions and engaged in correspondence with DB limited for requesting disbursement of the aforesaid balance amount being INR 40,00,00,000/- (Indian Rupees Forty Crores Only) as further interim finance. However, DB Limited has refused to provide the requisite additional interim finance and is also seeking to restrain the RP and the Corporate Debtor from raising such additional interim finance. DB Limited had filed an application being IA No. 57 of 2020 (“**DB Application**”) before this Hon’ble Tribunal inter alia seeking to restrain the RP and Corporate Debtor from raising additional interim finance and taking any steps in furtherance of the same. DB Limited had alternatively sought relief to the effect that such additional interim finance only be raised after paying off dues of DB Limited or in subordination of its debt. The said reliefs sought under DB Application were rejected by this Hon’ble Tribunal vide an Order dated 12.05.2020. DB limited has preferred an Appeal bearing Diary No. 20234 of 2020 (“**DB Limited**”), before the Hon’ble NCLAT, challenging the order

dated 12.05.2020 of this Hon'ble Tribunal. The DB Appeal is pending hearing and disposal before the Hon'ble NCLAT.

- viii.* In the absence of further finance and serious shortage of liquidity being faced by the Corporate Debtor, the operations of the Mumbai hospital of the Corporate Debtor were also being funded by the cash flows of the Vishakhapatnam hospital by the RP, until the MCGM had started utilizing the Mumbai hospital facilities of the Corporate Debtor, exclusively for COVID-19 related purposes.
- ix.* It is submitted that despite the dismissal of the DB Application by this Hon'ble Tribunal, DB Limited has, thus far, not disbursed the balance amount being INR 40,00,00,000/- (Indian Rupees Forty Crores Only) as further interim finance. The RP and the COC, nonetheless, are taking all available steps to keep the Corporate Debtor as a going concern and ensure continuity of its operations.
- x.* To secure a successful CIRP of the Corporate Debtor, the RP had called for submission of Expression of Interest (EoI), from prospective resolution applicants, the RP has received ten (10) EoIs and as such, the chances of a successful resolution of the Corporate Debtor is likely which will ensure to the benefit of all stakeholders, including the Applicants.

- xi.* It is contended that in any event, seeking an interim order of the nature sought by the Applicants is neither borne out from the mandate of the Code nor facts and circumstances set out above and reiterates that such relief is not maintainable in terms of the Code and contends that the Application deserves to be dismissed.
- xii.* Further contended that the prayer by the Applicants that staff representatives be allowed at CoC meetings, the Code as such does not provide for such representation and that the said prayer of the Applicant is misconceived, not maintainable and is liable to be rejected.
4. Rejoinder filed by the Applicant by denying all the allegations and contentions made by the Respondent and further submissions made by the applicants in the application are reiterated in the rejoinder.
5. It is submitted in the rejoinder that Respondents have professed their intent to keep the hospital as going concern and do not deny the claim placed before this Hon'ble Bench by the Applicants and that they have not contended the prayers of the Applicants in any way.
6. In the light of the contest as aforementioned, the point which emerges for my consideration is

“Whether the Respondents can be directed to release the pending monthly salaries and to continuously infuse funds to keep the Mumbai Hospital as a going concern?”

7. I have heard the Ld. Counsels both parties, and also perused the record.
8. Admittedly, the applicants herein are medical professionals and are serving in 1st Respondent's Hospital. The grievance of the applicants is that, for the services rendered by them, the 1st Respondent has not paid their remuneration in full or paid partly, since October, 2019, despite several requests and reminders. Hence the present application for suitable directions to the 1st respondent for the payment of the same.
9. The 1st respondent herein has been admitted into CIRP on 13th March, 2018. In terms of Regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amounts due to the "suppliers of essential goods and services", form part of the insolvency resolution process costs.

Regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

31. Insolvency resolution process costs.

"Insolvency resolution process costs" under Section 5(13)(e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32;

(aa) fee payable to authorized representative under [sub-regulation (8)] of regulation 16A,

(ab) out of pocket expenses of authorized representative for discharge of his functions under [section 25A]

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d),

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33,

(d) expenses incurred on or by the resolution professional fixed under Regulation 34,' and

(e) Other costs directly relating to the corporate insolvency resolution process and approved by the committee.

Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

32. Essential supplies.

32. The essential goods and services referred to in section 14(2) shall mean-

(1) electricity, ‘

(2) water;

(3) telecommunication services, and

(4) information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

10. Sec 5(13)(e) of the IB Code which is as below, says that Sec. 5(13) “insolvency resolution process costs” means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
(e) any other costs as may be specified by the Board;

11. Indisputably, the services of the applicants which are being availed by the 1st Respondent are essential to keep the 1st Respondent, as a going concern. So much so there can be no quarrel as regards the entitlement of the amount claimed by the applicants in so far as the same relates to the CIRP period.
12. The legal position as regards the entitlement of payment in respect of the supplies of essential goods and services can be well traced from the ruling in *M/s. Tata Power Company Limited vs Mr. Abhilash Lal & another* (IA (IBC)/34/2021), where in it is stated that:

“If the supply of essential services is to keep the Corporate Debtor as an ongoing concern, the assumption is that the Corporate Debtor would be deriving income from out of which the charges incurred for supply of essential services can be paid. If the Corporate Debtor cannot be sustained as an ongoing concern, no income derivation can be expected and hence, the supply of essential services, for the bare necessities of the personnel and the burden arising therefrom would form a part of the CIRP costs.”

13. So much so, I have no difficulty in holding that the 1st Respondent is bound to release the amount claimed by the Applicant for the services made during the CIRP period of the CD.
14. Strangely, the applicants only mentioned that sum more than INR 4.50 Cr is due. As such the application is devoid of the particulars as to the amount due to each of the applicants the RP has also not provided any data in this regard.

Therefore, in the light of my discussion as above, I hereby direct the Respondents to pay the outstanding dues of each applicant, to which each applicant is entitled as per the terms and conditions of his/her employment, commencing from the CIRP admission date, within 15 days, from the date of receipt of this order. The RP shall file report of compliance. Part payments, if any made, shall be deducted and balance amount only need be paid. The Application is allowed to the extent indicated here and the rest of the reliefs are hereby rejected.

Accordingly the IA (IBC)/63/2020 in TCP (IB)/32/7/AMR/2019 is partly allowed and disposed of.

Sd/- Dated 28.03.2024

**Dr. Venkata Ramakrishna Badarinath Nandula,
Member (Judicial)**

-Minisha Jilludimudi, LRA