

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 19.04.2024 AT 01:00

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/110/7/AMR/2022		7 of IBC	Rudrabhatla Ram Kumar Aditya Global Health Care Limited

ORDER

Present: None appears for both the parties.

Orders pronounced. This Petition is dismissed subject to the cost of Rs.5,00,000/- (Rupees Five Lakhs Only) which is to be paid by the FC and recorded vide Separate Sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

CP (IB) No.110/ 07/AMR/ 2022

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

Between:

Rudrabhatla Ram Kumar,
Flat No. 1,
Rainbow Co-operative Society,
Deonar Baug, Mumbai - 400089.
Maharashtra.

...FINANCIAL CREDITOR

Vs.

M/s. Aditya Global Health Care Pvt. Ltd.,
CIN No. U74900AP2015PTC096158,
R/o. 18-1-33, Opp. OP Gate,
Maharanipeta,
Visakhapatnam - 530002.

... CORPORATE DEBTOR

Date of Order: 19.04.2024

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Mr. C. Hanumantha Rao, Advocate.
For the Respondent : Mr. Nali Seshu Kumar, Advocate

Sdf

Sdf

[Per: Sanjay Puri]

ORDER

1. This application under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) has been filed by Rudrabhatla Ram Kumar, the Financial Creditor (“**FC**”) against M/s. Adithya Gopal Health Care Pvt. Ltd, the Corporate Debtor (“**CD**”) for initiating Corporate Insolvency Resolution Process (in short “**CIRP**”) of the Corporate Debtor for committing default in payment of the debt of **Rs 12,85,00,000**. The date of default is stated as 25.05.2021.

Submissions by Financial Creditor

2. It is stated that the applicant is the absolute owner of the site measuring 1011 Sq. yards situated at in Plot No. 10, Rockdale Layout, covered by Block No. 53, TS No. 1187, Waltair Road, Visakhapatnam, which was acquired through a Gift Settlement Deed dated 29.03.1973 and 30.07.2007 executed by Late Rudrabhatla Venkata Gowriswara Rama Sastry and Dr. Rudrabhatla Krishna vide a registered document No’s. 23/1973 and 3350/2007. Out of the total extent of 1011 Sq. yards the Applicant had retained 894.34 Sq. yards and gifted remaining of 116.66 Sq. yards to Rudrabhatla Uma through Gift Settlement Deed dated 10.07.2014 vide registered document No. 450/2014.
3. It is further stated that the Applicant had entered into a agreement titled “Development Agreement coupled with General Power of Attorney” dated 30.07.2014 with R.S. Builders and Developers vide registered document No. 5057/2014 (the Development Agreement

Sd/

Sd/

cum GPA)¹.

4. It is submitted that the Promoter/ Director of the CD (Marrapu Suresh Naidu) had approached the Applicant stating that the CD was in the process of undertaking a project of construction for setting up a hospital and looking for a site to develop and construct a hospital. Thereafter, the Applicant agreed to give his property which was under the 'Development Agreement cum GPA' with R.S. Builders and Developers.
5. It is submitted that the Applicant then cancelled the 'Development Agreement cum GPA' vide a Deed of Cancellation² dated 02.03.2017.
6. It is claimed that an Agreement of Sale and Memorandum of Understandings with the CD represented by its Promoter (Marrapu Suresh Naidu) was then entered by the applicant for the total consideration of Rs. 15,43,00,000/- towards the transfer of land and Rs. 5,00,00,000/- towards other development costs.
7. It is stated that as the implementation of the project is getting unduly delayed, the Promoter approached the Applicant for part financing of the project to which the Applicant had transferred an amount of Rs. 2,58,77,400/- vide RTGS from Indian Overseas Bank for an interest of 2%, which made the CD liable to pay a total amount of Rs. 23,01,77,400/- to the Applicant.
8. It is stated that the CD on various dates had paid an amount of Rs. 11,64,77,400/- as sale consideration of property. The promoter approached the Applicant to convey the property in favour of the CD as to create charge and extend its credit facilities from the Banks

¹ Page 103-142 of the Application

² Pg no. 168-175. Annexure-VIII

Sd/-

Sd/-

and promised to pay balance consideration as agreed in due course. Accordingly, the Applicant on 08.04.2019 vide a registered Sale Deed³ had transferred the property in favour of the CD.

9. It is stated that upon enquiry it was learnt that the CD was sanctioned with credit facilities by Andhra Bank, (Now Union Bank of India), Dwarakanagar Branch, Visakhapatnam and also created charge on the land transferred, but defaulted on payment of the debt due.
10. It is stated that the CD was indulged in manipulation of Books of Account and the financial statement filed with ROC, which reveals that they contain fraudulent entries and disclosures and they were illegally certified by a Chartered Accountant not holding proper and lawful appointment as Auditor of the Company as per the law. Further, the CD has also defaulted in deposit of the Tax Deduction at Source under Income-tax Act, 1961 also indulged in fraudulent conduct of business.

Counter of the Corporate Debtor

11. It is contended that the builder with whom the Applicant had entered "Development Agreement cum GPA" to develop his property of 894.34 sq. yards expressed his intention that he cannot develop the project after completing the construction of first slab as he was in want of funds for constructing the building. Therefore, the Applicant and the developer entered into a cancellation deed of the Development Agreement cum GPA.
12. It is stated that the CD was in search for a property to establish a hospital. Incidentally, the CD came to know about the Applicant's

³ Pg no. 191-208, Annexure- XI

Sd/-

Sd/-

site and cancellation of Development Agreement. After negotiations, the Applicant agreed to sell the property to the CD under a Registered Sale Deed dated 12.02.2019 bearing Document No. 1104/2019 of the Joint Sub-Registrar, Visakhapatnam. Since then, the CD was proceeding for construction of a hospital. Furthermore, it is averred that the CD paid full sale consideration to the Applicant at the time of purchase of the site and that there are no dues payable to the Applicant.

13. It is stated that the Applicant with an ill motive to interfere in the construction of hospital had purchased the abutting site to an extent of 116.66 sq. yards from his wife. Wherein a suit is pending before the II Addl. Junior Civil Judge, Vishakhapatnam for permanent injunction against the applicant.
14. It is contended that the CD had never approached the applicant for partial financing of the project, nor had the Applicant transferred any amount of Rs. 2,58,77,400/- to the CD via RTGS from Indian Overseas Bank.
15. It is contended that the CD did not owe any amount to the Applicant, and the present application has been initiated by the Applicant with ill motives against the CD. The CD had not committed any default of Rs. 10,63,22,600/-.

Rejoinder by the Applicant

16. It is averred that the CD had agreed to reimburse the development costs to the R.S. Developer and has jointly signed in an affidavit⁴ dated 12.07.2019 for settling the matter out of court.

⁴ Pg no. 209-210, Annexure-XII

Sd/-

Sd/-

17. It is stated that the CD requested for part financing the project and the applicant had transferred Rs. 2 Crores vide RTGS dated 19.11.2018 from Dhanlaxmi Bank⁵ and Indian Overseas Bank⁶ on 09.04.2019 for interest, which are not denied by the CD.
18. It is averred that the CD had entered into a series of Agreements of Sale and Memorandum of Understanding's promising the Applicant for the payment of unpaid balance be paid with interest from time to time and to pay balance consideration and interest on the property registered.
19. It is averred that the CD had diverted the loan funds secured from Andhra Bank without procuring the machinery which was questioned by statutorily appointed auditor. The CD had obtained the certificate as a utilization of loan funds and financial statements from another firm of Chartered Accountants by concealing the facts. It is averred that the firm of auditors statutorily holding appointment has filed a Company Petition in CP/8/AM/2022 before this Adjudicating Authority which is pending for disposal.
20. It is averred that the CD has been declared as a Non-Performing Asset (NPA) by Union Bank of India, which has initiated proceedings under the SARFAESI Act and has issued advertisements proposing the auction of the assets, focusing solely on the land and buildings thereon, without mentioning the machinery to which they have extended the credit facility of Rs. 10 Crores to the CD.
21. It is averred that the Applicant had filed and I.A. No. 140/2023 in the present Company Petition praying that the Union Bank of India

⁵ Pg no. 218-233, Annexure-XV

⁶ Pg no. 234-237, Annexure-XVI

Sd/-

Sd/-

be impleaded as Respondent, as the Bank is tampering with the assets of the CD.

The Decision

22. We have heard both sides and have also gone through the entire records. To admit an application under section 7 of I&B Code, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt. Upon reviewing the application, we find that the debt claim of the applicant FC has not been clearly stated.
23. In the synopsis⁷ of his application, and while describing ‘Facts of the Case’⁸ the FC has claimed that he had sold a piece of land to the CD for construction of a hospital project. The sale consideration was, it is claimed, Rs 15,43,00,000 towards the “transfer of land and development cost” and Rs 5,00,00,000 towards “other development costs”. Besides, he claims to have advanced an amount of Rs 2,85,77,400 to the CD (no date is mentioned) “for part financing of project”.
24. The total amount thus claimed as receivable from CD was Rs 23,01,77,400 which is also stated in the respective para 6 of the Synopsis and Facts of the Case. In the same para(s) 6, it is stated that the CD had paid “on various dates” an amount of Rs 11,64,77,400. This balance amount receivable as per the statements of the FC itself works out to be $(23,01,77,400 - 11,64,77,400 =)$ **Rs 11,37,00,000** as against **Rs 12,85,00,000** (with interest) claimed in Part-IV⁹ of Form-1 attached with the application.

⁷ Paras 4 – 6 of SYNOPSIS – page C of the Application

⁸ Pages G & H of the Application

⁹ Page 5 of the Application

SdL

SdL

25. In the Rejoinder, the total amount receivable from the CD “in respect of land, development and other costs and the amount of interest” is stated to be **Rs 22,28,00,000** with **Rs 11,64,77,400** already received from the CD “on various dates”. The resultant outstanding as per this averment come to **Rs 10,63,22,600**. In its counter the CD has denied this amount as payable to the FC and thus denied the default.
26. About the amount transferred by RTGS to the CD also, the FC appears uncertain. In his synopsis and application, the amount stated is **Rs 2,85,00,000**, whereas in the rejoinder the amount mentioned is **Rs 2,00,00,000**. In Part-IV of Form-1, the amounts stated to have been transferred by way of RTGS are Rs 1,00,00,000 on 19.11.2018 and Rs 1,60,00,000 on 09.04.2019 i.e. a total of **Rs 2,60,00,000**.
27. Another discrepancy in Part-IV of Form-1 is regarding the “Other Development Costs: vide agreement dated 12-02-2019” stated to be of **Rs 4,00,00,000**. In the synopsis and facts of the case, as mentioned earlier, this amount was claimed to be **Rs 5,00,00,000**. Moreover, the referred agreement of 12.02.2019 has not been made part of the application.
28. In Part-IV of Form-1, there is also a claim of **Rs 6,25,00,000** “with interest at the rate of 2% per month from 08-04-2019” but no basis for the same has been provided. There is however an email from the CD attached to the application¹⁰ which states the amount of Rs 6,25,00,00 as outstanding.

¹⁰ Page 557-558 of the Application

Sd/-

Sd/-

29. Various agreements and Memorandums of Understanding (MoUs) have been executed between FC and CD regarding the sale and development of a particular parcel of land¹¹. The initial agreements¹² set the land price at Rs 9,83,77,400. Subsequently, a MoU¹³ revised the price to Rs 10,11,00,000 and added an investment by FC of Rs 4,89,00,000, bringing the total to Rs 15 crores. Later, a revised sale agreement¹⁴ returned to the original price of Rs 9,83,77,400. Finally, another MoU¹⁵ set the land price at Rs 15,28,00,000."
30. It is noticed that in respect of a land parcel of 894.39 Sq.Yds. the FC had entered into a series of agreements and MoUs which culminated in a sale deed¹⁶ of 08.04.2019. This land sale deed clearly stated that the CD as 'VENDEE' had **"offered to purchase the same for a sum of Rs 11,64,77,400"**. This deed also acknowledged that the CD as 'VENDEE' had **"paid the sale consideration of Rs 11,64,77,400"** and the FC as 'VENDOR' had conveyed the said land parcel to the FC.
31. Considering that the entire debt claim is about the deals surrounding the aforesaid parcel of land and its development, we are of the view that either no debt was incurred, or the debt if at all incurred, remains uncertain.
32. It is also significant to emphasize that in Part-IV of the application the applicant has identified the date of default as 25.05.2021.

¹¹ 894.39 Sq Yds situated at Plot No. 10 of Rackdale Layout covered by Block No. 53 T.S. No. 1187 of Waltair Ward within the limits of Greater Visakhapatnam Municipal Corporation Area

¹² Sale Agreement dated 23.11.2016 and 7.12.2016 – Page 146 to 159 of the Application

¹³ MoU dated 11.11.2017 – page 176 to 180

¹⁴ Sale Agreement dated 10.02.2018 – Page 182 to 190 of the Application

¹⁵ MoU dated 05.06.2018 – Page 190A to 190D of the Application

¹⁶ Page 191 – 208 of the Application

Sd/-

Sd/-

However, there is no basis provided for this specific date, except for stating that certain cheques were returned on that date.

33. Apparently, this is in the context of the date of 08.04.2019, when the sale deed referred earlier was executed between the FC and the CD. As mentioned earlier, the said sale deed was a culmination of various agreements between the FC and the CD, and which acknowledged full payment by the CD to the FC for the conveyance of the land parcel sold.
34. The application under section 7 cannot be entertained where the financial debt is either not present, or if present, it is not clearly quantified. That's the case here. We are refraining to look into the question of the debt claim being 'financial debt' under section 7 as the debt claim itself is not clear.
35. We also notice that there are ongoing SARFEASI proceedings against the CD. Therefore, we cannot rule out the collusive nature of the present application, which has been resisted only perfunctorily by the CD.

For the reasons as stated in the foregoing paras, this Application is dismissed and a cost of Rs 5 lakhs is imposed on the Applicant.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)