

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.**

**CP (IB) No.7/Chd/HR/2017.
Date of Order: 16.03.2017.**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).
HON'BLE MS. DEEPA KRISHAN, MEMBER (TECHNICAL).**

In the matter of:

Recorders and Medicare Systems Pvt. Ltd.
Plot No.196, Industrial Area, Phase-1,
Panchkula-134113 (Haryana).

....Corporate Applicant/Debtor.

Revised application to initiate corporate insolvency resolution process in respect of Recorders and Medicare Systems Pvt. Ltd. under the Insolvency and Bankruptcy code, 2016.

Present: Mr.J.K.Grover, Independent Director of Corporate Applicant.
Mr.Purushottam Ram Singhania, Insolvency Professional.

ORDER.

R.P.NAGRATH J. (MEMBER JUDICIAL) (ORAL)

This is an application filed by Recorders and Medicare Systems Pvt. Ltd., a "Corporate Debtor" itself under Section 10 of Insolvency and Bankruptcy Code, 2016 (for brevity to be referred here-in-after as 'the Code') in statutory form No.6 as prescribed by sub-rule (1) of rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'Rules') for initiating corporate insolvency resolution process. The 'Corporate Debtor' also falls within the term "Corporate

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Applicant" as defined in sub-section (5) of Section 5 of 'the Code'. During hearing of the petition on 15.03.2017, it was pointed out by Mr.J.K.Grover that form No.6 does not contain the information relating to the loan from HDFC Bank against property and also the unsecured loan borrowed from Suman Jolly, Promoter Director, Rita Jolly, promoter and Shri Jalesh Kumar Grover, Independent Director. It was directed that the corporate applicant shall file the revised form No.6 containing these details and the documents along with the affidavit of Suman Jolly. The compliance has been made.

2. It is represented by Mr. Grover that the applicant company was incorporated on 15.12.2003 with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh. Copy of certificate of incorporation with the Memorandum and Articles of Association is at Annexure VII (B) having been allotted CIN No.U33110CH2003PTC026619. The authorised share capital of applicant company is ₹12,00,00,000/- i.e. 1,20,00,000 equity shares of ₹10/- each and its paid up capital is ₹9,71,91,000/- i.e. 97,19,100 equity shares of the same value. The applicant claims that presently the company has on its Board two Directors, namely; Mr.Suman Jolly and Mr.Jalesh Kumar Grover, the Independent Director. The list of directors with their distinct DIN numbers has been filed with the affidavit dated 14.03.2017 of Suman Jolly. It is represented that earlier Rita Jolly was Promoter Director, but at present, she is not in the Board of Directors of the Company. There are in all 56 shareholders of the company with major shareholding held by Mrs.Rita Jolly to the extent of 7.61%, Suman Jolly 35.29%, HBM Bio Ventures (NR) 7.17%, Baymill International Ltd. (NR) 45.98% as per the list of shareholders Annexure VI(F). According to the applicant, the registered

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office of the 'Corporate Debtor' is situated at Chandigarh and therefore, this Bench has the territorial jurisdiction to entertain and dispose of this petition.

3. The extract of the Resolution of the company 20.01.2017 is at page 529 whereby Mr. Jalesh Kumar Grover Director is authorised to attend the hearing of the case on behalf of the company and submit the information, as may be required by the Tribunal. Mr. Grover also refers to the Board Resolution dated 20.01.2017 Annexure VII (A), authorising Suman Jolly Director to file application under Section 10 of the Code and the rules framed thereunder. Mr. Grover has also been authorised to accept notice under the Code on behalf of the 'Corporate Debtor'. The affidavit dated 07.03.2017 in support of the contents of the application sworn in by Suman Jolly is at page 30 of the paper book. The applicant company has mentioned the residential address of Suman Jolly in column no.3 of form No.6 and also his address of registered office of the company along with email address for service of the process on behalf of the company.

4. It is further represented by the corporate applicant that the applicant company has the following financial creditors:

| Sr. No. | Name of the Bank/ <u>Unsecured creditors</u> | Address. | Total debt | Amount in default. |
|--------------------------|---|---|---|--------------------|
| Secured creditors | | | | |
| 1. | State Bank of Patiala | State Bank of Patiala, Commercial Branch, SCO 103-107, Madhya Marg, Sector 8-C, Chandigarh. | CC limit of ₹13 20 crs TL ₹4.00 crs FITL ₹2.21 crs WCTL ₹9 14 crs LC/BG LIMITS ₹6.50 crs Total: ₹35.05 crs | ₹47.36 crs |
| | | | Amount Outstanding ₹35.15 crs. | |

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|----|---------------------|--|--|-----|
| 2. | State Bank of India | State Bank of India, SAM Branch, Sector 17-B, Chandigarh-160017. | CC Limits ₹ 10.80 crs TL: ₹3 20 crs FITL ₹2.21 crs WCTL ₹3.58 crs LC/BG Limits ₹5.30 crs Total: ₹24.33 crs ₹33.48 crs | |
| | | | Amount outstanding ₹24.48 crs. | |
| 3. | HDFC Bank Ltd. | SCO 153-155, Sector 8-C, Madhya Marg, Chandigarh- 160008. | Loan against property ₹2.49 crs. | Nil |
| | | | Amount outstanding ₹1.56 crs. | |

Unsecured creditors/Loans.

| | | | | |
|----|--|---|-------------------------------------|------|
| 1. | Mr Suman Jolly (Promoter Director) | H.No.54, Sector 9-A, Chandigarh. | Debt raised ₹1.81 crs | Nil |
| | | | Amount outstanding ₹1 49 crs. | |
| 2. | Mrs.Rita Jolly (Promoter) | H No.54, Sector 9-A, Chandigarh. | Debt raised ₹0.15 crs | Nil. |
| | | | Amount outstanding ₹0 12 crs | |
| 3. | Mr.Jalesh Kumar Grover. (Independent Director) | Flat No.202, GH 40, Sector 20, Panchkula | Debt raised ₹0.78 crs. | Nil. |
| | | | Amount outstanding ₹0.78 crs. | |

It is thus, submitted that the total debt raised from financial creditors is ₹64.61 crores, whereas the amount in default is ₹80.84 crores The public deposits are shown as Nil. It is represented that there is default of an amount of ₹11,36,86,789/- in respect of Government dues as per list Annexure II (A);

₹4,56,41,914/- towards operational creditors (Raw Material) as per list

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Annexure II (M); ₹4,28,86,633/- towards workers dues as per list Annexure II (P) and the default in respect of service providers dues to the tune of ₹2,40,953/-.

5. The applicant has proposed the name of Interim Resolution Professional as Mr. Purushottam Ram Singhania, H.No.3029, Ajanta Co-Op. House Society, Sector 51-D, Chandigarh-160047, having email-address prsinghania@yahoo.com, Registration No. IBBI/IPA-001/IP-00079/2016-17/1747. The Insolvency Professional has also filed the written communication in form No.2 of Rules, Annexure-III to act as Insolvency Professional, if an order admitting the instant petition is passed.

6. Insolvency Professional has also declared that he is eligible to be appointed as a resolution professional in respect of 'Corporate Debtor' in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. He has also declared that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. It is also declared that Mr. Purushottam Ram Singhania is not presently serving as Interim Resolution Professional/Resolution Professional/Liquidator in any proceedings. It is stated by the proposed Interim Professional (IP) that he is competent to function as Interim Insolvency Professional as required by IBBI (Insolvency Professional) Regulation, 2016. It is represented that this declaration is duly signed and certified by Mr. Purushottam Ram Singhania.

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7. The applicant further represents that due to the defaults committed in payment of dues of the Bank, State Bank of Patiala, the lead Bank issued a notice dated 04.03.2015 under Section 13(2) of SARFAESI Act, 2002 [Annexure I(C)] stating that an amount of more than ₹47 crores was outstanding against the applicant. When the matter was listed on 10.03.2017, it was represented that the notice Annexure I (C) was stayed by the Hon'ble High Court in CWP No.18449 of 2015, but with repeal of SICA, the writ petition has been dismissed by the Hon'ble High Court on 13.12.2016. It was further submitted by Mr. Grover that another notice has been received from the District Magistrate, UT, Chandigarh asking the 'corporate debtor' and the two Directors Suman Jolly and Rita Jolly to appear before the District Magistrate in the application filed by the State Bank of Patiala for seeking assistance of the District Magistrate in taking over possession of the Industrial site No.181/5, Industrial Area, Phase-1, Chandigarh under Section 14 of SARFAESI Act, 2002.

8. The applicant further represented that a similar notice dated 10.03.2015 under SARFAESI Act, 2002 was also received from State Bank of India Annexure I(H) stating that there was an amount of more than ₹33 crores outstanding against the applicant. According to Mr.Grover, this notice was also stayed by the Hon'ble High Court in the same writ petition. The petitioner was directed to file copy of the writ petition as well as the other documents referred to in para no.7 above and this paragraph along with the affidavit. The compliance has since been made and requisite documents have been filed.

Attested
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9. It is also represented by the applicant that the Board of Industrial and Financial Reconstruction (BIFR) declared the applicant company as sick industrial unit in terms of Section 3 (1) (O) of SICA and appointed State Bank of Patiala as operating agency. Copy of order of BIFR dated 31.12.2012 is at page 509/516 of the paper book. It is also represented that an enquiry was still going on. The last order passed by the BIFR is stated to be dated 07.11.2016 at page 523 of the paper book suggesting that the proceedings were adjourned to 11.01.2017. In the meanwhile SICA was repealed. It is submitted that the instant petition has been filed in terms of eighth Schedule of the 'Code' as provided in Section 252 thereof. Eighth schedule further says that no fees shall be payable, if a reference is made under IB 'Code', 2016 within 180 days from the commencement of the 'Code', in case above proceedings under SICA have abated due to its repeal.

10. It is contended that the 'corporate debtor' proposes to negotiate with the financial creditors for settlement of the dues, in case the Insolvency Professional is appointed in terms of the provisions of the 'Code'. The copies of the corporate debtor's financial statement i.e. audited balance sheets for the last two financial years ending on 31.03.2015 and 31.03.2016, are attached as Annexure V (A) and V (B) respectively. Further the provisional financial statement for the current year made upto 28.02.2017 is at Annexure V (C) (at page no.456 of paper book). All these financial statements are duly attested by Suman Jolly, the Director of the applicant-company, for consideration of the Tribunal.

11. It is also represented that mortgage of the current assets of the company both present and future and of the fixed assets was created on

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07.03.2011, for which, the State Bank of Patiala issued the sanction letter, copy of which is Annexure I (B). The value of the stock, fixed assets and the debtors is also stated as ₹15.81 crores as per the balance sheet ending on 28.02.2017.

12. It is stated that the 'corporate debtor' created equitable mortgage of industrial property No.181/5, Industrial Area, Phase-1, Chandigarh on 21.11.2007. The estimated value of this property is 10 49 crores as per the creditor as on 01.06.2015. Copy of the estimate is at Annexure I (E). The equitable mortgage of the land measuring 8 bighas 19 biswas situate at Baddi (HP) was also created on 17.10.2008. The estimated value of this property is 1.12 crores as per the valuation report dated 01.06.2015 as per the Valuer appointed by the State Bank of Patiala. Another equitable mortgage was also created in respect of Plot No.196, Industrial Area, Phase-1, Panchkula (Haryana), which property is in the name of Intelligent Medical Services Pvt. Ltd., a group company of the applicant. It is represented by the applicant that the Directors of this company and of the 'corporate debtor' are the same. The date of creation of the mortgage is 21.11.2007 with estimate value of ₹14.17 crores as per the creditor State Bank of Patiala. The copy of valuation report dated 01.06.2015 is Annexure I (E).

13. It is further stated that the residential property No.54, Sector 9, Chandigarh in the name of Shubh Jolly, the mother of Suman Jolly Director, was created with HDFC and second charge has been created in favour of State Bank of Patiala by equitable mortgage created on 21.11.2007. The estimated value of this property as per creditor was ₹23.86 crores. The

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residual estimated value is ₹19.86 crores as per the creditors. The valuation report dated 01.06.2015 of the Valuer is at Annexure I (E). Rest are the details of personal guarantees furnished by Suman Jolly, Rita Jolly, Late Shubh Jolly and of M/s Intelligent Medical Services (P) Ltd., all deeds dated 17.10.2008. The certificates of charge issued by the Registrar of Companies (ROC) for State Bank of India are also annexed.

14. The instant application filed in form 6 in terms of Section 10 of 'the Code' by the Corporate Debtor. Section 10 of the 'Code' is extracted hereinunder:

- (1) *Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.*
- (2) *The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.*
- (3) *The corporate applicant shall, along with the application furnish the information relating to—*
 - (a) *its books of account and such other documents relating to such period as may be specified; and*
 - (b) *the resolution professional proposed to be appointed as an interim resolution professional.*
- (4) *The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—*
 - (a) *admit the application, if it is complete; or*
 - (b) *reject the application, if it is incomplete.*

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

- (5) *The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.*

Answer

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The above provision of the 'Code' discloses that the following procedures are required to be completed by a 'Corporate Debtor' for initiating the process of insolvency:

- (i) Existence of a Corporate Debtor.
- (ii) Such a Corporate Debtor must have committed a default.
- (iii) On the satisfaction of (i) and (ii) above a Corporate Applicant may file an application for initiating Corporate Insolvency Resolution Process.
- (iv) Such an application as contemplated in (iii) above shall be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.
- (v) Along with the application as in (iv) above, information relating to books of accounts and other documents relating to such period as may be specified.
- (vi) The Applicant to name the Resolution Professional proposed to be appointed as an Interim Resolution Professional.

Section 10 of the 'Code' confers a discretion on this Tribunal to either admit or reject the application and in case of rejection to give an opportunity to the applicant before such rejection to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority.

The term "**Corporate Debtor**" has been defined under Section 3 (8) of Part-I of the 'Code' to mean a Corporate Person, who owes a debt to any person and '**default**' is defined under Section 3 (12) of Part-I of the Code to mean "non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be".

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15. As provided in Rule 7 (1) of the Rules, the Corporate Applicant has to make an application under Section 10 of the 'Code' in Form 6 accompanied with documents and records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since we have already dealt in detail in the opening paragraphs supra of this order relating to information furnished, we are not repeating the same for sake of brevity, as the essential particulars as contemplated, have been provided by the Applicant.

16. In relation to information relating to books of accounts, audited financial statements have been filed for preceding two years for the year ending 31.03.2015 and year ending 31.03.2016 and unaudited financial statement for the period made upto 28.02.2017. The Schedule of Creditors, both secured and unsecured has been made upto 28.02.2017 attested by the director of the applicant company.

17. The applicant has also named Mr. Purushottam Ram Singhania, the Interim Resolution Professional as required under the 'Code', the application being an application made by a 'Corporate Debtor' with Registration No. IBBI/IPA-001/IP-00079/2016-17/1747. The Interim Resolution Professional named in the application has duly filed Form No.2 as prescribed under the Rules, in which the declaration as required to be made to the effect that no disciplinary proceedings are pending against him, which is a pre-requisite as per Section 16 of the 'Code' has also been made. It is also stated in the application under Section 10 of the 'Code' that the applicant is not barred from filing present application as provided in Section

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11 of the 'Code' and that no liquidation order has ever been passed against the applicant.

18. When the matter was listed on 10.03.2017, the applicant was directed to furnish the information of the accumulated profits/loss of the 'corporate debtor' as on 28.02.2017, 31.03.2016 and 31.03.2015. Similarly, the applicant was directed to furnish details of long term borrowings and other liabilities for the aforesaid years, the current liabilities and the revenue from operations. The compliance has been made by way of the affidavit dated 14.03.2017 of Suman Jolly. The same are reproduced as under:-

Accumulated profit/loss of the 'corporate debtor':

| | |
|------------------|----------------------|
| As on 28.02.2017 | - (₹116,11,99,813/-) |
| As on 31.03.2016 | - (₹112,48,73,266/-) |
| As on 31.03.2015 | - (₹109,76,78,197/-) |

Long Term Borrowings and other liabilities discloses the following for the above years:

| | |
|------------------|----------------|
| As on 28.02.2017 | 63,58,78,042/- |
| As on 31.03.2016 | 63,95,39,584/- |
| As on 31.03.2015 | 65,73,71,271/- |

Current Liabilities:

| | |
|------------------|----------------|
| As on 28.02.2017 | 24,04,94,144/- |
| As on 31.03.2016 | 18,68,81,479/- |
| As on 31.03.2015 | 19,42,31,616/- |

Revenue from Operations:

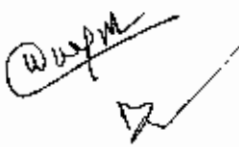
| | |
|------------------|----------------|
| As on 28.02.2017 | 26,55,94,764/- |
| As on 31.03.2016 | 27,43,22,166/- |
| As on 31.03.2015 | 32,43,91,421/- |

19. The figures extracted above indicate the losses with continued fall in revenue, therefore, it seems that the applicant has fallen into debt trap

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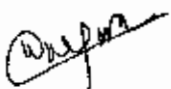
and is competent to set in motion the insolvency resolution process as contemplated under the 'Code'. On the basis of the aforesaid statements of the affairs of the company, the outstanding amount as per the books of the company towards financial creditors is ₹63.58 crores (including unsecured loans from promoters/directors amounting to ₹2.39 crores) and the amount in default towards financial creditors is ₹80.84 crores. It is represented that the total amount of operational creditors (Raw Material Suppliers) is ₹8.94 crores and the amount in default is ₹4.56 crores. The total amount of operational creditors (Government dues) is ₹7.73 crores and the amount in default is ₹11.36 crores. The total amount of operational creditors (Workers/Employees) is ₹6.44 crores and the amount in default is ₹4.29 crores. The total amount of operational creditors (Service providers) is ₹0.95 crores and the amount in default is ₹0.24 crores.

20. In view of the aforesaid discussion, the instant petition deserves to be admitted. It is, however, observed that the applicant company save some sketchy particulars has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which the 'Code' has been brought into force and to balance the interest of all stakeholders, we are satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the Applicant Company/Corporate Debtor. For the reasons aforementioned while admitting the application, we issue the following directions:-

-  (i) Appoint Mr. Purushottam Ram Singhania, H.No.3029, Ajanta Co-Op. House Society, Sector 51-D, Chandigarh-160047,

Email-address prsinghania@yahoo.com, Registration No. IBB/IPA-001/IP-00079/2016-17/1747, a Registered Insolvency Professional (IRP) as the Interim Resolution Professional as contemplated under Section 16 of the 'Code' and his term of appointment shall be for a period of thirty days from the date of this order or as may be determined by the Committee of Creditors whichever is earlier;

- (ii) In terms of Section 17 of the 'Code', from the date of his appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code' including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor.
- (iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the Rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standard of ethics and moral.
- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors at the earliest but not later than two weeks from the date of this Order.
- (v) It is hereby directed that the Corporate Debtor its properties, personnel and persons associated with the management shall



extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor.

21. We further declare a moratorium in relation to the following matters as contemplated under Section 14 of the 'Code' as under:

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any Court of Law, Tribunal, Arbitration panel or other Authority;
- (b) Transferring encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by any owner or lessor or where such property is occupied by or in the possession of the corporate debtor.

22. The Interim Resolution Professional appointed by this Tribunal is also directed to cause a public announcement within 3 days from the date of this order as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against the Corporate Debtor.

Approved

by

23. It is further directed that the Interim Resolution Professional shall positively file a report of events before this Tribunal every week in relation to the Corporate Debtor. Copy of this order be supplied to the authorised representative of applicant immediately, who shall deliver a copy instantly to the Interim Resolution Professional.

-Sd-

(Deepa Krishan)
Member (Technical)

March 16, 2017.

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-Sd-

(Justice R.P.Nagrath)
Member (Judicial)