

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No.50/ALD/2019
(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule,2016)

IN THE MATTER OF

M/S INTEC CAPITAL LTD

.....Applicant/Financial Creditor

VERSUS

M/S ISHWAR CHAND AGRO PVT.LTD.

.....Respondent/Corporate Debtor

ORDER DELIVERED ON :18.12.2020

CORAM:

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

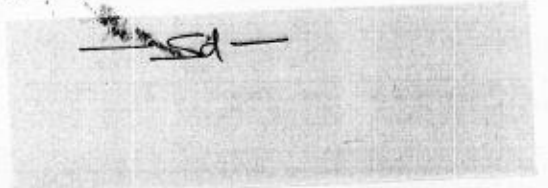
For the Applicant/ Operational Creditor: Mr. Nikhil Kumar, Adv alongwith
Mr. Saurabh Yadav, Adv

For the Respondent/ Corporate Debtor: Mr. Udai Chandani, Advocate

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

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") i.e. "**M/s Intec Capital Ltd**" under Section 7 of the Insolvency & Bankruptcy Code,2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e. "**Ishwar Chand Agro Pvt. Ltd.**" on grounds of its inability to liquidate its financial debt.
2. As per averments made in the petition, the Financial Creditor was approached by the Corporate Debtor for availing the business loan for a principal amount of Rs. 1,32,500/-; pursuant to which, the Financial Creditor on 30.07.2015, issued the Sanctioned Letter dated 31.07.2015 for Rs. 1,32,50,000/- by entering into a loan agreement with the Corporate Debtor and as per the loan agreement, the Corporate Debtor



had to repay the monthly EMI's to the Financial Creditor in 6 years by 72 instalments along with 14.50% per annum interest rate, which forms the monthly of EMI of Rs. 2,76,587/-, to be paid by the Corporate Debtor.

3. It was further contended that, as per the payment schedule, the Corporate Debtor has started making its repayment of EMI's from 05.09.2015. After making some of the repayments, the Corporate Debtor started making defaults in the repayment of EMI's and violated all the terms and conditions of the agreement.
4. In spite of repeated request and notices sent to the Corporate Debtor, it failed to regularize the loan payment. Thus, the Financial Creditor was compelled to recall the entire loan account sanctioned after the adjustment of the amount paid by the Corporate Debtor. Thereafter, the Financial Creditor issued loan recall notice dated 02.08.2017, after which an amount of Rs. 8,32,051/- including three EMI's and other charges had been received by the Financial Creditor.
5. It is further stated that the Corporate Debtor had paid only 22 EMI's out of 72 till 13.08.2018 and a sum of Rs. 1,36,10,089/- including the overdue interest and other charges is outstanding as on the date of 13.12.2018, thus, the Corporate Debtor remains in default in fulfilling their re-payment obligations, till date.
6. In reply to the above, the Corporate Debtor in its counter affidavit stated that before filing the present application, the applicant has filed an Arbitration case against the Corporate Debtor, which was decreed in favour of the applicant in connivance with the arbitrator on 20.04.2018, the copy of which was not delivered to the corporate debtor.
7. It is further stated that after sanctioning of loan and its disbursement, the corporate debtor started making payments of monthly instalments.

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But when the directors of the corporate debtor came to know about the cheating committed by the financial creditor, the corporate debtor stopped payment of instalments and decided to cancel the said loan agreement thus asked the financial creditor for settlement but the financial creditor had asked corporate debtor to pay whole interest till the maturity of the loan i.e. August 2021 and also used the said security cheques without even intimating the corporate debtor and security cheques got dishonoured.

8. Further stated that, the corporate debtor offered a compromise proposal in December 2017 to the financial creditor , whereby it offered to pay principal and interest due till Dec 2017 against outstanding loan but the Financial Creditor did not respond to the aforesaid offer . Thereafter the corporate debtor and its directors again offered a one time settlement in September 2018 to pay Principal and interest due till that date but the financial Creditor did not answer as they wanted to recover the interest till the maturity of the loan period i.e. August, 2021.
9. Rebutting the same, the Counsel for the Financial Creditor stated that the corporate debtor had never approached the Financial Creditor with any proposal to settle the entire loan amount and thereafter, loan recall notice dated 02.08.2017 was issued by the Financial creditor and in regard to the arbitration proceedings it was stated that the corporate debtor was represented throughout by its counsel and award was passed in his presence.
10. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.) Whether there is duly established financial debt.



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

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

11. In the present matter, this Adjudicating Authority finds the debt and default is admitted by the corporate debtor as it has been stated in the counter affidavit filed on behalf of the corporate debtor that they have stopped making payments of instalments and further approached the financial creditor with the one time settlement proposal. . Thus it is well established that there is the existence of debt and default on behalf of the corporate debtor.

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

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

13. Further, it is a settled law that the Adjudicating Authority is only required to ensure whether there is a debt and default on the basis of record (Form 1). It cannot take into consideration any other facts which are irrelevant. The ‘Corporate Insolvency Resolution Process’ not being a litigation much less adversarial litigation or a recovery proceeding or a money suit, has been held by this Appellate Tribunal in ***“Binani Industries Limited vs. Bank of Baroda & Anr.— Company Appeal (AT) (Insolvency) No. 82 of 2018”***.

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14. This Adjudicating Authority finds that the petitioner succeeded in establishing that there is a debt and existence of default on behalf of corporate debtor and the application is complete in all respect. It is seen that the amount in default is in excess of the minimum threshold limit fixed under IBC.

15. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in 25.01.2019 is well within limitation, being within three years from the date of acknowledgement of debt and proposal for settlement i.e December, 2017 and much prior to the amendment made in Insolvency and Bankruptcy Code on 05th of June,2020 whereby Sec 10A was inserted, thus the amendment made will not have any effect in the present petition.

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

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

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

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under

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the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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

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

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

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

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

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

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

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Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

17. The Financial Creditor has proposed the name of **Mr. Piyush Moona** **Registration Number IBBI/IPA-002/IP-P00990/2017-2018/11630** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.
18. The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.
19. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
20. Progress Report to be filed before the Registry of this Bench.

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JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 18.12.2020

Swati Gupta
(LRA)