

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

CP/647/(IB)/CB/2017

Under Section 7 of the Insolvency and Bankruptcy Code
2016 R/W Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. Harivardhan Steel and Alloys Pvt. Ltd.

.....Financial Creditor

Vs.

M/s. Experienced Hi-Tech Consultancy Services Pvt. Ltd

.....Corporate Debtor

Order delivered on 27th February, 2018

CORAM :

CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

*For Financial Creditor(s) : Counsels, Mr. B. Raviraja and R. Ramasubramaniam Raja
For Corporate Debtor(s): Sr.Counsel Mr. Shankara Narayanan for Vaibhav R. Venkatesh*

ORDER


Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under adjudication is an Application that has been filed by M/s. Harivardhan Steel and Alloys Private Limited (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Experienced Hi Tech Consultancy Services Pvt. Ltd.

(hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsels for the Financial Creditor, and Corporate Debtor, and the pleadings including the documents placed on the file.
3. The Financial Creditor claimed that an amount of Rs.1,17,36,438/- is outstanding against the Corporate Debtor. The details of which is that Rs.85,00,000/- is the principal amount plus interest @ 10% until 15.08.2017 which comes to Rs.32,36,438/- totalling Rs.1,17,36,438/-.
4. The Corporate Debtor is stated to have defaulted in making payment on 31.03.2014. The Financial Creditor has referred to the confirmation letter placed at page 46 of the typed set filed with the

Application which goes to show that on 01.04.2015, the Corporate Creditor has confirmed the balance through its authorised signatory, wherein the balance outstanding is shown as Rs.88,30,658/- including interest @ 10% as on 01.04.2015.

5. The Financial Creditor has also referred to the Legal Notice dated 29.06.2015 which is placed at pages 78 to 82 of the typed set filed with the Application sent under Sections 433 and 434 of the Companies Act 1956, wherein it has been mentioned that the Director viz., Ms. Amita Bishnoi and Ms. Manju Vijay Bishnoi have approached the Financial Creditor in the year 2012 for a Short Term Inter Corporate Deposit by presenting a rosy picture about the financial capabilities of the Corporate Debtor, and based on their assurance, the Financial Creditor did agree to finance the requisite amount of Rs.85,00,000/- which was paid during October, 2013. The detail of payments is as follows: 

Date	Bank	RTGS	Amount
23.10.2013	Axis Bank Ltd	UTIBH-13296643778	Rs.5,00,000/-
23.10.2013	Axis Bank Ltd	UTIBH-13296039819	Rs.20,00,000/-
24.10.2013	Axis Bank Ltd	UTIBH-13297645651	Rs.30,00,000/-
25.10.2013	Axis Bank Ltd	UTIBH-13298646630	Rs.5,00,000/-
29.10.2013	Axis Bank Ltd	UTIBH-13302651423	Rs.25,00,000/-

6. The Financial Creditor has also referred to the Legal Notices dated 01.08.2015 and 30.05.2016, the copies of which are placed at pages 85 and 94 respectively of the typed set filed with the Application sent to the Corporate Debtor. But, no replies have been given by the Corporate Debtor.

7. The Financial Creditor has filed Company Petition No.382/2016 before Hon'ble High Court of Madras under Section 433(e) along with other relevant provisions of the Companies Act 1956 for winding up of the Corporate Debtor on the ground of non-payment of the debt, the copy of which is placed at pages 132 to 140 of the typed set filed with the Application. Subsequently, the same has been transferred to the NCLT. The NCLT, vide its Order dated 21.07.2017 recorded that the Financial


Creditor failed to make compliance with the provisions of Section 9(3)(b) and (c) of the I&B Code, 2016, and therefore, the matter stood abated as per the notification dated 29.06.2017 issued by the Ministry of Corporate Affairs. Now, the Financial Creditor has filed the present Application under Section 7 of the I&B Code, 2016.

8. It has been submitted by the Counsel for the Financial Creditor that the Inter-Corporate Deposit was made by the Financial Creditor on condition that after completion of three months from the date of disbursement of the amount of Rs.85,00,000/-, the Corporate Debtor shall pay interest @ 10% on quarterly basis and shall return the loan amounting to Rs.85,00,000/- within the period of one year. But, the Corporate Debtor failed to honour the commitment to pay the 10% interest after the completion of three months from the date of disbursement of the said amount, and also failed to repay the said amount within the period of one year, in spite of the notices sent by the Financial

Creditor.

9. Counsel for the Corporate Debtor filed the reply stating therein that the abatement dated 27.07.2017 is neither set aside nor any appeal has been filed. This issue being covered by the Order of the Hon'ble NCLAT, passed in *M/s.Krismaa Foundation Pvt. Ltd -vs- M/s.Indust Cityscapes Constructions Pvt. Ltd*, therefore, is not required to be deliberated upon. Thus, the principle of *res judicata* as pleaded by the Counsel for the Corporate Debtor has no application in this case. The Corporate Debtor has also denied that any amount of loan was provided by the Financial Creditor to the Corporate Debtor in the name of Inter-Corporate Deposit. But, it has fairly been admitted during the course of arguments that that an amount of Rs.85,00,000/- has been received by the Corporate Debtor from the Financial Creditor during October, 2013. However, the Respondent has pleaded that there is no default on the part of the Corporate Debtor for the reasons

that a Board Resolution came to be passed in the meeting of the Directors of the Corporate Creditor on 20.10.2013 wherein it has been resolved that the long term interest free unsecured loan amounting to Rs.85,00,000/- taken from the Financial Creditor shall be repaid by the Corporate Debtor at the end of the year 31.10.2023 along with mutually decided honorarium of Rs.1 Lakh per year which would also be payable on or before 31.10.2023. The Corporate Debtor has also referred to the balance sheets filed by the Corporate Debtor for the year 2013-14 which is placed at page 105 of the typed set filed with the Application in order to show that the loan amount of Rs.85,00,000/- is not the Inter-Corporate Deposit, and the same was interest free unsecured loan.

10. The documents referred by the Counsel for the Corporate Debtor are self-serving and cannot be taken as evidence to prove contrary to balance confirmation placed at page 26 of the typed set filed with the Application, and signed by the authorised 

signatory cum director of the Corporate Debtor. Further, the photostat copy of the purported board resolution dated 20.10.2013 filed during the arguments, does not contain anybody's signature, therefore, is not admissible under the law of evidence.

11. The notices dated 06.02.2015, 29.06.2015, 01.08.2015 and 30.05.2016 which are placed at pages 43, 78, 85 and 94 respectively of the typed set filed with the Application, and the confirmation of balance dated 01.04.2015, which is placed at page 46 of the typed set filed with the Application and the admission made by the Counsel for the Corporate Debtor during the arguments, are sufficient proofs to ascertain the default on the part of the Corporate Debtor in relation to the outstanding debt claimed by the Financial Creditor.

12. In the light of the discussion made above, the arguments submitted by the Counsel for the Corporate Debtor stand rejected. The Financial

Creditor has fulfilled all the requirements of law and has also proposed the name of IRP after obtaining the written consent in Form-2. Therefore, CP/647/(IB)/CB/2017 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

13. Mr. CMA CS Rajasekaran is hereby appointed as IRP, as has been proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date, the copy of this order is received, and call for submissions of claim in the manner as prescribed.

14. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is hereby ordered to prohibit 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 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 an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

15. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
16. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The Directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.
17. The Financial Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

18. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor. The address details of the IRP are as follows: -

Mr. CMA CS Rajasekaran,
Regn.No: (IBBI/IPA-003/IP-N00053/2017-18/10493)
New No.6, Old No.12,
Appavoo Gramani 1st Street,
Mandaveli, Chennai – 600 028.
Email: mdaibc@gmail.com
Mobile No: 9884528518.

19. The Order is pronounced today on 27th February, 2018 in open Court in the presence of the Counsels for both the parties.

P.ATHISTAMANI


[CH.MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)