

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-1444(PB)/2018

IN THE MATTER OF:

Reliance Commercial Finance Ltd.

....Petitioner

Vs.

Sunar Jewels Pvt. Ltd.

....Respondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 25.04.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SH. S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Ashok Kumar Singh, Mr. Rajat Katyal,
Ms. Saloni Singh, Mr. Harsh Singha, Mr.
Ashutosh Ranjan, Advs.
For Respondent :Mr. Arvind Nayyar, Sr. Adv. With Mr. Vivek
Kishor, Ms. Mallika Kamal, Advs.

ORDER

M.M.KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Sunar Jewels Private Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' formerly Reliance Capital Limited, is a Non-Banking Financial Company incorporated under the provisions of the Companies Act, 1956.

2. The Corporate Debtor – Sunar Jewels Private Limited was incorporated on 12.05.2009 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U51909DL2009PTC190199.
3. It is submitted by the Petitioner that the respondent – corporate debtor had availed a loan facility amounting to Rs. 5,60,00,000/- which was sanctioned vide loan agreement dated 30.09.2016 (**Annexure – VIII**) against the security of immovable property. In addition to the above loan facility, the respondent – corporate debtor had availed four other loan facilities in the capacity of co-borrower. The said loan agreements each dated 30.09.2016 (**Annexure – IX (Colly)**) are placed on record.



4. It is also submitted by the petitioner – financial creditor that it had issued five Loan Recall Notices dated 27.03.2018 in respect of the four loan agreements, calling upon the respondent- corporate debtor to repay a sum of Rs. 5,89,43,430/-, Rs. 14,76,48,238/-, Rs. 1,37,06,113/-, Rs. 3,15,89,835/- and Rs.8,97,58,258/- respectively (**Annexure – XII (Colly)**).

5. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor in respect of the five loan facilities is Rs. 35,56,34,179/- . A tabular chart depicting working of the amount in default is annexed (**Annexure – VI**).

6. The Financial Creditor has proposed the name of Mr. Manoj Garg as the Insolvency Professional with the address GF – 85, World Trade Centre, Barakhamba Road, New Delhi - 110001 and E-mail-id – cagargmanoj@hotmail.com. His registration number is IBBI/IPA-001/IP-P01167/2018-19/11872. He has filed his written communication which



satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration vide Diary No. 9696 filed on 04.12.2018.

7. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Financial Creditor has mentioned the amount claimed in default and the date of the default.

8. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that Loan disbursed and a copy of Form No. CHG-1 filed by the corporate debtor depicting charge registered in favour of the petitioner – financial creditor with the Registrar of Companies, NCT of Delhi & Haryana **(Annexure – VII)**. A copy of the Order of Hon'ble Bombay High Court dated 09.12.2016 **(Annexure – I)** and CIBIL Report of the respondent- corporate debtor **(Annexure - X)** is also placed on record.

9. A reply to the petition has been filed by one Mr. Praveen Gupta, being the Director of the Respondent- Corporate Debtor, who has been given authority vide Board Resolution dated 01.12.2018 and also a Rejoinder to the Reply has been filed by the Petitioner-Financial Creditor.

10. When the case was heard on merit the respondent – corporate debtor raised the objection regarding the Scheme of Arrangement between Reliance Capital Ltd. and Reliance Commercial Finance Ltd. under the provisions of the Companies Act, 1956 duly sanctioned by the Hon'ble Bombay High Court on 09.12.16. It is pleaded that they were not informed about the said Scheme being sanctioned and learnt about the same for the first time through Recall notice.

The above argument raised does not sustain in the light of the Scheme sanctioned by the Hon'ble Bombay High Court. The Judgement records the statement made by the Regional Director that the Scheme is not prejudicial to the interest of the Shareholders and public. Moreover the debt and other liabilities of Reliance Capital Limited being the Transferee Company stand transferred to the petitioner – financial creditor

in the present petition. The respondent – corporate debtor was liable to make the payment as per the schedule mentioned in the agreements. Therefore the argument raised is wholly unwarranted and is hereby dismissed.

11. Another argument raised by the respondent – corporate debtor is that there is an Arbitration Award rendered on 11.01.2019 in the favour of petitioner – financial creditor. The aforesaid fact has not been disclosed in these proceedings.

The argument is devoid of merit. The suppression of a material fact alone would constitute a basis for adverse comment on the conduct of the Petitioner. An award of the Arbitrator does not create a bar for filing a petition under Section – 7 of IBC, 2016 nor does the petitioner suffer from any disability on that account. There is thus no impediment created by the non-disclosure of the aforesaid fact. Therefore we have no hesitation to reject the argument.

12. The disbursement of loan and default stands admitted by the respondent – corporate debtor. Even Otherwise there is overwhelming documentary evidence on record which support



those findings. In view of the aforesaid statement made by the respondent – corporate debtor and a perusal of the documents placed on record the petition warrants admission.

13. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.

14. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in the case of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).

15. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

16. As a sequel to the above discussion, this petition is admitted and Mr. Manoj Garg is appointed as the Interim Resolution Professional.

17. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.



19. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Manoj Garg to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

20. We wish to clarify one aspect which has come to our notice that the corporate debtor is Co-Borrower in four loan agreements with Shree Raj Mahal Jewellers Pvt Ltd., who is also a corporate debtor in IB-818(PB)/2018. Following the judgement of the Hon'ble Appellate Tribunal in Dr. Vishnu Kumar Agarwal vs. M/s Piramal Enterprises Ltd. (Company Appeal (AT) (Insolvency) No. 346 of 2018) decided on 08.01.2019, it is relevant to mention that the financial creditor in both the cases, that is, IB-818(PB)/2019 & IB-

1444(PB)/2018, is Reliance Commercial Finance Ltd. Therefore, the financial creditor would be entitled to make exclusive claim in any of the two petitions and no duplicacy of the claim shall be entertained by the IRP/RP as concluded in M/s Piramal Enterprises Ltd. (supra). It is pertinent to mention that it has a cascading effect on the allocation of voting share in the CoC. It would also avoid any error in respect of the amount claimed by the claimants. The IRP/RP shall take note of these facts.

21. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.


(M.M.KUMAR)
PRESIDENT


(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

25.04.2019
(VIDYA)