

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-588(PB)/2017

IN THE MATTER OF:

SRS Finance Limited

.....Applicant

v.

Omega Jewellers Private Limited

.....Respondent

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

Judgement delivered on: 31.05.2018

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

S.K. MOHAPATRA
Hon'ble Member (T)

For the Financial Creditor: Dr. Shruti Bajaj, Advocate

For the Respondent: None

M.M.KUMAR, PRESIDENT

JUDGEMENT

The 'Financial Creditor'- SRS Finance Limited has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to

trigger the Corporate Insolvency Resolution Process in the matter of M/s Omega Jewellers Private Limited. It is appropriate to mention that the "financial Creditor" is body incorporated under the Companies Act, 1956 on 01.02.1994 and was assigned identification number L74899HR1994PLC040440. The registered office of the applicant company is at SRS Tower, 306, 3rd floor, near Metro Station Mewla Maharajpur, G.T. Road, Faridabad-121003.

2. Mr. Deepak Garg, whole-time director & CFO of the applicant was duly authorized by its Board Resolution dated 03.11.2017 to sign and file the present application for initiation of Corporate Insolvency Resolution Process in terms of provisions of the Code.

3. The Corporate Debtor-M/s Omega Jewellers Private Limited (CIN No. U52599DL2009PTC188535) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 18.03.2009 having its registered office at C 1/22-A, Kh. No. 326/1 Nehru Vihar, Karawal Nagar-Delhi-110094. Its authorised share capital is Rs. 20,00,000/- and the paid up share capital is Rs. 14,13,480/-.

4. In the application, the Financial Creditor has furnished the details of financial debt granted to the 'Corporate Debtor' with the dates of disbursement. A perusal of part IV of the application has highlighted the following particulars of financial debt:

"PARTICULARS OF FINANCIAL DEBT"									
1. TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Business loan (running account facility)								
	Business Loan Originally Sanctioned- 5.00 Cr.								
	Business Loan after review-4.75 Crore								
<table border="1"> <thead> <tr> <th>Date of disbursement of debt/ Loan</th> <th>Amount of Debt/Loan</th> </tr> </thead> <tbody> <tr> <td>29.08.2013</td> <td>50,000,000/-</td> </tr> <tr> <td>12.08.2014</td> <td>6,000,000/-</td> </tr> <tr> <td>31.12.2015</td> <td>4,400,000/-</td> </tr> </tbody> </table>		Date of disbursement of debt/ Loan	Amount of Debt/Loan	29.08.2013	50,000,000/-	12.08.2014	6,000,000/-	31.12.2015	4,400,000/-
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29.08.2013	50,000,000/-								
12.08.2014	6,000,000/-								
31.12.2015	4,400,000/-								

5. Facts which are material to the controversy raised may first be noticed that the respondent company requested for sanction of loan amounting to Rs. 500 lacs and the same was sanctioned vide letter dated 26.08.2013 in form of business loan for a period of five years. The said loan was disbursed on 29.08.2013 and it was charged against the property of respondent on

11.11.2013.

6. It is also the case of applicant that the respondent failed to regularize the interest continuously therefore the account of respondent was classified as NPA.

7. Thereafter the applicant issued letter of default dated 16.12.2016 calling respondent to pay a sum of Rs. 71,81,789/- to the applicant company.

8. The applicant company further issued legal notice dated 03.06.2017 calling the respondent to make payment of Rs. 5,39,56,212/- to applicant.

9. The applicant has placed on record various other documents in support of the debt sanctioned to Respondent company which are as follows:

- Letter dated 10.08.2013 issued by respondent.
- Letter dated 10.11.2015 issued by respondent.
- Letter dated 28.03.2016 issued by respondent.
- Letters dated 29.03.2018, 12.08.2014 and 31.12.2015 by applicant company.
- Ledger account of respondent company maintained by applicant.



- Letter dated 16.12.2016 issued by applicant to respondent company for non-payment of interest.
- Copy of legal notice dated 03.06.2017 to respondent company by applicant company.
- Balance sheets of Respondent Company.

10. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

11. The applicant has also placed on record certificate issued by Bank of Baroda dated 03.05.2018, under Section 2A of Banker's Book Evidence Act, 1891 certifying that the statement of account attached with the certificate is a true copy as saved in the computer system in ordinary course of business.

12. In the reply filed by the Respondent, the disbursement of the loan amount has not been disputed nor it has been contended that the account of the financial creditor suffers from any errors. The aforesaid facts are evident from the perusal of para 3 & 4 of the reply which are set out *in-*

extenso:



“3. That the respondent due to huge financial losses in business due to pan India strike by gold jewellers agitating against the decision of central government in the month March-April 2016 and further general slowdown in market and still further due to non-realisation of debts from its debtors could not pay the instalments on time and requested the financial creditor to grant more time to pay the instalments against the sanctioned loan of Rs. 4, 75,00,000/- and the interest thereon by the financial creditor in favour of corporate debtor.

4. Even till date the corporate debtor is willing to pay the remaining amount of the loan. However, for the same the corporate debtor needs sufficient time so that the corporate debtor may realize its due amounts from its debtors who are unable to pay the dues on one pretext or other. It is important to mention that the contents mentioned in the application regarding the sanction of the loan amount is correct.”



13. A perusal of the aforesaid two paragraphs makes it evident that the corporate debtor did not pay the instalments on time and had requested petitioners to grant further time to pay the instalments against loan amount of Rs. 4.75 Crores with interest. It is further evident that the corporate debtor expressed the will to pay outstanding demanded amount and has requested for sufficient time to enable him to recover the due amounts from its debtors. This stand taken by the corporate debtor in the reply would amount to admission of the loan amount and interest and the default in making the payment. These elements constitute basic ingredients of section 7 of the Code and are considered sufficient to trigger the CIRP provided the application in other respect is complete. The only other factor which needs consideration is the antecedents of the proposed IRP.

14. The 'financial creditor' has proposed the name of Shri Sudhir Kumar Agarwal, for appointment as interim resolution professional having registration number IBBI/IPA-001/ IP-P00195 / 2017-18/10374 having office at 415, Naurang House, 21, K.G Marg, New Delhi-110001. A written communication dated 30.03.2017 in Form 2 in terms of Rule

9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Shri Sudhir Kumar Agarwal as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

15. For the reasons, aforementioned this petition is admitted. Shri Sudhir Kumar Agarwal, having registration number IBBI/IPA-001/ IP-P00195 / 2017-18/10374 is hereby appointed as an Interim Resolution Professional.

16. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately with regard to admission of this application under Section 7 of the Code.

17. The expression "immediately" as under Section 13(2) of the Code has been classified to mean 3 days by Regulation 6



(Exp) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016.

18. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

- “(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;



(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.”

19. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the 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) Regulation 2016. The aforesaid regulation 32 reads as under:

“32. Essential supplies- The essential goods and services referred to in section 14(2) shall mean-

(1) electricity;

(2) water;

(3) telecommunication services; and

(4) information technology services,



to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration- Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.”

20. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be



under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

21. The Petition is disposed of in the above terms.

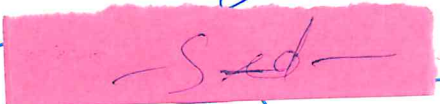
22. The office is directed to communicate a copy of the order to the Financial Creditor and the Corporate Debtor at the earliest possible but not later than seven days from today.

 S-d

(M.M. KUMAR)

31.05.2018

PRESIDENT

 S-d

(S.K. MOHAPATRA)

MEMBER (TECHNICAL)