

C.P. (IB) No. 364/KB/2017

Vivid Colors Pvt. Ltd.

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

Company Petition No. 364/KB/2017

In the matter of:

Section 7 of the Insolvency and Bankruptcy code

And

In the matter of :

VIVID COLORS PRIVATE LIMITED

Flat No. 14, Block No. 2, Rajshree Apartment

Sidhgiribagh, Varanasi

Uttar Pradesh- 221010

....Petitioner Company / Financial Creditor

Versus

JENSON & NICHOLSON (INDIA) LTD.

7B, Middleton Street P.S. Shakespeare Sarani

Kolkata, West Bengal-700071.

....Respondent Company / Corporate Debtor

Judgement/Order delivered on 07th August , 2017

CORAM: Ms.manorama Kumari,Member (Judicial)

For the Petitioner/Financial Creditor

Mr.Shaunak Mitra, Advocate

Mr.Arvind Gupta, Advocate

For the Respondents/Corporate Debtor

Mr.Sachin Kumar, Advocate

Mr.Surendra Kumar, Advocate

An application for initiation of Corporate Insolvency Resolution Process by the Financial Creditor in respect of Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 .

ORDER

Heard the Ld. Advocate representing the Financial Creditor / Petitioner at length.

The Ld. Advocate representing the Corporate Debtor / Respondent has unequivocally admitted the Debts / Loans inclusive of interest after adjustment of all the account payments of the Financial Creditor to the tune of INR 2,95,46,76,776/- (Rupees Two hundred ninety five crores forty six lakhs seventy six thousand seven hundred seventy six). The Corporate Debtor has specifically and categorically admitted the confirmation of Loans / Debts amount as well as interest due as on 31.03.2017 to the Financial Creditor vide their letter dated 19.05.2017. He has fairly submitted that the outstanding amount of Loans / Debts has also been reflected in the Balance Sheet of the Corporate Debtor for the financial year ending on 31.03.2016 and the financial position of the Company is not as such to repay the Loans / Debts. Thus, the default has occurred on the part of Corporate Debtor.

The petitioner, Financial Creditor namely, Vivid Colors Private Limited has filed a petition under Section 7, read with Section 14, 16, 33, and other applicable Sections of the Insolvency and Bankruptcy Code, 2016, inter alia, praying for initiation of Insolvency Resolution Process against the Corporate Debtor / Respondent Company claiming that the petitioner is a Financial Creditor within the meaning of Section 5(7) of the Code and the Respondent owes a debt to the Petitioner/ Corporate Debtor within the meaning of Section 5(5)(a) of the Code. It has been claimed that the Respondent Company indebted to the Petitioner Company for an amount of INR 2,95,46,76,776/ (Rupees Two Hundred Ninety Five Crores Forty Six Lakh Seventy Six Thousand Seven Hundred Seventy Six) inclusive of interest as per relevant Financial Contract till the date of payment. Though, the Advocate representing the Respondent Company / Corporate Debtor fairly admitted the part of outstanding dues but the outstanding dues has not yet been repaid to the Petitioner / Financial Creditor till date.

It has also been claimed that the Respondent is a defaulter in making the payment to the Financial Creditor and the claim is within the period of limitation and well within the jurisdiction of this Tribunal.

The total amount of debt granted to the Corporate Debtor to the tune of INR 60,54,35,886/- on account of Loan / Debts originally taken from Bank, Financial Institutions and other lenders but all are assigned in favour of Financial Creditor i.e. Vivid Colors Pvt. Ltd. as well as INR 32,23,75,000/- on account of Loan / Debts directly granted by Financial Creditor. The Corporate Debtor has from time to time made part payment under the Financial Documents, in acknowledgment of its debt and liability reflected in Annexure-1.

Particulars of Financial debt is mentioned in page 25 of the petition and marked as Annexure-P/2. The principal amount of Loan / Debt comes to INR 927,810,886/- plus interest accrued thereupon comes to INR 2,026,865,890/- and total Loans / Debts come to INR 2,954,676,776/- after adjusting all the account payment. The balance outstanding Loans / Debts of sum of INR 2,95,46,76,776/- is still payable by the Corporate Debtor to the Financial Creditor. The confirmation letter dated 19.05.2017 has been received from the Respondent / Corporate Debtor with respect to loan and interest outstanding as on 31.03.2017 which is due to the Petitioner / Financial Creditor which is at page 26 and marked as Annexure-P3 the aforesaid Loan/ Debt of Financial Creditor has un-equivocally been admitted by the Corporate Debtor in writing on several occasions including, inter alia, by its latest confirmation of balance sheet as on 31. March, 2016.

The petitioner has prayed for interim relief which are as follows:-

- a) Admit the present Application and initiate Corporate Insolvency Resolution Process;
- b) Appoint the proposed Interim Resolution Professional as the Interim Resolution Professional as per the provisions of Section 16 of IBC 2016 to conduct the Corporate Insolvency Resolution Process;
- c) Declare a moratorium period as per the provisions of Section 14 of IBC 2016;
- d) Direct issuance of a public announcement of initiation of Corporate Insolvency Resolution Process;
- e) Direct issuance of a public announcement calling for submission of claims;
- f) Direct the Resolution Professional to furnish an information Memorandum to the Petitioner and give Petitioner access to all relevant information in

physical and electronic form, including financial position of the Respondent Company, all information relating to disputes by or against the Respondent Company, to make a resolution plan;

OR

Pass any such other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

The Petitioner / Financial Creditor has also prayed for the following reliefs:-

- a) Approve the resolution plan submitted by the Resolution Professional before this Hon'ble Tribunal
Or in the alternate
 - i. Pass an order for liquidation of the Respondent Company as per the provisions of Section 33 of IBC 2016;
 - ii. Direct issuance of a public announcement stating that the Respondent Company is in liquidation;
 - iii. Appoint the Resolution Professional, or any other person as this Hon'ble Tribunal deems fit, as the liquidator of the Respondent Company;
- b) Costs of this Petition may please be awarded in favour of the Petitioner and against the Respondents; and
- c) Pass any such other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

The petitioner has proposed the name of Mr. Vinay Talwar as an Interim Resolution Professional. The particulars of the proposed interim resolution professional are as follows.

Name: Vinay Talwar

Designated Partner

M/s. Turnaround Insolvency

Professional LLP

Address: 1, Link Road, Jangpura Extension, New Delhi – 110014

Email: vinay@corporateconsultants.in

Regd. No. : IBBI/IPE/0006

The petitioner has also certified that Mr. Vinay Talwar is fully qualified and permitted to act as Interim Resolution Professional. The proposed IRP Mr. Vinay Talwar has also given his consent letter in form no. 2 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and he has also certified that no disciplinary proceeding is pending against him with the Board of Indian Institute of Insolvency Professional of ICAI Insolvency Professional Agency as specified in Section, 9 (5) (i) of IBC 2016.

On perusal of the documents, records and evidence of default as mentioned in part –V of the petition, I found that it is a fit case to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with following directions:-

- (i) That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the

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

(ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(iii) That the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(iv) That the order of moratorium shall have effect from 08.08.2017 till the completion of the Corporate Insolvency Resolution Process as prescribed under Section 12 of the Code.

(v) That this Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.

(vi) That this Bench hereby appoints Mr. Vinay Talwar enrolled with registration no. IBBI / IPI / 0006 having official address at 1, Link Road, Jangpura Extension, New Delhi - 110014 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.

(vii) That this Bench hereby directs the Registry of NCLT, Kolkata to communicate this order to the Petitioner i.e., Financial Creditor and the Corporate debtor.

(viii) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

Accordingly, this Petition is admitted.

This order be communicated to the Financial Creditor as well as Corporate Debtor in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016. List on 13.09.2017 for submission of progress report by the Interim Resolution Professional.

(MANORAMA KUMARI)
MEMBER (JUDICIAL)