

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

Company Petition (IB) No.579/KB/2017

In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

1. Abhishek Stock Broking Services Pvt. Ltd.
2. Narayan Finvest Pvt. Ltd.
3. Ayush Fiscal Pvt. Ltd
4. Multiplus Resources Ltd. Applicant/Financial Creditor
Versus

Shree Ganesh Jewellery House (I) Ltd. Respondent/Corporate Debtor

Order Delivered on 12th February 2018

Coram:

Jinan K.R., Member (J)

For the Applicant : 1. Mr. Anirban Ray, Advocate
2. Ms. Urmila Chakraborty, Advocate
3. Mr. Nikunj Berlia, Advocate

For the Respondent : 1. Mr. Sarvapriya Mukherjee, Advocate
2. Miss Farnaz Nasim, Advocate

O R D E R

Per Jinan K.R., Member (J)

Abhishek Stock Broking Services Pvt. Ltd. and 3 others
(Applicant/Financial Creditor) has filed this application under section 7 of the
IBC, 2016 read with Rule 4 of the of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rule, 2016 for corporate insolvency resolution process against the respondent Shree Ganesh Jewellery House (I) Ltd. (Respondent/Corporate Debtor).

2. Brief facts of the case, as stated in the application, are that (1) Abhishek Stock Broking Services Pvt. Ltd., (2) Narayan Finvest Pvt. Ltd., (3) Ayush Fiscal Pvt. Ltd. and (4) Multiplus Resources Ltd. are the corporate bodies having its Registered Office at 9, Lal Bazar Street, Block – A, 3rd Floor, Room No.1, Kolkata – 700 001, Identification Nos. are U74140WB1995PTC070469, U65993WB1991PTC051249, U655999WB1992PTC055336 and L67110WB1993PLC058314 respectively. Shri Vinod Kumar Soni has filed this application on behalf of the applicant companies on the basis of Board Resolutions of all the applicant companies dated 15/9/2017 annexed with the application as Annexure A at page 16 to 23

3. The Corporate Debtor Shree Ganesh Jewellery House (I) Ltd., Identification No. is L36911WB2002PLC095086.

4. The name and registration number of the proposed interim resolution professional is Mr. Manish Jain, Registration No. is IIB/IPA-001/IP-P00582/2017-18/11023 of No.S-8, Dharmatalla Area, 2, Ganesh Chandra Avenue, Kolkata – 700 013 email manishmahavir@gmail.com

5. The corporate debtor had availed credit facility by way of financial assistance from the (Applicant/Financial Creditor) Abhishek Stock Broking Services Pvt. Ltd. The applicant had granted credit facility of an overall limit of Rs.22,00,000/- (Twenty-two lakh) by way of transfer of funds through RTGS on 19/7/2014. The said loan was granted for a period of six months.

An aggregate loan of Rs.85,00,000/- was advanced by Narayan Finvest Pvt. Ltd.

A loan of Rs.65,00,000/- was advanced by Ayush Fiscal Pvt. Ltd. for a period of six months.

A loan of Rs.40,00,000/- was advanced by Multiplus Resources Ltd.

However, the said amount fell due from 21/7/2014 in the books of the account of the Financial creditors.

6. The total amount of debt/amount claimed to be in default started from the month of 21st January 2015 till date of actual and final realization along with costs and charges along with interest @ 12% p.a. total amounting to Rs.56,64,439/- as on 31/8/2017. The corporate debtor failed to make timely payment of the installments citing financial problem.

7. The petitioner further submits that the consent of the Interim Resolution Professional Mr. Manish Jain, (Reg. No: IBBI/IPA-001/IP-P00582/2017-2018/11023) obtained by the applicant and is produced in the petition. The written communication of the same under Form-2 has been duly marked and annexed in Page. 55.

8. The petitioner alleges that at the request of corporate debtor/respondent the applicants lent a cash loan for a total sum of Rs.85,00,000/- (Eighty-five lakh). The date of disbursement is (i) Loan given on 12/06/2014 Rs.30,00,000/-, (ii) Loan given on 24/6/2014 Rs.20,00,000/-, (iii) and (iv) Loans given on 21/7/2014 Rs.15,00,000 and Rs.20,00,000/-.

9. The petitioners further allege that the total amount of default is constituted of four different principal sums and part payment was made

towards discharge of the debt due. A detailed computation of the account is annexed with the application and marked as Annexure B-2.

10. The particulars of financial debt in respect of four financial creditors are as follows: -

Abhishek Stock Broking Services Pvt. Ltd.	Total amount of debt granted is Rs.22,00,000/-	Date of disbursement on 19/7/2014
Narayan Finvest Pvt. Ltd.	Total amount of debt granted is Rs.85,00,000/-	Date of disbursement on 12/6/2014, 24/6/2014 and 21/7/2014.
Ayush Fiscal Pvt. Ltd.	Total amount of debt granted is Rs.65,00,000/-	Date of disbursement on 21/7/2014
Multiplus Resources Ltd.	Total amount of debt granted is Rs.40,00,000/-	Date of disbursement on 21/7/2014

11. It reveals from the record that no security is held by any of the applicants with respect to the financial debt owed by the respondent/corporate debtor. Applicants filed copies of bank statement evidencing payment is annexed along with the application and marked as Annexure C-1 to C-4.

12. The applicant has also annexed with the application copies of loan confirmation for the financial years 2014-15, 2015-16 and 2016-17 and marked as Annexure D-1, D-2, D-3 and D-4. Since the respondent failed to repay the loan amount, the applicants filed the instant petition for initiating corporate insolvency resolution process as against the respondent under section 7 of I & B Code.

13. This petition was filed under sub-rule (1) of rule 4 in Form No 1 of Insolvency and Bankruptcy (Application to adjudication authority) Rules, 2016 along with Exhibits A, B, C, and D and various Annexure for



establishing that petitioners are the financial creditors and the amount claimed by the petitioners is a financial debt and therefore the petitioners are entitled to initiate corporate insolvency resolution process as against the respondent.

14. To prove its case, the applicants/financial creditor have filed supplementary affidavit annexing certified copies of the bank statement as Annexure A.

15. The respondent in this case entered appearance through its one of the Directors for defending this case by submitting that this petition is not maintainable. The application is devoid of merits and as such, is an abuse of process of law. The application is coercive and made in an attempt to extract money from the respondent company by pressuring it to succumb money. The respondent is not liable to make payment and does not admit any liability as agreed by and between the parties.

16. The respondent further submits that the rate of interest claimed by the applicants are arbitrary and based on unsubstantiated documents. The claim of the applicants is exaggerated and the same is bad in law and liable to be rejected.

17. The respondent denied the total amount of default mentioned in Annexure B-1, B-2, B-3 and B-4 as no such documents were ever executed. The respondent also denied the statement of balance confirmation. The respondent further denied that the applicants are financial creditors or are entitled to make any application under the provisions of I & B Code. Under the circumstances, the application filed by the applicants is liable to be rejected.

18. In its rejoinder filed by the applicants/financial creditor the applicants submitted that the corporate debtor has failed to show any ground for rejection of the application. The respondent committed default in making payment and the respondent corporate debtor has issued confirmation of accounts thereby admitted the financial debt due and payable to the financial creditor.

19. Heard the Ld. Counsel for the petitioners at length as well as the Ld. Counsel for the respondent and perused the documents.

20. It is pertinent to note here that issuance of demand notice is not at all a pre-requirement for initiation of corporate insolvency resolution process by a financial creditor under Sec.7 (1) of I & B Code. Truly, if it is a petition filed under Sec.9, Sec.8 (1) requires issuing demand notice prior to the filing of the application.

21. Financial creditors have also filed copy of bank statement in compliance with the provision of Sec.7(3)(c). It has come out in evidence that financial creditors extended financial assistance in the form of Inter Corporate Deposits to the corporate debtor. The corporate debtor has duly acknowledged receipt of such Inter Corporate Deposits which were seen distributed through RTGS in the account of the corporate debtor. The corporate debtor has issued confirmation of accounts and thereby admitted the financial debts to be due and payable to the financial creditors in the case in hand. So also, corporate debtor has admitted the interest amount accrued at the rate 12% per annum on the principal sum. The statement of account also shows that the corporate debtor has deducted TDS.

22. The corporate debtor denied the entire transaction disputing the authenticity of the documents evidently executed and signed by the corporate

debtor. The above said factors proves that the attempt of the corporate debtor is an attempt to evade payment which is found liable to pay to the financial creditors. Corporate debtors said attempt is found unsuccessful. Despite demands, reminders made by the financial creditors the corporate debtor has failed to repay the debt outstanding in its name.

23. As held in *Innoventive Industries Ltd. v. ICICI Bank* [2017] 139 CLA 335 by the Hon'ble NCLAT, this adjudicating authority is satisfied that there is occurrence of default and the application filed is complete the application filed under section 7 of the I & B Code is liable to be admitted. Here in this case none of the objections of the corporate debtor is found sustainable under law.

24. The financial creditors have also proposed the name of Interim Resolution Professional, Shri Manish Jain, who is competent to work as IRP. No disciplinary proceeding is pending against him. Therefore, he also deserves to be appointed as Interim Resolution Professional.

25. In view of the above said discussions, this petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code, 2016 is liable to be admitted. Accordingly admitted upon the following directions :-

ORDER

Mr. Manish Jain, Registration No. is IIB/IPA-001/IP-P00582/2017-18/11023 of No.S-8, Dharmatalla Area, 2, Ganesh Chandra Avenue, Kolkata - 700 013 email manishmahavir@gmail.com is appointed as Interim Resolution Professional.

Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply.

(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 Securitization 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 possession of the corporate debtor.

(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 the moratorium period.

(3) 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.

(4) The order of moratorium shall affect the date of such order till the completion of the corporate insolvency resolution process.

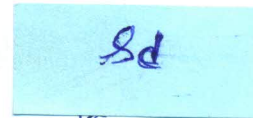
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect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

26. Necessary public announcement as per section 15 of the I & B Code, 2016 may be made. Let the copy of the order be sent to the Applicant/Operational Creditor as well as Corporate Debtor and I.R.P.

27. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

28. Registry is directed communicate the order forthwith to the applicant and corporate debtor and insolvency professional by way of E-mail and post.

List the matter for submission of report on 01/03/2018.



Jinan K.R.
Member (J)

Signed on 12th February 2018