

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH-III  
NEW DELHI**

**C.P.No.IB-276/ND/2017**

Section: Section 7 of the Insolvency and Bankruptcy Code, 2016  
read with the Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016.

**In the matter of:**

**RCI Industries and Technologies Ltd.  
B-97,Heavens Building,  
Wazirpur, Ring Road,  
Delhi-110052**

**... Financial Creditor/Applicant**

**CK Infrastructure Ltd.  
Lu-75, DDA Shopping Complex,  
Pitampura  
Delhi-110 034.**

**..... Corporate Debtor**

**Coram:**



**R.VARADHARAJAN,  
Hon'ble Member (JUDICIAL)**

**Counsel for the Petitioners: Mr.Saaduzzaman, Advocate  
Mr.Shobit Nanda, Advocate**

**Counsel for the Respondents : None**

**Order delivered On: 11.2017**

### **ORDER**

RCI Industries and Technologies Limited claiming to be a Financial Creditor of CK Infrastructure Ltd. has filed the above application seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) under the provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter for brevity called as IBC,2016). The background of the claim as made before this Tribunal from the synopsis discloses that a loan amount of Rs.50.00 lakhs based on the contract entered into between the Financial Creditor and the Corporate Debtor dated 1.1.2015 was made available to the Corporate Debtor, repayable within a period of 30 days i.e. on or before 31.1.2015 alongwith interest

in a sum of Rs.2,50,000/-. The Financial Creditor, it is stated has made available the funds of Rs.50.00 lakhs by way of loan vide cheque No.058170 dated 1.1.2015 drawn in favour of the Corporate Debtor. It is further averred that the said sum of Rs.50.00 lakhs has also been transferred to the account of the Corporate Debtor, as evident from the statement of bank account of the Financial Creditor. It is further submitted that in acknowledgement of the said sum of Rs.50.00 lakhs and as undertaken vide contract/agreement dated 1.1.2015 as signed between the parties, the Corporate Debtor had also issued a post dated cheque dated 31.1.2015 for a sum of Rs.52,50,000/- which included the interest agreed to be paid of Rs.2.50 lakhs. It is further submitted by the Financial Creditor that the post dated cheque had been issued by the Corporate Debtor drawn on Oriental Bank of Commerce and signed by the authorized signatory of the Corporate Debtor. The said cheque it is averred was not presented on the date as mentioned on the face of the cheque dated 31.1.2015 for the reason that the Corporate Debtor was seeking some time for repayment of the amount due and





hence the request made by the Corporate Debtor (i.e.) presentation of the cheque was delayed for sometime, but ultimately it was presented on 4.3.2015. However, the said cheque of Rs.52,50,000/- issued by the Corporate Debtor got dishonored on account of 'insufficient funds' which is also evident it is averred from the bank statement of the Financial Creditor showing the return of cheque due to 'insufficient funds'. Subsequent to the dishonor of the cheque it is the averment of the Financial Creditor that the Corporate Debtor had sent letter dated 31.3.2015 seeking for the replacement of the cheque which was earlier issued, with another cheque. Even though the earlier cheque was replaced with another cheque but due to repeated requests on the part of the Corporate Debtor it was not presented. However, contrary to the promises made by the Corporate Debtor, funds were not arranged and in the circumstances Financial Creditor was forced to a issue legal notice dated 6.7.2017 under the hand of its counsel demanding a sum of Rs.73,85,959/- which also included the interest amount for the delayed payment calculated @18% per annum for the



period from 1.4.2015 to 4.7.2017 amounting to Rs.21,35,959/- in addition to the Principal sum of loan and interest of Rs.2,50,000 agreed and in all aggregating to a of Rs.52,50,000/- as explained. Despite receipt of the said notice, Financial Creditor avers that the Corporate Debtor has not taken any effort to pay the amount in default and in the circumstances this Application has been filed on 9.8.2017 seeking to unfold the CIRP process.

2. Perusal of the Petition discloses that the Application seems to have been filed by M/s Satinder Kapur & Associates, Advocates in the form prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for brevity (AAA Rules), under Rule 6 of the said Rules. However, in the margin provided at the bottom of the prescribed form in relation to name and position to the Financial Creditor and who is authorized to act on behalf of the Financial Creditor, the name of one Mr. Abhishek Kedia, Company Secretary is disclosed. Perusal of the document at page No.51 of the typed set discloses that a certified true copy of the Resolution passed at the meeting of the



Board of Directors of the Financial Creditor dated 3.8.2017 at its registered office has been enclosed under which it is seen that the said Mr. Abhishek Kedia, Company Secretary has been jointly and/or severally authorized to act as authorized representative of the company to initiate legal proceedings under IBC,2016 and also to file necessary application amongst others before the jurisdictional bench of this Tribunal and taking into consideration the said Resolution it is seen that Mr. Abhishek Kedia is authorized to file this Application. Further, it is seen that the amount in default as claimed by the Financial Creditor is in excess of Rs.1.00 lakh and as the territorial jurisdiction to entertain this Application is also available to this Tribunal, as the registered office of the Corporate Debtor it is averred by the Petitioner is located at LU-75, DDA Shopping Complex, Pitampura, Delhi -110034. In addition to the above compliances, Annexure-II of the Application also discloses that the Financial Creditor has proposed the name of Interim Resolution Professional (IRP) as set out in Form-2 under the provisions of the Insolvency and Bankruptcy (Application to Adjudicating





Authority) Rules, 2016 as one Mr. Umesh Garg who has also given his consent to act as such, if appointed as the IRP, in relation to the CIRP of the Corporate Debtor. Further it has been disclosed by the person named as IRP to the effect that the said IRP is independent of the Corporate Debtor and other declarations in terms of IBC,2016 and the Attendant Rules including the one governing the Corporate Insolvency Resolution Professional like the one named in the Application. Prior to the filing of the Application, it is seen that the Applicant has duly despatched an advance copy of the Application to the Corporate Debtor.

3. When the matter was listed before this tribunal on 17.8.2017 for the first time the Petitioner was directed to file an affidavit of service in relation to postal receipts alongwith tracking report and was also directed to take notice to the e-mail address available at the MCA website of the Corporate Debtor and was further directed to produce certificate issued by Insolvency and Bankruptcy Board of India (IBBI) to the Interim Resolution Professional and that the registration is still in vogue with IBBI.



In compliance with the directions as given above, the Petitioner represented by its counsel had filed an affidavit on 24.08.2017 through the authorized signatory namely Mr. Abhishek Kedia which discloses that the Corporate Debtor has been served at its registered office in relation to postal receipt bearing consignment No.BRD804947613IN dispatched on 9.8.2017 at LU-75, DDA Shopping Complex, Pitampura, Delhi -110034. It is also stated in the affidavit that the consignment was delivered on 3.9.2017 as evidenced from the tracking report available at p.4 of the affidavit. Company's master data as maintained by the MCA in its website and the print out thereof dated 16.8.2017 discloses that the registered office address is the one stated as above namely LU-75, DDA Shopping Complex, Pitampura, Delhi -110034. The affidavit filed on behalf of the Petitioner also contains a certificate of registration of the IRP namely Mr. Umesh Garg annexed, perusal of which discloses that the certificate is valid from 30.5.2017 as issued by IBBI.





4. When the matter was listed on 28.8.2017 the Petitioner was directed to furnish further proof in relation to the loan granted to the Corporate Debtor by way of production of Resolution and in response to the same, Petitioner produced a certified true copy of the Board Resolution of the Financial Creditor dated 26.12.2014 for providing loan for a sum of Rs.50.00 Lakhs to the Corporate Debtor. Further, an audited statement of the Financial Creditor for the year ended 31.3.2015 has also been produced.

5. We have perused the Application as filed by the Applicant on 9.8.2017 along with annexures as well as subsequently by way of an affidavit dated 24.8.2017 as well as further documents produced in order to sustain the plea of granting loan to the Corporate Debtor dated 4.9.2017. Prima facie it is seen that the notice of Application has been served upon the Corporate Debtor as evidenced from the postal receipt bearing No.RLAD-BRD804947613IN despatched on 9.8.2017 to the Corporate Debtor and the tracking report which has been produced based on the directions of this Tribunal alongwith affidavit dated 24.08.2017 discloses that the said receipt number is figuring in



the tracking report and the same discloses that the item was delivered to the Corporate Debtor on 10.8.2017. Thus it is noticed that despite service of notice the Corporate Debtor has not chosen to put in its appearance to defend against the initiation of CIRP process against the Corporate Debtor. Further, from the documents it is evident that a sum of Rs.50.00 lakhs had been sought for as an urgent requirement on 1.1.2015 signed by the Director of the Corporate Debtor namely one Mr. Yusuf Khan for the purpose of participating in tender in Road Construction Division, Bihar. Further, in the said letter dated 1.1.2015 an assurance has also been made that the sum of loan would be paid within a period of 30 days along with profits of R.2.50 lakhs and the Corporate Debtor has also sought remittance of the amount through RTGS to the current account maintained with the Oriental Bank of Commerce by it and the details of the account No.has also been provided thereunder. It is further seen that as averred by the Financial Creditor, the Corporate Debtor had also issued a cheque along with the covering letter also dated 1.1.2015 for a sum of Rs.52,50,000/-.



Further, vide letter dated 31.3.2015 as averred by the Financial Creditor, it is seen that the Corporate Debtor has sought for replacement of the cheque earlier issued by it dated 31.1.2015. Notice demanding the payment of the defaulted amount dated 06.07.2017 under the hand of Financial Creditor's legal counsel despite service as evidenced from tracking reports annexed as page 41 to page 45 of the typed set filed along with the Petition seems to have elicited no response on the part of the Corporate Debtor. The statement of account duly attested by the Financial Creditor for the years 1.4.2014 to 4.8.2017 discloses that the sum of Rs.50.00 lakhs is due from the Corporate Debtor. A written communication by the IRP in Form-2 also seems to be in order. Further, the certificate furnished in relation to the IRP subsequently seems to show that the registration of IRP with IBBI to act as IRP is still in vogue and has not lapsed.

6. Thus taking into consideration all of the above, this Tribunal is of the view that default as contemplated under the provisions of IBC,2016 has been established by the Financial Creditor viz-a-



viz the Corporate Debtor and in the circumstances the Petition stands admitted, with the following consequences:

(a) Mr. Umesh Garg, having registration No.IBBI/IPA-001/IP-P00135/2017-18/10277, is appointed as the Interim Resolution Professional and he shall strictly act in accordance with the provisions of IBC,2016 and other Attendant Rules as enjoined upon him;

(b) In terms of Section 14, as reproduced hereunder, the Corporate Debtor shall be under moratorium on the following terms:-

(1) This Tribunal, being the Adjudicating Authority declares a moratorium for prohibiting all of the following in relation to 'Corporate Debtor' , 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;

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(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.

(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 moratorium period.

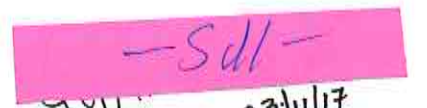
(3) xxxx

(4) The order of this moratorium shall have effect from the date of the order till the completion of the corporate insolvency resolution process subject to proviso of Section 14 of IBC,2016.

(c) The Board of Directors of the Corporate Debtor shall stand suspended on and from this day as envisaged under Section 17 of IBC,2016.

(d) In terms of Section 7(7)(a) of IBC,2016 the Registry of this Tribunal is directed to communicate the order to both the Financial Creditor and the Corporate Debtor at the earliest.

7. With the above directions, the application stands disposed of.

  
02/11/17  
**(R.VARADHARAJAN)**  
**MEMBER(JUDICIAL)**

U.D.Mehta  
.11.2017