

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP No. 1178/IBC/NCLT/MB/MAH/2017

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. Bell Finvest (India) Limited  
..... Financial Creditor  
(Petitioner/Applicant)

V.

M/s. Luthra Water Systems Private  
Limited.  
..... Corporate Debtor  
(Respondent)

Order delivered on: 15.11.2017

**Coram :**

Hon`ble M.K. Shrawat, Member (J)

Hon`ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Adv. Vinit Mehta a/w. Adv. Aniruth Purshotaman i/b. Adv. Pravin Warpe, Advocate for the Financial Creditor/Petitioner.

**For the Respondent :**

Adv. Nirman Sharma a/w. Adv. Suprabh Jain, Adv. Apurva Manwani and Adv. Sonali Moshra i/b. Adv. Siddhesh Bhole – Advocate for the Respondent/Corporate Debtor.

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. The Petitioner/Applicant viz. 'M/s. Bell Finvest (India) Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 7<sup>th</sup> July, 2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).

*Bhaskara Pantula Mohan*

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹ 1,72,08,000/-. And the total amount claimed in default is said to be 3,26,95,789/- including interest as on 30<sup>th</sup> June, 2017.
3. Further under the head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Luthra Water Systems Private Limited' (hereinafter as **Corporate Debtor**) having Registered office at, 22-25, Trinity Chambers, 115-117, Bora Bazar Street, Fort, Mumbai – 400001.

**4. Brief Background :**

- 4.1. The Corporate Debtor through its letter dated 15.10.2015 requested to the Financial Creditor to sanction a loan amount of ₹ 2,00,00,000/- and stated that said amount will be repaid in 24 monthly instalments. Along with this request letter the Corporate Debtor has attached the required documents for sanctioning of loan.
- 4.2. Based on this letter the Financial Creditor has sanctioned the Working Capital Term Loan amounting ₹ 1,72,08,000/- to the Corporate Debtor vide letter dated 15.10.2015. The rate of interest was fixed at 10% p.a.
- 4.3. This loan was sanctioned on the personal guarantee of the Directors of the Corporate Debtor viz. Mr. Naveen Shreeram Luthra and Mr. Arun Shreeram Luthra and Mrs. Mala Mehta.
- 4.4. Thereafter on the same date i.e. on 15.10.2015 both the parties viz. Financial Creditor and Corporate Debtor entered into a loan agreement which collectively talks about the amount of loan, its repayment, rate of interest, liability of the Debtor and its Guarantors etc.

**5. Submissions by the Financial Creditor :**

- 5.1. The Learned Counsel for the Financial Creditor submitted that, based on the sanction letter the Financial Creditor has disbursed the said sanctioned loan amount in three parts.
- 5.2. Firstly on 05.11.2015 amount of ₹ 40,00,000/- has been disbursed. Thereafter on 06.11.2015 and 07.11.2015 amount of ₹ 33,66,400/- and amount of ₹ 64,00,000/- has been disbursed respectively.





- 5.3. It is further submitted that, an amount of ₹ 34,41,600/- has been remitted towards the Advance interest in the Loan Account of the Corporate Debtor.
- 5.4. The Learned Counsel further stated that, the Corporate Debtor, after disbursement of loan, has paid 5 monthly instalments regularly and 6<sup>th</sup> monthly instalment in half.
- 5.5. It is further submitted that, on the Corporate Debtor the charge is also been recorded with the Registrar of Companies under Charge ID : 10610429, for the said loan amount.
- 5.6. Further that, a record of default of the Corporate Debtor is also available with the CIBIL.
- 5.7. It is further stated that, the Financial Creditor have also sent the **Loan Recall Notice** dated 30.11.2016 claiming the amount in default viz. ₹ 2,65,84,670/-.
- 5.8. Subsequent to the said notice the Corporate Debtor has forwarded two cheques viz. one amounting ₹ 2,00,00,000/- and second amounting to ₹ 15, 84,670/- dated 10.12.2016. But both these cheques were dishonoured marked as insufficient funds.

#### **6. Submissions by the Corporate Debtor :**

- 6.1. The Learned Counsel for the Corporate Debtor firstly has raised the issue of the maintainability of this Application under provisions of the Code.
- 6.2. It is submitted that, the amount claimed by the Financial Creditor does not amount to "Financial Debt" as defined under S. 5 (8) of the Code as the Financial Creditor has included payments made towards cheque return charges, pre-payment interest and legal cost.
- 6.3. It is further stated that, as the claimed amount is not a "Financial Debt" hence, herein Applicant/Petitioner is not a Financial Creditor as per the Code. And accordingly this Petition/Application deserves rejection.
- 6.4. The Learned Counsel further submits that, there is parallel/cross transaction between the Financial Creditor and Corporate Debtor and in view of that transaction there is nothing remained to be paid by the Corporate Debtor. This parallel transaction is based upon the oral condition of the Financial Creditor.

*[Handwritten Signature]*

- 6.5. It is further submitted that, the Corporate Debtor is not a willful defaulter but due to the said parallel/cross transaction the Corporate Debtor is unable to make the repayment.
- 6.6. It is also submitted that, the said amount is in dispute and hence this Petition/Application deserves to be dismissed. And there is Arbitration Suit is also filed with the Hon'ble Bombay High Court.

**7. Findings :**

- 7.1. We have gone through the facts and submissions of the both parties. And upon considering the same we come to conclusion that, the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there is no complete payment of Debt on the part of the Corporate Debtor.
- 7.2. As regards to the submissions made by the Learned Counsel for the Corporate Debtor, it is worth to reproduce sub-Section of (5) of S. 7 of the Code as follows:
- (5) Where the Adjudicating Authority is satisfied that—*
- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*
- Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*
- 7.3. Hence, accordingly we have perused this Petition/Application filed under S. 7 of the Code r.w. Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code this Application is complete under sub-section (2) of S. 7 of the Code.

*Apurva:*



- 7.4. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that, there is any disciplinary action is pending against the said proposed Interim Resolution Professional.
- 7.5. Hence, on perusal of this Petition/Application and S. 7 of the Code we are of the opinion that, this Petition/Application is in conformity of the S. 7 (2) and S. 7 (5) of the Code and accordingly deserves **Admission**.
- 7.6. Further that, as far as the question of claimed amount is concerned, we are of the opinion that, this Tribunal is not to decide the quantum of amount in default but this Tribunal is merely to decide whether there is Default under S. 3 (12) of the Code or not? And as already said there is Default under S. 3 (12) of the Code on the side of the Corporate Debtor. We are of the opinion that, the quantum of claimed amount is to be decided by the Resolution Professional, so appointed.
- 7.7. That, it is further submitted that the Financial Creditor had charged abnormal rates of interest and there is no comparison between the amounts disbursed and amounts claimed. We are of the opinion that charging of interest by the Financial Creditor is very high and at the same time it is for the IRP/Resolution Professional to sort out the same.
- 7.8. As far as question of dispute is concerned, S. 7 (5) of the Code does not provide any provision for the Notice of Dispute, unlike the Operational Creditor.
- 7.9. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the both side, we say that, this Petition/Application is **Admitted**.
- 7.10. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Devendra Padmachand Jain, Email Id: **devendradjain@hotmail.com**, R/at, A-43, Prime Plaza, Opp. DLA School, Bodakdev, Ahmedabad, Gujrat, having registration No. IBBI/IPA-001/IP-P00255/2017-18/10484 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
- 7.11. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with



effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

7.12. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

7.13. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

7.14. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

8. Ordered Accordingly.

Sd/-  
**BHASKARA PANTULA MOHAN**  
MEMBER (JUDICIAL)

Sd/-  
**M. K. SHRAWAT**  
MEMBER (JUDICIAL)

**Dated : 15<sup>th</sup> November, 2017**