

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB) 625 (ND)/2017

In the matter of:

Indus Container Lines Pvt. Ltd

..... **Petitioner**

V/s

Geo Express Pvt. Ltd.

..... **Respondents**

SECTION: U/s 7 of IBC, 2016

Order delivered on 31.01.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. DEEPA KRISHAN, HON' BLE MEMBER (T)

For the Petitioner: Mr. Anshul Rai, Advocate

For the Respondent: None

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of their inability to liquidate the financial debt.

2. As per averments made in the petition, the financial creditor advanced a loan of Rs.25 lakhs to the Corporate Debtor in December, 2015 to be repaid with interest @ 31.2% per annum. To enable the Corporate Debtor avail the same, an agreement dated 23.11.2015 had been executed between the parties. In terms of the aforesaid, the Corporate Debtor had agreed to pay interest of Rs. 2600 for 30 days for every one lakh taken. To secure the said loan and to ensure a timely repayment, the corporate debtor signed a Promissory Note dated 07.12.2015, promising to pay on demand the loan availed. Two post-dated cheques were tendered by the Corporate Debtor towards repayment of the admitted liability for the loan availed.

3. As per the financial creditor, the Corporate Debtor failed to adhere to the repayment schedule. They have defaulted not only in respect of repayment of the principal amount, but also the payment of interest due thereon since March 2016. It is submitted by the Ld. Counsel for the financial creditor that a sum of Rs.5,60,773/- is payable as interest, in addition to the principal amount of Rs.25 lakhs.

4. It is further submitted by the Financial Creditor that despite repeated requests and demands, the Corporate Debtor has failed to respond, though in their correspondence, more specifically vide emails dated 09.02.2016 and 30.06.2016 they admitted the liability and prayed for further time to liquidate their debt. Ld. Counsel for the Financial Creditor has pointed out that cheque dated 23.09.2016 no. 000151 given towards discharge of the liability returned dishonoured on presentation with the remarks "Funds Insufficient".



5. The Respondent/Corporate Debtor, despite being served vide various modes, including through the process of the Bench, failed to put in any appearance to resist the/ Petitioner's prayer. They were accordingly proceeded ex parte.

6. The Petition has been filed in the required format through its duly authorised signatory and has proposed the name of Mr. Ajit Kumar as the IRP whose Registration No. with the IBBI is IBBI/IPA-003/IP-N 00062/2017-2018/10548 as the IRP. Consent of Shri Ajit Kumar along with his statement of eligibility is on record.

In the light of the averments, there is clearly a default of repayment of a financial debt. As per Section 2(11) of the Code, "debt" is defined as a liability or obligation in respect of a claim which is due from any person. Further, a financial debt has been clarified to mean and include money borrowed against payment of interest. Given the facts and circumstances which include the dishonour of Cheque No. 000151 dated 23.9.2016 for a sum of Rs.30,60,773/- given towards liquidating the financial debt, being the principal and interest thereon, the Petitioner's prayer merits consideration. Accordingly, the petition is Admitted. A moratorium in terms of Section 14 of the Code is imposed forthwith in terms of the following:-

"(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.

- (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) 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 have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

7. The IRP proposed by the Petitioner is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15,17 and 18 of the Code and file his report within 30 days before this Bench.
8. The petitioner/Financial Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP.
9. Renotify this case for report of the IRP on 2nd March, 2018.

-S-d-1

(Deepa Krishan)
Member (T)

-S-d-11

(Ina Malhotra)
Member (J)

(Sapna Bhatia)