

**In the National Company Law Tribunal  
Mumbai Bench, Mumbai**

**CP No. 1245/I&BC/NCLT/MB/MAH/2017**

**Under Section 7 of the Insolvency & Bankruptcy Code 2016**

**In the matter of**

**M/s. Bell Finvest (India) Limited,**

Registered Office at:  
1107, Maker Chambers V,  
Nariman Point,  
Mumbai – 400 021

: Petitioner/Financial Creditor

**V/s**

**M/s. Advance Logistics & Trading India Pvt. Ltd.**

706, Vashi Infotech Park  
Plot No.16, Behind Raghuleela Mall,  
Vashi, Navi Mumbai,  
Thane – 400705

: Respondent/Corporate Debtor.

Order delivered on 11.09.2017

**Coram:**

Hon'ble M.K. Shrawat, Member (Judicial)  
Hon'ble Bhaskara Pantula Mohan (Judicial)

Present

- : 1. Mr. Aniruddh Purushottaman, Advocate  
2. Mr. Arun M. Deshpande, PCS  
3. Mr. Ajay M. Antarkar, Advocate  
4. Mr. Vinit D. Jawle, Advocate

Per M.K. Shrawat, Member (Judicial).

**Order**

1. The Petitioner M/s. Bell Finvest (India) Ltd. is a "Financial Creditor" hence submitted the requisite Form on 27.07.2017 in respect of the alleged outstanding financial Debt of ₹53,43,350/- (Principal+Interest). The Petitioner had advanced a sum of ₹36 lakhs to the Financial Debtor M/s. Advance Logistics & Trading (India) Pvt. Ltd. The Petitioner has filed the Petition under Section 7 of the Insolvency & Bankruptcy Code 2016.
2. The loan advanced was to be repaid as per the terms and conditions agreed upon by both parties as per the Loan Agreement dated 14<sup>th</sup> October, 2015 . The lender is stated to be a Non-Banking Financial Company registered with the Reserve Bank of India hence engaged in the business of advancing loans. The Corporate Debtor

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defaulted the repayments on 19.02.2016 (date of default) as stated in PART-IV, 'Particulars of Financial Debt', filed by the Financial Creditor.

3. Brief history of the Financial Debt

a) The Corporate Debtor Company has approached the Financial Creditor on 13.10.2015 requesting to sanction a temporary loan up to ₹40 lakhs which was to be repaid in 10 equal monthly instalments, for the purpose of 'Working Capital' in business.

b) Thereafter, the Financial Creditor has sanctioned a loan amount of ₹36 lakhs @ flat interest rate of 10% p.a. payable in advance. In case of interest and/or principal instalments due were defaulted/delayed, additional interest @ 1% per day over and above the interest rate, for defaulted/delayed period on the instalments/amount due (calculated from due date till date of payment) was payable. A Demand Promissory Note was also executed on 14.10.2015 by the Corporate Debtor Company.

c) Details of the total outstanding loan amount:-

Loan Amount	:	36,00,000
Less Amount received	:	27,00,000
Add Cheque Retd. Charges	:	2,000
Add Additional Interest	:	44,41,850
Less Additional Interest Recd	:	0
Less Cheque Retd Charges Recd	:	500
Total Amount Due as on 30/06/2017:		53,43,350

4. A personal guarantee of Mrs. Puja Vijay Relwani, Mr. Vijay Prahlad Relwani was also executed on 14<sup>th</sup> October, 2015 towards the said financial debt. As per the terms of the loan agreement, the loan amount was to be used for business purpose only.
5. Facts of the case have revealed that the loan amount of ₹36 lakhs was disbursed by the Financial Creditor vide Cheque No. 000028 dated 19.10.2015 of HDFC Bank, less a deduction @10% p.a. interest for entire term ₹3,60,000/-. Net payment made was ₹32,40,000/- through RTGS on the YES Bank Account of the Corporate Debtor.



6. Upon default of the agreed repayments, the Petitioner Company has filed Petition under section 7 of the Insolvency & Bankruptcy Code, 2016.
7. From the side of the Corporate Debtor, a copy of the letter dated 26.08.2017 written to the Chief Manager, Department of Non-Banking Supervision (DNBS), Reserve Bank of India, RBI Building, Opp. Mumbai Central Railway Station, Byculla, Mumbai – 400 008 is also on record in which the Debtor Company has alleged certain irregularities against the Lender Company which *inter alia* stated as under:-

*"8. It transpires now that the said Lending NBFC had extracted huge sum of money from the Company by indulging into illegitimate, fabricated and frivolous claim(s) of interest besides flouting various other norms in brazen contravention of the NFC Regulations, as prescribed by the Reserve Bank of India from time to time."*

- 7.1. From the side of the Debtor it is also pleaded that the conduct of the Lender was against the public policy. The Lender should have adopted a fair practice and duty bound to carry out the lending business in compliance of the NBFC Regulations. In this regard, the Corporate Debtor had placed written submission wherein in one paragraph the claim was objected in the following manner:-

*"In the instant case, every step taken by the Financial Creditor in sanction of loan in question, entering into Loan Agreement containing illegal stipulations, recovery of advance interest for the entire tenure of loan before disbursement of loan, charging of exorbitant interest rate, charging of illegal penalty @ 1% per day through deceitful methods in contravention of Master Circular of Fair Practices Code mandated in terms of powers exercised by RBI under Section 45-L of the RBI Act, 1934 read with relevant Notifications issued by the Reserve Bank of India from time to time, had rendered the contract of loan as null and void ab-initio. The Corporate Debtor reserves its right to agitate its' grievances to the concerned Regional Office of the Reserve Bank of India for aforesaid contraventions and countermand illegitimate recovery of money tried to be thrust upon it by the Financial Creditor, in due course of time."*

### **FINDINGS**

8. In the light of the above discussion and on due perusal of the documents annexed, the Debt is to be qualified as "Financial Debt" defined under Section 5(8) of Insolvency & Bankruptcy Code 2016. As a result, the Financial Creditor has filed



this Application for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.

9. Since this is a Petition of "Financial Creditor", therefore, the Insolvency Process shall commence as prescribed under Section 7 of the Insolvency & Bankruptcy Code 2016. The occurrence of "default" is established. Even on reminders, the amount in question remained unpaid by the Financial Debtor. The Petition under consideration deserves "Admission".
10. Although the Petition of the Financial Creditor deserves admission, due to the proper compliance of the requirement of the I&B Code but simultaneously on examination of the objection of the Financial Debtor, this Bench is of the view that before commencement of Corporate Insolvency Resolution Process, the named IRP, so appointed, shall examine the reasonableness of the quantum of the Debt as per Part -IV of the Form. This observation is because of few reasons. We have noted that a sum of ₹27 lakhs were allegedly repaid by the Debtor. It is to be examined the dates of repayment and charging of additional interest. The Financial Creditor has allegedly charged additional interest of ₹44,41,850/-, hence the adequacy and correctness of the outstanding Debt as on the date of filing of the Petition is to be examined. Our next reason is that the representation made by the Financial Debtor before the Regulatory Authority i.e. the Chief Manager, Department of Non-Banking Supervision, Byculla, Mumbai. The Financial Debtor has raised certain preliminary objections such as violation of NBFC Regulations by the Financial Creditor, non-adoption of Fair Practice Code, non-permissible levy of penalty on delayed payment, non-grant of Moratorium period, etc. To facilitate the commencement of the Insolvency Process, the Corporate Debtor shall place all his defence with corroborative evidences before the IRP within 7 (seven) days of this order. The IRP thereafter shall prepare an exhaustive report covering all the aspects as indicated hereinabove and present before this Bench within 7 (seven) days thereafter by 'mentioning' the matter in the Court.
11. The Petitioner has proposed the name of the "Interim Resolution Professional" Mr. Devendra Padamchand Jain, Email ID:- [devendradjain@hotmail.com](mailto:devendradjain@hotmail.com); address A-43,



PRIME PLAZA, OPP. DLA SCHOOL, BODAKDEV, AHMEDABAD, State – Gujarat, REGISTRATION No. IBBI/IPA-001/IP-00224/2016-17/1511. The IRP has also given his consent in Form No.2.

12. Having considered the totality of the circumstances and the Application for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed *supra*, it is hereby pronounced that "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. Accordingly, this Tribunal "Admits" the Petition and appoints Mr. Devendra Padamchand Jain as Interim Resolution Professional to initiate the Insolvency Resolution Process on the above Corporate Debtor forthwith, with the following directions:-
13. Since the Application is "Admitted", therefore, this Bench prohibits all of the following viz.:-
  - I (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(SARFAESI Act);
  - (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.
  - (II) That 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) Section 14 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 the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be acted upon immediately as specified under section 13 of the Code.

14. Accordingly, **this CP 1245/I & BP/NCLT/MAH/2017 stood admitted.**
15. The Insolvency Resolution Process is commenced from the date of this order.

Sd/-

**BHASKARA PANTULA MOHAN**

Member (Judicial)

Date : 11.09.2017

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Sd/-

**M. K. SHRAWAT**

Member (Judicial)