

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

CP 1073/I&BP/NCLT/MB/MAH/2017

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI.

COMPANY PETITION NO.1073/I&BP/NCLT/MB/MAH/2017

In the matter of Section 7 of the Insolvency & Bankruptcy Code, 2016

(Application to Adjudicating Authority) Rules, 2016.

CORAM : SHRI M.K. SHRAWAT
Member (Judicial)

M/s. Ashmita Multitrade Pvt. Ltd. : Financial Creditor

Versus

Mindtree Exports Pvt. Ltd. : Corporate Debtors

Represented By :-

Adv. Sweta Valecha,
For P.D. Jain & Company : Advocate for Financial Creditor

(None) : for Corporate Debtors.

Date of Order : 13.06.2017

1. This Petition is submitted before the NCLT on 08-06-2017 by furnishing Form No.1 in the capacity of "Financial Creditor" as defined under section 5(7) of The Code 2016, with a prayer to initiate Corporate Insolvency Resolution Process.
2. Facts in respect of the financial debt is that M/s. Ashmita Multitrade Pvt. Ltd. (Creditor No.1) made an investment of Rs.84 lakhs. Further, M/s. Gehna Multitrade LLP (Creditor No.2) was invested Rs.4,53,00,000/- in Mindtree Exports Pvt. Ltd. (Financial Debtor). The amount was advanced during the period of 6th May 2016 to 3rd June 2016. The debt amount was to be returned by 13.09.2016, as noted in para-10 of the Petition. It is alleged that the Corporate Debtor started avoiding the Financial Creditors although reminders were issued. The Corporate Debtor had promised to return back the amount but according to the Creditor not a single penny was paid. There is one more allegation that the Directors of Mindtree Exports viz. Mr. Ashok Kumar Gautam and Mr. Sulabh Sharma are actually the employees who were made the dummy Directors. The Financial creditor has sent a notice on 15-02-2017 to the Corporate Debtor demanding the said sum of Rs.5,37,00,000/-. The Creditors have annexed respective Bank Statements to demonstrate that the payments were made to the Debtor through bank transaction. The Learned Counsel of the Petitioner has also stated that the

MCA

- Debtors have accepted the impugned debt and no objection has ever been made. In the absence of any dispute the Petition is to be admitted for further action.
3. During the course of hearing a question has been raised that whether two Financial Creditors can file a single Petition jointly or two separate petitions were required to be filed. On perusal of Section 7 of IB Code it is apparent that a Financial Creditor either by itself or jointly with other Financial Creditors may file an application for initiating Corporate Insolvency Resolution process against a Corporate Financial Debtor. Since a provision has been made for a joint Petition, hence the aforesaid Petition is hereby "Admitted" for further action.
 4. On due consideration of the totality of the circumstances it appears that this is a fit case to initiate the Insolvency Process as prescribed under the Act, therefore, "Moratorium" under section 14 of the Code is set into motion.
 5. Certain conditions precedent for 'Admission' of a Petition under I&B Code, prima-facie, have been presently completed, like the 'Default' of non-payment is established. As a result, the provisions of Section 7 of The Code have come into operation, which prescribes that a financial creditor may file an application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor when a default has occurred. It is required that a Financial Creditor shall furnish the record of the default. When the Adjudicating Authority is satisfied that a default has occurred and the application is complete and the proposed Insolvency Resolution Professional is a qualified person, then by an order initiate the proceedings under Section 7 of the Code.
 6. The consequence of passing the order under Section 7(5)(a) of The Code is that the "Moratorium" as prescribed under Section 14 of The Code shall come into operation. In the present case the consequence is that once the "Moratorium" is set in motion then the rights of the Petitioner shall get protected. As a consequence, the assets of the Corporate Financial Debtor must not be liquidated until the Corporate Insolvency Resolution Process is completed. The process of Moratorium shall be effective from today i.e. 13th June 2017 till the completion of the Corporate Insolvency Resolution Process or by any other order of this bench, if deem fit.
 7. The Petitioner has proposed the name of Mr. Subhas Ramchandra Hegde, G-18, Gokuldham Shopping Centre, Gokuldham, Goregaon (E), Mumbai-63, Email ID : hegde9820098555@gmail.com, Reg. No. IBBI/IPA-001/IP-00426/2016-17/1351 as Interim Resolution Professional. His name is therefore approved and appointed to proceed as per the provisions to finalise the Insolvency Resolution Process within the prescribed period. The Petitioner shall also act upon under the provisions of Section 13 of The Code by making a public announcement to comply the provisions of Section 15 of The Code.

M/S

8. The Commencement of the Corporate Insolvency Resolution Process is hereby declared.

Date : **13-06-2017**

Sd/-

M.K. SHRAWAT
Member (Judicial)

Gopal