

**In the National Company Law Tribunal
Division Bench, Chennai**

CP/586/(IB)/CB/2017

Under Section 7 of the IBC, 2016

In the matter of

National Skill Development Corporation

V/s

Everonn Skill Development Limited

Order delivered on: 23.11.2017

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioner/FC: Shri Vikas Kumar, Advocate

Shri Thriyambak J.Kannan, Advocate

For the Respondent/CD: Shri Dheeraj Mani, Advocate

ORDER

Per: K. Anantha Padmanabha Swamy, Member (J)

1. Under Consideration is a Company Petition filed by M/s. National Skill development Corporation (in short, '**Petitioner/Financial Creditor**') against M/s. Everonn Skill Development Limited (in short, '**Respondent/Corporate Debtor**') under Section 7 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The Petitioner/Financial Creditor is National Skill Development Corporation (NSDC), an entity under Ministry of Finance and providing financial assistance to skill development agencies for imparting skill development training. The Respondent is a Company registered under the Companies Act 1956 and running skill development training centres in India.
4. The learned counsel appearing on behalf of the Petitioner/FC submitted that the National Skill Development is not for Profit Company. NSDC promotes skill development by catalysing creation of a number of non-profit vocational institutions. The Corporate debtor is 100% wholly owned subsidiary of M/s. Everonn Education Limited. The Respondent/CD approached the petitioner and expressed for being a funded training partner and pursuant to the same, the parties entered into a loan Agreement on 16.03.2011 for providing financial assistance of Rs. 101.34 Crores. As per the agreement the first tranche of the loan amount of Rs. 41,16,00,000/- was released on 30.04.2011. It was further submitted that the as per the loan agreement, facility agreements was executed on 16.03.2011

by both the parties. An irrevocable power of Attorney was executed by the parties wherein the respondent has given absolute authority to the petitioner to deal with the hypothecated assets of the respondent as it deems fit in the event of default of repayment of the loan amount. Therefore, since there are no assets of the respondent at the moment, the hypothecation agreement has no relevance at this point of time. During the period of January, 2012 to November, 2016 the respondent defaulted in repayment of the loan amount as well as the interest due to the applicant under the loan agreement. The Applicant/Financial Creditor sent Legal Notice to Corporate Debtor on 22.08.2016 and 22.11.2016 intimating that an amount of Rs. 22,08,70,628/- was due from the Respondent.

5. The learned counsel for Petitioner further submitted that the above said position as admitted by the CD was not adhered to and the CD had defaulted as per terms of the loan agreement, hence a legal notice issued to the respondent for recovery of loan amount of Rs. 22,40,00,791/- (including interest) on 23.01.2017. It is also submitted that in a letter dated 26.05.2017, the respondent replied to the legal notice dated 23.01.2017 and intimated that the company was going through a financial crunch and wherein the respondent admitted in the

reply that they repaid an amount of Rs. 21.06 crores only. The Bank statement conforming disbursement and part repayment of loan amount by the respondent and the claim amount of Rs. 20,69,76,293/- along with applicable interest till date of payment is undisputed by the respondent but is in fact admitted by the Respondent.

6. Its further submitted that when the Corporate Debtor was unable to pay its Financial Debt which became due and payable on 23rd January 2017, then petitioner, having been left with no other option approached this Adjudicating Authority claiming the payment of Rs. 20,69,96,293/- along with applicable interest towards the Corporate Debtor in the capacity of a Financial Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.
7. The learned counsel for the Respondent/CD caused appearance and submitted that they had replied to the Petitioners notice dated 23.01.2017 stating that the parent company of the respondent, M/s. Everonn Education Limited, was in liquidation and that the Provisional Liquidator appointed by the Hon'ble High court of Madras in CP No. 375 of 2014 had also filed a report seeking to take possession of all the wholly owned subsidiary companies including the

Respondent Company i.e M/s. Everonn Skill Development Limited.

8. The Official Liquidator filed a Memo inter-alia, stating that respondent company was a party in CP No. 275/2013 and that the Hon'ble High Court of Madras had appointed a Provisional Liquidator for the respondent company in the said proceedings and had further granted interim stay for 2 weeks by an order dated 21.08.2014 in CA No. 819 and 820 of 2014.
9. However, the learned counsel for the respondent has filed a memo dated 14.11.2017 and stating that CP No. 275 of 2013 was dismissed as withdrawn by the Hon'ble High Court of Madras on 22.12.2015 pursuant to a settlement agreement filed by the parties.
10. In relation to above submission, the learned counsel for the petitioner submitted that there is no pending proceeding, winding up or otherwise, against the Respondent Company as on date. There is no liquidator, provisional and/or official appointed in respect of the affairs of the respondent company. The applicant has also provided the respondent/CD the copy of the petition and has filed an affidavit of service. However, no counter has been filed by the respondent/CD and he has not denied the facts of the loan and the acts of default as stated in the petition.

11. As per the submission of the counsel for the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 and the rules framed thereunder.
12. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, this Adjudicating authority is satisfied that the petitioner has proved by placing overwhelming evidence. viz. loan agreement, Deed of Hypothecation, Corporate Guarantee, investment agreement and Account Statements that default has occurred due to the inability to pay by the Corporate Debtor to service loan together with the interest.
13. Therefore, the instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.
14. We appoint Mr. C. Ramasubramaniam as Interim Resolution Professional (**IRP**) proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B

Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

15. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016 and order to prohibit all of the following, 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 (54 of 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.*

16. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

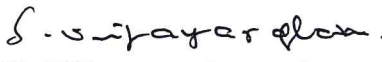
17. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.

18. The Petitioner/FC as well as the Registry are directed to send the copy of this Order to IRP to take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

19. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

20. The address details of the IRP are as follows: -

Mr. C. Ramasubramaniam
Regn. No: (IBBI/IPA-002/IP-N00052/2016-2017/10096)
Srinidhi, G4-RMC Flats, No.1,
Venkatespuram Colony,
Vadapalani, Chennai-600026
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(S. Vijayaraghavan)
Member (Technical)


(K. Anantha Padmanabha Swamy)
Member (Judicial)