

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-II, CHENNAI**

IBA/1364/2019 filed under Section 7 of
the Insolvency and Bankruptcy Code,
2016 read with Rule 4 of the Insolvency
and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

**In the matter of M/s. Mega Foods Products Madras Private
Limited**

M.D. Overseas Limited
Rep. by its Managing Director
Mr. Satish Bansal
No.43, Babar Road
Bengali Market,
New Delhi-110001

---Financial Creditor

V/s

M/s. Mega Foods Products Madras Private Limited
(CIN: U32301TN1988PTC015941)
D-3 Ambattur Industrial Estate,
Ambattur, Chennai-600058

---Corporate Debtor

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Applicant/FC : *Shri. B. Ravi Raja, Advocate*
Shri. R. Ramasubramaniam Raja, Advocate
Shri. G. Vikraman, Advocate

For the Respondent/CD : *Shri. Amit Chandrakant Vaishnav, Advocate*

IBA/1364/2019

In the matter of M/s. Mega Foods Products Madras Private Limited



ORDER

Per: B. ANIL KUMAR, MEMBER (TECHNICAL)

Order Pronounced on: 27.04.2021

Under adjudication is an application filed pursuant to Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. M. D. Overseas Limited (hereinafter referred to as "Financial Creditor") for initiation of Corporate Insolvency Resolution Process (in short "CIRP) against **M/s. Mega Foods Products Madras Private Limited** (hereinafter referred to as "Corporate Debtor") on the ground that it has defaulted in repaying an amount of Rs.8,13,59,624/- as on 31.03.2017.

2. The averments made by the Applicant in the application are as follows:

(i) The Financial Creditor had entered into a Memorandum of Understanding (MoU) dated 30.09.2016 with the Corporate Debtor agreeing to lend a total amount not exceeding Rs.13 crore in tranches with an interest at 18% per annum to be



compounded and paid quarterly to the financial creditor and the repayment of loan was to commence from 01.12.2017 in 5 equal annual instalments.

(ii) The Corporate Debtor, as collateral security, deposited original title deeds of the property by way of Deposit of Title Deeds dated 16.11.2016 in favour of the Financial Creditor and the Corporate Debtor had registered charge as per the provisions of Companies Act. The Corporate Debtor has also executed a General Power of Attorney on 16.11.2016 (Page.24) to enable the Financial Creditor to take steps to recover their dues.

(iii) Pursuant to Definitive Lender's Agreement entered into a on 25.01.2017 between the Financial Creditor and Corporate Debtor, the 1st tranche of Rs.7,47,10,630/- was fully utilized to settle the dues of Dena Bank and ISRAC and the subsequent tranches would be utilized for funding business growth subject to achievement of sales turnover of Rs.4 crore.

Pursuant to the request letter dated 11.04.2017 from the

Corporate Debtor, vide addendum to the Lender's Agreement dated 25.01.2017, further sum of Rs.47,60,000/- was sanctioned by the Financial Creditor and one of the conditions of the lender's agreement provided that entire 10% of the paid up equity share capital of Corporate Debtor (i.e.1,84,279 equity shares) with a face value of Rs.10/- each held with the Key Management shall be pledged with the Financial Creditor so long as the amount including accrued interest remain outstanding. As per the agreement, the Corporate Debtor shall pay interest quarterly to make repayment of the loan in five equal annual instalments along with interest from 01.12.2017. However, the Corporate Debtor failed to make any payment of the outstanding dues towards principal as well as interest accrued thereon and hence, the default occurred on 01.12.2017.

(iv) The Financial Creditor issued a legal notice dated 23.10.2019 to the Corporate Debtor demanding repayment of entire dues amounting to Rs.13,51,52,921/- along with further interest on the aforesaid sum from 23.10.2019 till date of

payment calculated at 18% per annum compounded annually.

The Corporate Debtor replied that they shall issue a detailed reply within two weeks.

3. In the *Counter* filed on 17.02.2020, the Corporate Debtor alleged that the Financial Creditor has suppressed existence of a MoU dated 14th September 2016 (Page.6) with Ms .Deepti Bansal, a related party to the petitioner herein whereby the said Deepti Bansal arranged funds for settlement of the loans payable to the ICICI Bank, Dena Bank and ISRAC. It is averred that the respondent has not borrowed any money as claimed by the petitioner herein and there is a pre-existing dispute with respect to the fulfilment of the obligations by the said investor. Further, whatever monies received are only towards consideration for transfer of 49% equity shares held by the promoters of the Respondent Company but not as a loan. As such, the matter has to be settled before an Arbitrator but not through this Adjudicating Authority.

4. It is submitted that the financial creditor has not advanced any amount pursuant to the lender's MoU Agreement dated 30.09.2016

IBA/1364/2019

In the matter of M/s. Mega Foods Products Madras Private Limited



but the said amounts were paid to the banks by virtue of share holders agreement dated 16th September 2016 and shares were transferred in favour of Deepti Bansal in lieu and consideration of the settlement amounts received by Dena Bank and ISARC. As per the shareholders agreement a sum of Rs.13 crore was receivable by the Company whereas Rs.7,94,70,630/- was paid and that too directly to the two banks as stated above. Since the payment towards the settlement of two banks were made as per the instructions of Deepti Bansal and not given to the respondent Company and as such the claim for repayment of amount or interest thereon should have against Deepti Bansal and not against respondent company.

5. In the *Rejoinder* filed on 26.02.2020, the Applicant submits that the Respondent has unequivocally admitted that it has received a sum of Rs.7,94,70,630/-. The Respondent has not denied the execution of the MoU dated 30.09.2016 between the Applicant and the Respondent including its shareholders, which is prior to the date of release of sums.



6. The applicant made pay orders from its ICICI bank account to Dena Bank & ISRAC and that the said pay orders were sent to the Respondent who, in turn, sent the pay orders to the respective creditors. It is evident from the fact that the amount received is loan by the applicant as depicted in the annual audited accounts of the Respondent. Further, the Respondent has failed to furnish any document to substantiate that the amount received was against alleged consideration towards transfer of 49% of equity shares. Further, the theory that the Applicant had forcibly obtained the signature in various documents is nothing but an afterthought.

7. With respect to the allegation that the Deepti shares yet to be pledged, the same is an inadvertent mistake due to oversight. In Fact, Deepti Bansal had pledged her shares. The Corporate Debtor contended that the Financial Creditor has not remitted the balance sum of Rs.5,52,89,370/- towards working capital and expenditure. The balance tranche towards expenditure was subject to pre-condition that the Corporate Debtor would achieve sales turnover of Rs.4 crores, cash flow and profitability levels for the



year ending 31.03.2017 are to the satisfaction to the Financial Creditor. Since the Corporate Debtor never fulfilled the pre-condition, the question of breach on non-performance of the financial creditor does not arise.

8. The defence raised by the Corporate Debtor is frivolous and it is evident that the Respondent is refusing to repay the amounts due to the Applicant. Hence, CIRP ought to be initiated against the Corporate Debtor under the provision of IBC.

9. In order to ascertain whether a person is a financial creditor, the debt owed to such a person must fall within the ambit a 'Financial Debt' as under Section 5(8) of the IBC. A financial debt is defined under Section 5(8) of the IBC to mean:

"a debt along with interest, if any, which is disbursed against the consideration for time value of money and includes-

- a. *Money borrowed against payment of interest;*
- b. *Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;*

- c. *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- d. *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- e. *Receivable sold or discounted other than any receivable sold on non-recourse basis;*
- f. *Any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing;*
- g. *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- h. *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause"*

10. The respondent had admitted execution of MoU dated 30.09.2016, and settlement of dues of respondent by applicant to ICICI Bank, Dena Bank and ISRAC, on behalf of respondent as per agreed clauses of MoU. Further, as per MoU, the shares were

pledged to applicant by respondent and there is also equitable mortgage in favour of applicant.

11. On perusal of pleadings, documents and relevant judgements, we conclude that 'debt' and 'default' has been proved by applicant. The applicant, by letter dated 10.12.2020 has proposed the name of Mr. S. Vasudevan, having Regn. No. IBBI/IPA-002/IP-N00573/2017-2018/11740 as Interim Resolution Professional (IRP). The said IRP has also submitted his consent in Form-2 dated 10.12.2020. Hence Mr. S.Vasudevan is appointed as IRP.

6. In view of the aforesaid reasons, this **IBA/632/2019** is hereby **admitted** with the following directions:

- I. That Moratorium is hereby declared prohibiting all of the following actions, 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 Securitization 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.
- 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) of Section 14 of IBC 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 the completion of the corporate insolvency resolution process or until this Bench

approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints **Mr. S. Vasudevan**, having Regn. No.[IBBI/IPA-002/IP-N00573/2017-2018/11740, Plot No. 5, 2nd Floor, Manasarovar Apartment,, Bagavanthy Nagar, Medavakkam Koot Road, Medavakkam, Chennai-600100, Mobile: 9710419502, E-Mail: kvasu1956@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

7. Accordingly, this Application is hereby **admitted**.

IBA/1364/2019

In the matter of M/s. Mega Foods Products Madras Private Limited



8. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

knp