

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-517
IB-219/ND/2020

IN THE MATTER OF:

East India Udyog Ltd
V/s
Calzini Fashions Limited

....Applicant

....Respondent

SECTION

U/s Sec.7 IBC

Order delivered on 28.01.2021

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Ashish Garg, adv
For the Respondent	: Sandeep Banga Adv

ORAL ORDER

As per: Sh. Abni Ranjan Kumar Sinha, Member (Judicial)

1. By filing this application under Section 7 of the IBC, the applicant has prayed for initiation of the CIRP against the Corporate Debtor in terms of the Loan Agreement dated 15.03.2018 entered in between the Financial Creditor as well as Corporate Debtor.
2. Heard the Ld. Counsel for the Financial Creditor as well as Corporate Debtor and perused the averment made in the application and the other documents filed by the respective parties.
3. The facts mentioned in the application in short is that on the basis of Loan Agreement, the applicant has paid Rs. 30,00,000/- on 31.03.2018 which would be evident from the Annexure A-1 at page 3 of the supplementary affidavit filed by the applicant. We further notice that out



of that, Rs. 15,00,000/- was repaid by the Corporate Debtor on 06.07.2018, same is evident from page 4 of the supplementary affidavit as Annexure A-1.

4. In part-IV of the application, the applicant has mentioned the amount of Rs. 15,00,000/- plus interest, (page 7 of the application) and on the basis of that, the defaulted amount is shown as **Rs. 17,70,739/-**.
5. On perusal of reply we notice that although the total amount claimed in the application is disputed by the Corporate Debtor but in para 13 of the reply, the Corporate Debtor has admitted the dues of Rs. 15,00,000/-.
6. Ld. Counsel for the applicant, in course of his arguments submitted that since the default in payment of amount has also been admitted by the Corporate Debtor by filing the reply, therefore, in view of Section 7 of the IBC, the Corporate Debtor is not required to raise any dispute.
7. On the other hand, Ld. Counsel for the respondent has also submitted that in para 13 of the reply debt of Rs. 1500000/ is admitted by the Corporate debtor but so far the amount claimed by the applicant is concerned that has been disputed by the respondent.
8. In the light of the submissions raised on behalf of the parties, at this juncture, we would like to refer Section 7 of the IBC and the same is quoted below:-

(1) A financial creditor either by itself or jointly with other financial creditors other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred. Provided that for the financial creditors, referred to in clauses (a) and (b) of the sub-section (6A) of the section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten percent of the total number of such creditors in the same class, whichever is less:



Provided further that for the financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—



(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the



applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

9. Mere plain reading to the provisions shows that the Adjudicating Authority while considering the application U/S 7 IBC is required to examine these two facts:- U

(i). Whether there is a financial debt

(ii). Whether the default has occurred

10. In view of Section 7(5) of the IBC, the moment the Adjudicating Authority came to the conclusion that there is a financial debt and there is default in payment of the debt and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional then the Adjudicating Authority has no option but to admit the application filed under Section 7 of the IBC. So far the dispute is concerned like Section 9, the Corporate Debtor is not required to raise the dispute under Section 7 of the IBC and that dispute is unknown to the section 7 of IBC, therefore, we are unable to accept the contention of the Corporate Debtor that the amount claimed by the applicant is disputed by



the Corporate Debtor. We further notice that the applicant at page 7 Part-III has also proposed the name of the IRP **Mr. Reetesh Kumar Agarwal**, who has also given their consent in Form 2, available at page 35 of the application. The proposed IRP has also given a declaration that no disciplinary proceeding is pending against him.

11. In the light of that, when we consider the application in hand then we find that the applicant has succeeded to establish that there is a financial debt and Corporate Debtor is in default in making the payment of that financial debt, the application is complete. The applicant also proposed the name of IRP **Mr. Rakesh Kumar Jain having registration number IBBI IPA-001/IPP01297/2018-19/12068** who has given his written consent and there is no disciplinary proceeding pending against him.

12. Under such circumstances, we are inclined to admit this application. and **Accordingly, this Application is admitted and initiate CIRP against the Corporate Debtor. The applicant has proposed the name of the IRP therefore, we appoint Mr. Reetesh Kumar Agarwal having registration number IBBI/IPA-001/P000878/2017-18/11475 as IRP. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-**

1. effect forthwith staying:-

(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 debt or 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.

Further:

(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:

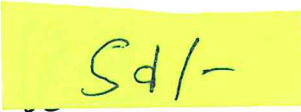
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an



order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

13. Financial Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Financial Creditor to be recovered as CIR costs and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

14. **Registry is directed to communicate the order to the IRP. Since the order is dictated in open Tribunal in presence of both the parties , therefore, there is no need to communicate /send the order to the parties. Financial Creditor is also directed to communicate this order to the IRP.**


(K.K. VOHRA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)