

**THE NATIONAL COMPANY LAW TRIBUNAL
“JAIPUR BENCH, JAIPUR”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP No. IB-235/7/JPR/2019

**Under Section 7 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Nand Kishore Parihar

with its address at

2-C, Royal Residency Apartment,
11th Surya Colony, Near Polytechnical College,
Residency Road, Jodhpur -342001 (Rajasthan)

....Petitioner-Financial Creditor

Versus

Rajhans Industries Private Limited

with its registered office at

A-2, Industrial Estate,
Jodhpur – 342003 (Rajasthan)

...Respondent-Corporate Debtor

Judgment delivered on: 05.08.2021

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON’BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Ankit Sareen, Advocate

For the Respondent : Mr. Shivangshu Naval, Advocate
Mr. Nandini Bhowan, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, (**for brevity ‘IBC’ / ‘Code’**), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Sh. Nand Kishore Parihar (**for brevity ‘Financial Creditor’/**

'Petitioner') with a prayer to initiate Corporate Insolvency Resolution Process ('CIRP') against Rajhans Industries Private Limited (for brevity 'Corporate Debtor'). The affidavit of Sh. Nand Kishore Parihar verifying the contents of the application is at page Nos.11 & 12 of the petition.

2. The Corporate Debtor namely, Rajhans Industries Private Limited is a Company incorporated on 02.12.1960 under the provisions of Companies Act, 1956 with CIN No.U28991RJ1960PTC001107 having its registered office at A-2, Industrial Estate, Jodhpur - 342003 which falls within the State of Rajasthan. Hence, the jurisdiction lies with this Adjudicating Authority.

3. The Authorized Share Capital of the Respondent Company is ₹12,50,000/- and Paid-Up Share Capital of the Company is ₹10,50,000/- as per master data. The master data of corporate debtor is stated to be filed as Annexure A-2C (Page No.14) of the petition.

4. The facts of the case, briefly as stated in the petition are that petitioner-financial creditor was working as a Director in the respondent-company. When the petitioner was working as a Director, the petitioner had lent unsecured loan to the company in his individual capacity. Howsoever, in the year 2018, financial creditor was removed from the post of directorship. The details of aforesaid unsecured loan is found in the balance sheets of corporate debtor ending on 31.03.2016, 31.03.2017, 31.03.2018. Copies of balance sheets for the Financial Years 2015-16, 2016-17 and 2017-18 are attached as Annexure A4, A5 and A6 respectively. As regards to the amount involved in default and the Date of default, it is mentioned by the financial creditor in Part-IV of their application that the total outstanding amount is

₹29,50,000/- as on 27.07.2019. Computation of outstanding amount and interest thereon is attached as Annexure A-3 of the petition.

5. It is further submitted that the Financial Creditor has raised demand as per notice dated 24.12.2018 (Annexure-7) for release of full unsecured loan within 7 days. Corporate Debtor has replied vide letter dated 25.01.2019 wherein it has been stated that corporate debtor is unable to settle amount due to non-operation of bank account.

6. In Part-V of the application, it is stated that no security are held by the financial creditor.

7. Notice of this petition was issued to the corporate debtor on 12.09.2019 to show cause as to why this petition be not admitted and Corporate Debtor has filed reply vide Diary No.2405/2019 dated 16.10.2019 wherein the respondent-corporate debtor had admitted liability to the extent of ₹26,30,583/-. It is also submitted that petitioner has made few withdrawals in personal capacity during his tenure of directorship. Hence, after deducting withdrawals made by petitioner, the aforesaid amount is outstanding. The petitioner-financial creditor has filed rejoinder thereto vide Diary No.2605/2019 dated 06.11.2019 wherein the fact of withdrawals of outstanding amount for personal use is denied.

8. In the present case, the occurrence of default is evidenced by copies of balance sheets for the Financial Years ending on 31.03.2016, 31.03.2017 and 31.03.2018 and the same are placed at Annexure-4, 5 and 6 respectively. It can be seen that petitioner has served a notice dated 24.12.2018 demanding the release of unsecured loan pending with Corporate Debtor in full. Copy of notice dated 24.12.2018 and reply dated 05.01.2019 is attached as Annexure-7 and 8 of the petition. The petitioner

has issued another notice dated 11.07.2019 (Annexure-9) stating that no amount has been released by corporate debtor and to repay the outstanding loan amount of ₹29,50,000/- along with 18% interest. Copy of postal receipt and e-mail showing due service of notice are part of Annexure-9 (at page No.134 and 135).

9. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.
- (e) It is further directed that 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.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) 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.”

10. In Part-III of Form 1, Financial Creditor has proposed Mr. Prashant Agrawal as Interim Resolution Professional. IRP has filed consent in Form 2 dated 12.08.2019 in which it has been stated that no disciplinary proceedings are pending against him and he is not serving as IRP or RP in any other proceedings. As proposed by the Financial Creditor, this Bench appoints Mr. Prashant Agrawal as Interim Resolution Professional having Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127, E-mail:

ippagrawal@gmail.com, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

11. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

12. A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

August 05, 2021
AV