

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.506/ALD/2019

*(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule,2016)*

IN THE MATTER OF

M/S SUPREME INDUSTRIES LIMITED.

.....Applicant/Financial Creditor

VERSUS

M/S CHARTERED MERCANTILE M.B. LTD.

.....Respondent/Corporate Debtor

ORDER DELIVERED ON :08.07.2021

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

**For the Applicant/ Operational Creditor: Mr. Amitabh Agarwal,Advocate
For the Respondent/ Corporate Debtor: None**

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") under Section 7 of the Insolvency & Bankruptcy Code,2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e "**M/s Chartered Mercantile M.B. Ltd**". on grounds of its inability to liquidate its financial debt.
2. As per the averment made in the petition, the deed of guarantee dated 20.06.2018 was entered and executed between the Corporate Debtor and the financial creditor and the applicant agreed to give credit facilities to sell the said goods to the purchasers.
3. Further stated that the purchasers issued purchase order dated 23.06.2018 to the financial creditors for the said goods for an amount of Rs.

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2,00,69,460/- and the applicants have sold, supplied and delivered goods in parts from 07/04/2018 to 20/07/2018 amounting to Rs. 1,30,11,821/- as per the purchase order dated 23/06/2018 and the Financial Creditors further issued 45 tax invoices alongwith delivery challan to the purchaser for the supply of the goods for an amount of Rs.1,30,11,821/- against the purchase orders.

4. As per the terms of the purchase order, the purchasers were required to make 100% payment within 30 days of dispatch of the said goods by post dated cheque and if the payment is not made within due date, then interest @ 24% p.a will be charges on outstanding amount. It is further contended that the date of last dispatch of the goods was 20/07/2018 and the payment of Rs. 1,30,11,821/- was due on 20.08.2018 to which the purchasers have paid a sum of Rs. 40,00,000 on 21/08/2018 and Rs. 15,00,000/- on 15/10/2018, and the remaining amount remains outstanding and further the purchasers by email dated 03/11/2018 informed the financial creditors that they will release their payment to the financial creditor, but inspite of various reminders and personal visits to the office of the purchaser, they failed and neglected to make the remaining payment.
5. Therefore, the financial creditor approached the corporate debtor and discussed that in case if the purchasers fails to release the said outstanding balance on or before 22/11/2018, then the corporate debtor will process the payment from their end as per the agreement and the corporate debtor by the letter dated 02/12/2018 replied stating that till the time validity of the Bank Guarantee is not expired, thus they cannot take any action against the purchaser and informed that as soon as any payment is received to the purchaser, they will make the payment in instalment to the applicants and corporate debtor also assured that they will give full cooperation to the financial creditors.

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6. Further the applicants by its letter dated 11/03/2019 issued notice of invocation of the bank guarantee for an amount of Rs. 84,30,000/- and forwarded the original bank guarantee to the corporate debtor which was received and acknowledged by the corporate debtor on 15/03/2019 but the amount was not credited, then again on 10/16/2019 and 20/06/2019 , financial creditor again issued notices but despite several letters, the corporate debtor neither replied to the said letters nor made any payment to the outstanding amount of Rs. 93,04,252. The applicant has therefore filed this petition as a financial creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.
7. The Corporate debtor has been duly served by the speed post but it is a matter of record that although various opportunities were granted but the Corporate Debtor has chosen not to contest the case and hence vide order dated 23.02.2021, the case was fixed for ex parte hearing on 09.04.2021, and finally the matter was heard on 01.07.2021 but on the date of hearing also the respondent opted not to appear.
8. From the perusal of averments made in the application filed on behalf of petitioner and the documents annexed therein, this adjudicating Authority finds, that the purchaser vide email dated 03.11.2018 clearly admits the debt and assured in the email that they will release the outstanding amount to the applicants and further the corporate debtor was liable to pay the applicant as per the terms of agreement between the parties.
9. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:
 - i.) Whether there is duly established financial debt.
 - ii.) Whether there is default in payment by the corporate debtor.

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iii.) Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

10. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in 09.11.2019 is well within limitation, being within three years from the date of acknowledgement of debt.

11. Therefore, in light of the aforesaid provisions, this adjudicating Authority is of the considered view that the total amount claimed in default is of Rs.93,04,252/-/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor. The increase in threshold limit to initiate CIRP from Rs. 1 lakh to 1 Crore vide notification of the MCA dated March 24, 2020 is prospective in nature and does not in any way apply in the present matter.

12. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein.

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(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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

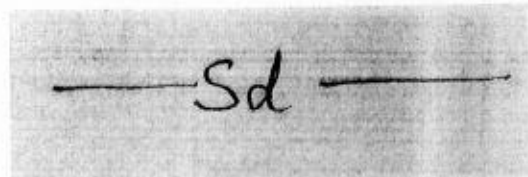
(b) a surety in a contract of guarantee to a corporate debtor.

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(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. The Financial Creditor has proposed the name of **Mr. Girdharlal Sharma, Registration Number IBBI/IPA-001/IP-P00391/2017-18/10709** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.
14. The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.
15. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
16. Progress Report to be before the Registry of this Bench.



**JUSTICE RAJESH DAYAL KHARE
MEMBER (J)**

Date: 08.07.2021

Swati Gupta
(LRA)