

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No. 287/7/NCLT/AHM/2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 29.01.2021

Name of the Company:

IFCI Ltd

V/s

Anil Mega Food Park Pvt Ltd

Section:


7 of Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 29th day of January, 2021.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP (IB) No.287/7/NCLT/AHM/2019

(Application for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency & Bankruptcy Code, 2016)

In the matter of :

IFCI Ltd.

IFCI Tower,
61 Nehru Place,
New Delhi-110 019

..Financial Creditor

V/s

Anil Mega Food Park Pvt. Ltd.

Anil Starch Premises,
Anil Road, Ahmedabad-380 025
To be served through
Mr. Manish Girishchandra Shah
Director of Anil Mega Food Park Pvt. Ltd.
G-8, Shayona City Part-4,
Nr. R. C Technical Road,
Ghaltlodia, Ahmedabad- 380 061

..Corporate Debtor

Order Reserved on 5th January, 2021
Order Pronounced on 29th January, 2021

Coram: **MADAN B. GOSAVI, MEMBER(J)**
VIRENDRA KUMAR GUPTA, MEMBER (T)



Appearance:

Learned Counsel Ms. Nalini Lodha for the Financial Creditor

Learned Counsel Mr. Arjun Sheth appeared for the Corporate Debtor

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER(T)]

1. This Application is filed by the **IFCI LIMITED** (hereinafter referred to as the 'Financial Creditor') through its Authorised Signatory under Section 7 of the Insolvency & Bankruptcy Code, 2016, r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016, to start Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP') against the **ANIL MEGA FOOD PARK PVT. LTD.** the Corporate Debtor, on the ground that, it has committed a default in paying the financial debt of **Rs. 45,00,00,000/-**. (Rupees forty five crores only).
2. The facts in brief are that, the Corporate Debtor provided a Corporate Guarantee in favour of the Financial Creditor for a sum of Rs. 45,00,00,000/- on 11.06.2015. All necessary documents regarding the competency and liabilities of the Corporate Debtor to own its commitments made in this Guarantee has been placed on record. The charges have also created in the records of ROC. It is

noted that the borrower defaulted in repayment of the loan resulted into issuance of recall of notice 03.10.2016. The Applicant also invoked Corporate Guarantee given by the Corporate Debtor vide notice dated 22.12.2016. The account of the borrower is classified as Non-Performing Asset (NPA) on 26.09.2016 and the Borrower was under liquidation. The date of default has been claimed 15.04.2016 and the application has been filed on 08.04.2019 i.e. within period of three years from the date of invocation of the Corporate Guarantee. Thus, it is within period of limitation.

3. Learned Counsel Ms. Nalini Lodha appeared for the Financial Creditor narrated these basic facts that there was a debt which was due and payable both in law and fact, hence, an application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 was to be admitted for the reason that a default has occurred in the discharge of its liabilities arising out of such Corporate Guarantee.
4. It was also claimed that proceeding against Corporate Guarantor could be taken simultaneously or even otherwise. The Learned Counsel for the Corporate Guarantor appeared and submitted that the matter was squarely covered by the decision of the Hon'ble

NCLAT, wherein it has been held that the claim for the same debt cannot be filed by the same Financial Creditor in two separate CIRP. It was also claimed that an Appeal is pending before the Hon'ble NCLAT , but there was no Stay on the implication of said judgements, hence, the present application was liable to be dismissed.

5. We have considered the submissions made by both the sides and material available on record. It is disputed fact that the Corporate Debtor has given a Corporate Guarantee to secure the funds borrowed by another group of Corporate entity. The requisite documents meet the requirements of law and there is not defect or technical deficiency thereunder.
6. It is also noted that the Corporate Guarantee has been invoked after Principal borrower has failed to repay the debt. It is also noted that the application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 is well within period of three years from the date of default, hence, complies with the requirement of law and limitation.
7. The legal plea raised by the Corporate Debtor have got no force of law as the Hon'ble Supreme Court in the case of ***State Bank of India vs. V. Ramakrishnan and Ors. (14.08.2018 - SC)*** has held that

proceeding against both Corporate Debtor as well as Guarantor can be initiated. Even, Hon'ble NCLAT itself in its subsequent decision after considering the decision relied on the Corporate Guarantor has changed its view and has held that the proceeding against the Corporate Debtor and as well as Corporate Guarantor can be undertaken under Section 7 of the IBC, 2016 simultaneously. In view of the matter, we hold that this application is liable to be admitted. Accordingly, we admit the same and order as under :

ORDER

1. **Anil Mega Food park Pvt. Ltd.** the Corporate Debtor is admitted in Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency & Bankruptcy Code, 2016 and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - (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;*
- (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.*

2. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
3. The Financial Creditor has proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. R. D. Choudhary** **IBBI/IPA-001/IP-P00157 /2017-18/10326** to act as an IRP under Section 13(1) (c) of the Code. The IRP did not give his

fee schedule.

4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

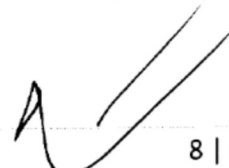
5. We direct the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

6. It is further directed that the supply of goods/service to the

Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.

7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of Rs. 5,00,000/- (Rupees Five Lacs only) to the IRP within two weeks from the date of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority alongwith First Progress Report.

8. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities



forthwith and upload the same on website immediately after pronouncement of the order.

9. **With this observation, CP(IB) No. 287/7/NCLT/AHM/2019 is allowed.**

10. The matter to be listed on 15.03.2021 for further consideration.



**(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)**



**(MADAN B GOSAVI)
MEMBER (JUDICIAL)**

Signed on this, the 29th January, 2021

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