

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.**

CP (IB) No.271/Chd/Pb/2018

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

In the matter of:

JFC FINANCE (INDIA) LIMITED,
P-32, Lower Ground Floor,
South Extension Part-II,
New Delhi – 110 049,
Through authorised representative.

....Petitioner-Financial Creditor.

Versus.

MOHAK CARPETS PRIVATE LIMITED,
17/2, KENNEDY AVENUE, AMRITSAR,
Punjab – 143001,
Through its Managing Director.

....Respondent-Corporate Debtor.

Order delivered on: 08.10.2018

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the petitioner: 1) Mr.Manish Jain, Advocate
2) Ms.Divya Sharma, Advocate

For the respondent: Mr.Mayur Kanwar, Advocate

Per: R.P.Nagrath, Member (Judicial):

Judgment (Oral)

This petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') for initiating the insolvency resolution process against the respondent-corporate debtor by filing an application in Form 1 as

prescribed under sub-rule (1) of Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority Rules, 2016 (for brevity the 'Rules'). The application has been filed in the prescribed Form by the petitioner company on the basis of the resolution dated 09.08.2018 to initiate the proceedings against the corporate debtor under Section 7 of the Code and authorising Mr.Vijay Kumar Chopra or Shri Sunil Kumar, the Director of the company severally to sign and verify the application on behalf of the company and to do all the necessary acts in the progress of the case. Copy of the resolution of the petitioner company is at Annexure A-1 (A). The application has been signed by Mr.Vijay Kumar Chopra aforesaid, who also filed his affidavit in support of the contents of the application.

2. The respondent-corporate debtor was incorporated on 11.06.2009 with the authorised share capital of ₹5,00,00,000 (₹5 Crores only) and paid-up capital of ₹4,82,63,720 (Rupees Four Crores Eighty Two Lakhs Sixty Three Thousand Seven Hundred Twenty only). The respondent-corporate debtor has its registered office at Amritsar in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The facts of the case briefly stated are that the corporate debtor entered into a Loan Facility Agreement dated 25.05.2018 with the petitioner, copy of which is at Annexure A-5 (at page 31 of the paper book). As per this agreement, the respondent-corporate debtor borrowed a sum of ₹10,00,000/- as loan from the petitioner agreeing to repay the loan in 10 equal monthly instalments of ₹1,15,000/- along with interest @ 18%

per annum and in case of default to pay, penal interest @ 1% per month. The loan was disbursed to the respondent-corporate debtor on 28.05.2018.

4. It is further stated that towards the repayment of the first instalment of the loan, the respondent issued a cheque for ₹1,20,000/- dated 28.06.2018 in favour of the petitioner, which bounced on presenting the same with the Bank on 30.06.2018. Thereupon the petitioner called upon the respondent-corporate debtor vide letter dated 02.07.2018 to make the payment of the entire amount of loan within three days and in response thereto, the respondent conceded its default. The sanction letter of the amount of ₹10,00,000/- dated 24.05.2018 is at Annexure A-6 (Colly). Annexure A-11 dated 13.07.2018 is the call letter and the response of the respondent admitting the default vide letter dated 20.07.2018, is at Annexure A-12. Thereafter the loan was recalled as per Loan Recall Notice dated 01.08.2018 (Annexure A-13).

5. The amount in default stated in Part IV of the application is ₹10,37,017/- as on 08.08.2018, which includes an amount of 4075/- towards interest @ 18% per annum with penal interest. With this petition, the petitioner has annexed the computation of the calculation of the outstanding amount of ₹10,37,017/- which is at Annexure A-4.

6. Notice to the respondent was directed to be issued vide order dated 13.09.2018. Mr. Mayur Kanwar, Advocate appeared for the respondent-corporate debtor on that very date and accepted the notice. Mr. Mayur Kanwar, Advocate also filed the power of attorney in his favour along with the resolution of the Board of Directors of the respondent-

corporate debtor dated 04.09.2018. The learned counsel for the respondent made the statement that the respondent is not to oppose the instant petition and therefore, reply/objections were not to be filed. The matter was, however, adjourned for today for arguments. The learned counsel for the respondent again submits that the respondent-corporate debtor does not oppose the admission of the petition.

7. We have heard the learned counsel for the parties and also perused the record with their able assistance.

8. The petitioner is stated to be a Non-Banking Financial Institution (NBFC), which has granted the loan. It is also evident from the agreement Annexure A-5 and as per Certificate of Incorporation Annexure A-I that the petitioner-financial creditor has been registered as a Finance Company.

9. As per sub-section (2) of Section 7 of the Code, the financial creditor is to move an application in the prescribed Form, which has been provided in Rule 4 (1) of the Rules. Sub-section (3) of Section 7 of the Code reads as under:-

“(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.”*

10. As per clause (a) of Section 7 (3) of the Code, the financial creditor has to produce the record of the default recorded with the information utility or such other record or evidence of default as may be specified. The petitioner has produced all the documents of loan including the Agreement of Loan Facility. The factum of the loan having been disbursed to the respondent is also reflected in the statement of the Bank Account of the petitioner maintained with the Axis Bank, which is at Annexure A-14. The entry of the disbursement of the loan is to the tune of ₹10,00,000/- on 29.05.2018 in the statement of account. The default is also evident because the cheque, which was issued to the petitioner towards part payment has also bounced. Copy of the cheque, which bounced is at Annexure A-7 along with the memo of dishonour, which is at Annexure A-8 due to insufficient funds. The application has also not been contested by the respondent.

11. As per clause (b) of Section 7 (3) of the Code, the petitioner is bound to propose the name of the resolution professional to be appointed as the Interim Resolution Professional. In Part-III of the application, the financial creditor has proposed the name of Mr. Anil Kumar, registered resolution professional with registration No. IBBI/IPA-001/IP-P00144/2017-2018/10308 to be appointed as the Interim Resolution Professional, who has given the necessary declaration and he certified that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional Agency. It is also stated that presently, he is working as Interim Resolution Professional in two cases and both the matters have been stayed pursuant to Court directions. The Certificate of

Registration of the proposed IRP is at page 29 of the paper book. The petitioner has thus been able to bring home all the requirements of Section 7 of the Code.

12. In order to comply with the requirement of Rule 4(3) of the Rules regarding despatch of copy of the application filed with the Adjudicating Authority to the corporate debtor, the petitioner has attached the postal receipt by which, the copy of the application along with the entire paper book was sent to the respondent on 17.08.2018, is at page 67 of the paper book.

13. In view of the above, the instant petition is admitted. The matter be listed on 12.10.2018 for passing formal order of declaring the moratorium as well as appointment of the Interim Resolution Professional.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R.Sethi)
Member (Technical)
October 08, 2018.
Ashwani

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)