

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III

IB-2646/ND/2019 &
IA/5725/ND/2022

U/S. 7 of the IBC, 2016 and Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

LOVENI MARKETING & ADVERTISING PRIVATE LIMITED

Registered office at:

**3E-17, BP NIT FARIDABAD,
HARYANA-121002**

...Financial Creditor

Versus

SN CINEMA ADVERTISING PRIVATE LIMITED

Registered Office at:

**A-210 & A-211/5, 2ND Floor,
SOMDUTT CHAMBER 1, BHIKAJI CAMA PLACE,
NEW DELHI-110066**

....Corporate Debtor

Delivered on:03.01.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)







Appearances:

Financial Creditor: Adv. Gursat Singh

Corporate Debtor: Adv. Sundar khatri

ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. The instant application bearing IB-2646/ND/2019 is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor, Loveni Marketing & Advertising Private limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., SN Cinema Advertising Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Financial Creditor/Petitioner has averred as follows: -

- a. It is submitted that, Loveni Marketing & Advertising Private limited i.e., Financial Creditor is engaged in the area of marketing and survey for marketing of products.



- b. It is submitted that, Corporate Debtor is also engaged in similar business of advertising and marketing of products requested Financial Creditor to grant financial assistance of Rs. 1,00,00,000/- at a rate of interest of 30% p.a. After a resolution passed by the board of directors of Financial Creditor on 14.02.2017 a sum of Rs. 85,00,000/- was paid to the Corporate Debtor.
- c. It is submitted that, Financial Creditor issued a statutory legal notice dated 05.04.2018 through its advocate to Corporate Debtor. However, Corporate Debtor repaid Rs 20,00,000/- to Financial Creditor towards part repayment of principal amount.
- d. It is further submitted that, Financial Creditor issued series of Demand notices dated 15.11.2018, 07.02.2019, 16.03.2019, 05.05.2019 ,05.08.2019 , 05.09.2019 and 01.10.2019 but Corporate Debtor failed to repay the disputed loan amount.
- e. It is further submitted that, Financial creditor initiated criminal proceedings under Negotiable Instruments Act against Corporate Debtor and its Director before Chief Judicial Magistrate, Faridabad and case is still pending before the said forum.

3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 05.02.2020. Corporate debtor has also filed their reply to the captioned petition.



4. We have heard the arguments advanced by Ld. Counsels appearing for Financial creditor as well as for the Corporate debtor and also perused the record.

5. The Financial Creditor's claim is based on the facts that Corporate debtor had approached the 'Applicant' to avail loan facility of Rs. 1,00,00,000/- as Applicant and Corporate Debtor is engaged in same business of marketing. Financial Creditor paid a sum of Rs. 85,00,000/- to the Corporate Debtor as loan.

6. Per contra, Corporate debtor has raised one contention:-

I. Documents on the basis of which the instant application is filed, are not binding upon the Corporate Debtor as there is a pre-existing dispute of debt as Financial Creditor has already initiated the proceedings under section 138 of Negotiable Instruments Act, 1881.

7. As regards to the issue raised by the corporate debtor it is observed that the applicant had sanctioned inter corporate loan to the tune of Rs. 85,00,000/- to the Corporate debtor. While perusing the records, we found certified true copy of letter dated 20.02.2018 from Corporate Debtor acknowledging receipt of loan of Rs 85,00,000/-.The Corporate Debtor has also issued post-dated cheques towards repayment of principal loan amounts but, those cheques were dishonoured due to insufficient funds.



Thus, on analysing the cheque return memo report, we have arrived at the considered view that issuing of cheques by Corporate Debtor would be considered as 'acknowledgement of debt'. The action of issuing the cheque by the Corporate Debtor in the favour of Financial creditor would mean the Corporate Debtor acknowledges the debts itself, because there always exists a statutory presumption that the cheque was issued to discharge legally enforceable debt or liability. The contention raised by the Corporate debtor also relates to the fact that there exists a dispute in respect of debt as Financial creditor has already instituted certain proceedings under section 138 of Negotiable Instruments Act. It would be pertinent at this juncture to refer Hon'ble Supreme Court's judgement in the matter of **Innoventive Supra**, wherein the Hon'ble Supreme Court has held that "it is clear that the provisions of the IBC will prevail over any other law where a conflict exists by the bare perusal of the non-obstante provision contained in Section 238 of the IBC, which unambiguously provides that the IBC will apply notwithstanding anything inconsistent therewith contained in any other law for the time being in force". Further, in any case this Hon'ble Adjudicating Authority and the Hon'ble National Company Law Appellate Tribunal (hereinafter, "NCLAT") in catena of cases have laid down that pendency of proceedings under the any other Act has no bearing in so far as admission of application under Section 7 of the Code is concerned. The latest judgment of the Hon'ble NCLAT dealing with the said issue is the case of **Amar Vora vs City Union Bank Ltd., bearing Company Appeal (AT) (CH) (Ins) No. 130 of 2022** dated 11.05.2022 wherein it



has been held that a financial creditor can file an Application under Section 7 of the Code against a Corporate Debtor despite any other proceedings being pending before any other forum in respect of the same debt, by virtue of Section 238 of the Code. Relevant extract from the aforesaid ruling of the Hon'ble NCLAT has been reproduced below:

"The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under:

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law." In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7, 9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on



the ground that the provisions of I & B Code, 2016 is overriding effect of other laws.

8. In the light of the decision referred to **supra**, when we consider the submissions of the Financial Creditor for the claims towards the Loan amount disbursed to the Corporate debtor, it appears to us that the failure of the Corporate debtor to make payment of the Loan amount will be considered as 'Default'. Hence, by analysing the facts of the case in the light of the decisions of the Hon'ble Supreme Court and NCLAT **supra** we are inclined towards the view that present petition is maintainable u/s 7 of IB Code, 2016.

9. The Financial Creditor in Part-III of Form 1 has proposed the name of Mr. Yogesh Kumar Gupta, having registration number IBBI/IPA-003/IP-N00078/2017-18/10701 for appointment as Interim Resolution Professional. We observe that the Insolvency and Bankruptcy Board of India (Disciplinary Committee) in exercise of the powers conferred under section 220 (2) of the Code read Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 suspended the registration of Mr. Yogesh Kumar Gupta having Registration No. IBBI/IPA-003/IPN00078/2017-18/10701 for a period of three years w.e.f. 31st July, 2022.



10. Accordingly, this bench appoints Mr. Parveen Kumar Jain having IBBI Registration IBBI/IPA-001/IP-P02022/2020-21/13110 and e-mail id: parveen_2817@yahoo.co.in (Mob. No. 9312222564) as the Interim Resolution Professional of the corporate debtor, Mr. Parveen Kumar Jain is appointed as Interim Resolution Professional of the Corporate Debtor subject to the condition that no disciplinary proceedings are pending against him. The IRP appointed is directed to place on record the Authorization for Assignment (AFA), specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within 3 days of pronouncement of this order.

11. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit 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 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's 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 (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.

e. The explanation below section - 14 (1) also stipulates “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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

12. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium

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period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

13. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the Code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

14. The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., to make compliance with this order as per the provisions of IBC, 2016.

15. The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.



16. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

17. The application bearing IB-2646/ND/2019 is admitted and IA/5725(ND) 2022 filed by the Corporate Debtor is also hereby disposed off.

17. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

(Dr. Binod Kumar Sinha)

Member (Technical)

(Bachu Venkat Balaram Das)

Member (Judicial)