

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
(ITEM No. 504)

(IB) 112 (ND)/2021

In the matter of:

FIDUS FINANCE PRIVATE LTD.

HAVING ITS REGISTERED OFFICE AT:

**4 BBD BAG (E), 5TH FLOOR,
STEPHEN HOUSE, KOLKATA
WEST BENGAL-700001**

.... APPLICANT/FINANCIAL CREDITOR

VERSUS

IIC LIMITED

HAVING ITS REGISTERED OFFICE AT:

**CIN: U70200DL2010PLC199960
90/A-207, KHASRA NO. 412,
GROUND FLOOR, MAHIPALPUR EXTENSION
NEW DELHI-110037**

.... RESPONDENT/CORPORATE DEBTOR

SECTION: U/S 7 of IBC, 2016

Order delivered on: 20.09.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

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For the Applicant/Financial Creditor:

For the Respondent/Corporate Debtor:

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (**hereinafter referred to as the “Code”**), praying for initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor.

2. We have heard the Ld. Counsel for Applicant as well as Respondent/Corporate Debtor and perused the averments made in the application, additional affidavit by the applicant as well as reply filed by the respondent.

3. Ld. Counsel for the respondent/Corporate Debtor submits that the reply of the respondent is based upon Section 215 of the Code and the respondent has taken a ground that the application is not maintainable because the applicant has not complied the provision of Section 215 of the Code.

4. He further submits that apart from this ground, the respondent has not taken any other ground.

5. On the other hand, Ld. Counsel for the applicant submits that by filing the reply, the respondent in Para III (b) made a following averments: -

“Without prejudice to the above, it is submitted that the Corporate Debtor is willing to safeguard the interest of stakeholders including the present petitioner. It is submitted that Corporate Debtor is willing the pay the entire outstanding debt of Financial Creditor as mutually to be agreed between the parties in 36 equal instalments



starting from 01.01.2022 and the present petition be dismissed with the aforesaid direction.”

6. He further submits that amounts to the acknowledgement of debt.

7. He further submits that the applicant has also proposed the name of Interim Resolution Professional (IRP), who has also given his consent.

8. Considering the submissions and the averments made in the application, at this juncture, we would like to refer Section 215 of IBC, 2016 upon which the respondent/Corporate Debtor has placed reliance as well as Section 7(3) (a) of IBC, 2016 and the same are quoted below:-

IBC Section 215-Procedure for submission, etc., of financial information.

(1) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations..

(2) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.

(3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified

IBC Section 7-Initiation of corporate insolvency resolution process by financial creditor.



(1)

(2)

(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)

(c)

(4)

(5)

(a).....

(b).....

(6).....

(7)

(a)

(b)

9. When we read both these sections together then we notice that in view of Section 7 (3)(a) of IBC, 2016, the financial creditor shall, along with the application are required to furnish the information and the documents as referred to in Section 7(3)(a) of the Code.

10. It is further seen that apart from the record of the default, recorded with the information utility which has been referred to in Section 215 of the Code, the applicant may also produce; other documents or evidence to

establish the default, in such form and manner as may be specified u/s 7(3)(a) of the Code.

11. In the light of aforesaid facts, when we consider the submissions of the Corporate Debtor that the application is not maintainable in view of noncompliance of Section 215 of the Code then in our considered view Section 215 shall always be read with Section 7(3)(a) of the Code. And on the basis of that, we are of the considered view that Section 7 of the Code has prescribed a procedure and the documents which are necessary to be enclosed along with the application filed by the applicant. Merely record of the default recorded in the information utility is not available or not filed by the applicant; the application filed under Section 7 cannot be rejected, if the applicant has produced other documents to establish the default.

12. At this juncture, we would like to refer Section 7 (5) of the IBC, 20116 and the same is quoted below:-

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:



Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

13. In view of Section 7 (5) of the Code, the moment, the applicant satisfies the Adjudicating Authority that there is Financial Debt and there is any default of payment of that debt, application is complete under Sub Section 2 of Section 7 and there is no disciplinary proceeding pending against the proposed IRP, then the Adjudicating Authority have no option but to admit the application under Section 7(5)(a) of the IBC, 2016.

14. So far, the documents are concerned, on perusal of the application we notice that the other documents as required under Section 7(3)(a) have already been enclosed along with the application and the applicant has already proposed the name of the Interim Resolution Professional, **Mr. Parmod Kumar Gupta** to act as IRP, who has also given his written communication in Form 2, which is at available at page 18 of the paper book.

15. We further notice that the respondent in its reply has also admitted this fact that he is ready to repay the amount in 36 installments. In other words, the respondent has acknowledged the defaulted amount which has referred to in Part -IV of the application.

16. As we have already observed that merely the record of the default is not available on the information utility, in our considered view is not a ground to reject the application filed by the applicant.

17. In the light of that, when we consider the case in hand then we find, the applicant has succeeded to establish that there is a financial debt and Corporate Debtor is in default in making the payment of that financial debt, the application is complete and the applicant has also proposed the name of IRP **Mr. Parmod Kumar Gupta having registration number IBBI/IPA-001/IP-P01329/2018-19/12075** Who have also sent the



written consent and there is no disciplinary proceeding pending against him.

18. Under such circumstances, we hereby inclined to admit this application and accordingly same is **ADMITTED** and initiate CIRP against the respondent. Since the applicant has proposed the name of the IRP therefore, we appoint **Mr. Parmod Kumar Gupta having registration number IBBI/IPA-001/IP-P01329/2018-19/12075** as IRP. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

1. effect forthwith staying:-

(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 debt or 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.

Further:

(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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(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.



19. Financial Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Financial Creditor to be recovered as CIR costs and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

20. **Registry as well as the petitioner in whose presence the order is dictated are directed to communicate the order with the IRP as well the parties.**


K. K. VOHRA
Member (T)


ABNI RANJAN KUMAR SINHA
Member (J)

Chirag