

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 1153/MB/2017

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Bell Finvest (India) Limited

[CIN: U32200MH1994PLC080907]

1107, Makers Chambers V, Nariman Point, Mumbai-
400021

... Financial Creditor /Petitioner

Versus

**Intercon Container Survey & Commodities Private
Limited**

[CIN: U63000MH2008PTC181279]

Office No. 706, Vashi Infotech Park, Plot No. 16,
Sector 30A, Vashi Station, Navi Mumbai,
Maharashtra- 400705

... CorporateDebtor/Respondent

Order Delivered on 15.09.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Vinit Mehta, Advocate.

For the Corporate Debtor : None.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Bell Finvest (India) Limited** ("the

Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Intercon Container Survey & Commodities Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a Private Limited Company limited by shares and incorporated on 17.04.2008 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Office No. 706, Vashi Infotech Park, Plot No. 16, Sector 30A, Vashi Station, Navi Mumbai, Maharashtra- 400705 and its Corporate Identity Number (CIN) is **U63000MH2008PTC181279**. Therefore, this Bench has jurisdiction to deal with this petition.
3. As per Part IV of the Form 1, the total amount of debt is **Rs.48,62,500/-** which was overdue as on 10.09.2016 as per Loan Recall Notice dated 11.09.2016 and **Rs.58,55,500/-** which was overdue as on 20.06.2017. The date of default is **30.04.2016** as per the Affidavit dated 02.02.2022.

Submissions made by Financial Creditor:

4. It is the case of the Financial Creditor that the Corporate Debtor had requested the Financial Creditor to sanction a temporary loan of Rs.35,00,000/- which will be repaid in 8 EMI's.
5. Accordingly, a loan sanction letter was issued by the Financial Creditor in favour of the Corporate Debtor on 19.03.2016, thereby sanctioning a loan of Rs.30,00,000 (Rupees Thirty Lakh Only). The copy of the sanction letter is annexed as Exhibit H to the Petition.
6. A loan agreement was entered into between the parties as borrower and lender for an amount of Rs.30,00,000/- (Rupees Thirty Lakh Only). A copy of the loan agreement is attached as Exhibit I to the Petition.
7. Further, a demand promissory note and ex-receipt for consideration on promissory note was executed by both the parties for an amount of

Rs.30,00,000/- with interest @ 24% p.a. or at any rate which may be determined by the applicant.

8. In order to secure the disbursed loan amount the following deeds of Guarantee were executed in favour of the Petitioner:
 - a) A Deed of Guarantee was executed by Mr. Vijay Relwani, Pooja Relwani and Mr. Rajendra Patil in favour of the Financial Creditor as on 28.03.2016. A copy of the same is annexed as Exhibit J to the Petition.
 - b) A Corporate Guarantee Deed was executed by Avance Logistics and Trading India Pvt. Ltd in favour of the Petitioner on 29.03.2016. A copy of the same is annexed as Exhibit K to the Petition.
 - c) A Deed of Guarantee was executed by Meenaxi Patil on 30.03.2016.
 - d) Another deed of personal guarantee was executed by Mrs. Pooja Relwani on 30.03.2016, in favour of the Petitioner.
9. On failure to repay any installment, the Financial Creditor sent a loan recall notice addressed to the Corporate Debtor on 11.09.2016. Copy of the same is annexed as Exhibit Q Colly to the Petition.

Submissions made by the Corporate Debtor by the way of Reply:

10. It is observed that the Corporate Debtor chose not to appear and plead the present Petition before the Bench however, they have filed a reply on record, the same is taken on merit.
11. The Corporate Debtor submits that the Financial Creditor has concealed the basic fact that the dispute is already pending before Hon'ble Sole Arbitrator, Shri Pradip Vasant Bavkar, bearing dispute no. 107/2016.
12. The Corporate Debtor claims that the Financial Creditor has charged a heavy and exorbitant interest rate on the loan availed. The Applicant has already received the interest amount of Rs.7,20,000/- at rate of 36% p.a.

before disbursement of the said Loan which is unjustified and against the law.

13. It is claimed that the Financial Creditor has only disbursed an amount of Rs.22,80,000/- instead of Rs.30,00,000/-. The Corporate Debtor states that the Applicant has wrongly mentioned in the Petition that Rs.4,80,000/- was remitted towards the advance interest in the Loan Account of the Corporate Debtor before the period of the Loan is over and at an exorbitant rate of interest @ 36% p.a. and that too before the said amount being due from the Corporate Debtor. The amount to be paid is also to be calculated and decided.
14. The Financial Creditor has submitted before the Hon'ble Arbitrator the intention of the Corporate Debtor to repay the entire dues in instalments as per the calculations made by the Corporate Debtor and shall require sufficient time for the same. Instead of amicably settling the dispute, the Financial Creditor has initiated proceedings against the Corporate Debtor.
15. The Corporate Debtor states that prima facie no case can be made out of the present Petition for granting any relief as sought in the Petition and it is liable to be dismissed with exemplary cost.

Findings:

16. We have heard the arguments of the Financial Creditor and perused the records. This Bench observes that it is well established that a pre-existing dispute in arbitration does not bar the proceedings before this Bench u/s 7 of the Code. Thus, the contention of the Corporate Debtor regarding concealed facts does not stand valid.
17. Further, the records clearly show that a loan of Rs.30,00,000/- was disbursed by the Financial Creditor in favour of the Corporate Debtor at the determined rate of interest. The same is admitted by the promissory

note executed by the Corporate Debtor in favour of the Financial Creditor. Hence, the said loan stands undisputed. Upon perusal of the records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor owes money to the Financial Creditor.

18. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
19. The Financial Creditor has proposed the name of **Mr. Devendra Padamchand Jain**, Registration No. IBBI/IPA-001/IP-00224/2016-2017/1511, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
20. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
21. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 1153/MB/C-I/2017** filed by Bell Finvest (India) Limited, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Intercon Container Survey & Commodities Private Limited [CIN: U63000MH2008PTC181279]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

- (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of the Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Devendra Padamchand Jain**, Registration No. IBBI/IPA-001/IP-00224/2016-2017/1511, having address at A-43, Prime Plaza, Opp. DLA School, Bodakdev, Ahmedabad, Gujarat, Email: devendradjain@hotmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of

one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

15.09.2022
SAM

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)