

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P. (IB) No.12/BB/2021

Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

&

I.A No. 362 of 2021

Under Section 60 (5) of IBC, 2016
r/w Rule 11 & 32 of the NCLT, Rules 2016

In the matter of:

Park View Developers Private Limited

P-23/24, Radha Bazar Street
Kolkata - 700001

... Petitioner/Financial Creditor

VERSUS

SDU Travels Private Limited,

1/23, Raja Mansion,
12th Cross, Swimming Pool Extension,
Malleshwaram,
Bengaluru - 560003

... Respondent/ Corporate Debtor

Order delivered on: 06.01.2022

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Present:

For the Applicant/Financial Creditor: Shri Rohit R Kamath
For the Respondent/Corporate Debtor: Shri B.C Thiruvengadam with
Shri Susheel Cyriac

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, (hereinafter referred to as 'IBC'/Code) 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Park View Developers

Private Limited (hereinafter referred to as 'Financial Creditor'/Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against SDU Travels Private Limited (Corporate Debtor/Respondent).

2. The Corporate Debtor namely, SDU Travels Private Limited is a company incorporated on 22nd September 2010 with CIN No. U63040KA2010PTC055264 with its registered office at No.1/23, Raja Mansion, 12th Cross, Swimming Pool Extension, Malleswaram, Bengaluru - 560003. Hence the jurisdiction lies with this Adjudicating Authority. The authorised share capital of the Respondent Company is Rs. 140,000,000/- and the paid up share capital is Rs. 120,576,620/-.
3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor approached the Financial Creditor for securing a loan of Rs. 1,87,50,000/-. The Financial Creditor is also one of the Shareholder of the Corporate Debtor. It is stated that the loan of Rs. 1,87,50,000/- was proposed to be taken from Canara Bank, Canning Street Branch, 27, Brabourne Road, Kolkata - 700001 against the fixed deposits amounting to Rs. 2,50,00,000/-. Pursuant to the same, a Board Resolution dated 1st November 2017 was passed by the Corporate Debtor authorising Mr. Sunit Suri to do the needful.
4. It is stated that on 8th November 2017, the Corporate Debtor wrote a letter to the Financial Creditor seeking their consent to proceed with the process of securing loan against the following fixed deposits as Collateral Security:

| FD No. | Amount |
|--------|---------------|
| 803885 | Rs. 50,00,000 |
| 320096 | Rs. 50,00,000 |
| 320097 | Rs. 50,00,000 |
| 320113 | Rs. 50,00,000 |
| 320112 | Rs. 50,00,000 |

5. The Financial Creditor accorded their consent on 09.11.2017. On 12.12.2017 through email, the Corporate Debtor requested the Financial Creditor to handover the Collateral security to Mrs. Kajal Choudhary for being submitted to the Bank in order to obtain loan facilities. Subsequently, the said collateral security was submitted in the Bank as security towards the loan obtained by the Corporate Debtor from Canara Bank. The Canara Bank vide letter dated 3rd April 2018 communicated to the Corporate Debtor that Rs. 1,87,50,000/- had been granted to them against the guarantee furnished by the Financial Creditor.
6. Thereafter, around May 2019, it had come to the knowledge of the Financial Creditor that the Corporate Debtor is suffering huge losses. It would be further evident from the ledger that the Corporate Debtor failed to pay the interest amount to Canara Bank and the last paid interest by the Corporate Debtor to Canara Bank was on 4th December 2019. As on May 29, 2020, a total sum of Rs. 2,47,59,552/- was due and payable by the Corporate Debtor to Canara Bank.
7. The Corporate Debtor defaulted from time to time, despite the Financial Creditor's several requests to the Corporate Debtor on account of which Canara Bank, towards satisfaction of its dues has invoked the collateral Security, leaving the Financial Creditor at jeopardy. The copy of the statement of account of General Advances denoting the enforcement of Collateral Security by Canara Bank is attached as Annexure E to the Petition.
8. On 2nd January 2021 the Financial Creditor issued a Demand notice to the Corporate Debtor by means of hand delivery. Thereafter, the Financial Creditor had approached the concerned Information Utility office to furnish details of default of the Corporate Debtor. The record of Financial information Form C

furnished by NeSL is filed as Annexure-P of the petition. It is apparent that the Corporate Debtor is commercially insolvent and is unable to pay its debts. The Corporate Debtor is not economically viable and poses a threat to its commercial morality. Hence the petition.

9. In part-III of Form 1, the Financial Creditor has proposed Mr. Anurag Sharma, bearing Registration No. IBBI/IPA-002/IP-N00209/2017-18/10728 as the Interim Resolution Professional (IRP). The consent of the proposed IRP is furnished in Form 2 dated 18.01.2021 in which it is stated that there are no disciplinary proceedings pending against the IRP with the Board or Indian Institute of Insolvency Professionals of ICAI.
10. It is stated in Part – IV of Form No.1 that the total amount of debt in default amounting to Rs. 2,47,59,552/- (Rupees Two Crore Forty-Seven Lakhs Fifty Nine Thousand and Five Hundred and Fifty Two only) out of which amount extended as loan by Canara Bank is Rs. 1,87,50,000/- @ 15.40% p.a. The date on which default occurred is on 31st January 2020. The copy of ledger accounts maintained with Canara Bank is enclosed herewith as Annexure –D of the petition.
11. In Part V of Form No.1, the copy of the bank form evidencing letter for loans/advances against term deposits is enclosed as Annexure – H of the petition.
12. Notice was issued to the Corporate Debtor as to why this petition not be admitted on 26.02.2021. In response thereto, a statement of objections has been filed by the Corporate Debtor vide Diary No. 1032 dated 22.03.2021, wherein it is stated that “the Corporate Debtor’s intentions are noble, and it intends to repay the debt of the Financial Creditor. However, it is not able to do so at present.

It however intends to repay every penny owed to all its creditors including the Financial Creditor herein once it can pick up the tatters and shreds left by the unfortunate turn of events and rebuilt its business from scratch". Though the statement of objections is filed, the Respondent admitted its liability and expressed its inability to repay the debt.

13. We have heard the learned Counsel for the Petitioner and the Learned Counsel for the Respondent and have also perused the records carefully.
14. Section 7 (5) (a) of the Code is as follows:

"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."
15. In the present case, the occurrence of default is evidenced by the details furnished by the Petitioner including the ledger accounts maintained with the Canara Bank, copy of the statement of account of General Advances denoting the enforcement of collateral security and the copy of the letter of communication issued by Canara Bank wherein it is stated the Corporate Debtor has not paid the instalment regularly. The copy of the ledger accounts, copy of the letter of communication is enclosed as Annexure D and F of the petition.
16. The other issue for consideration is whether present application is filed within the limitation. The transaction involving the defaulted amount dates back to 31.01.2020 and the instant application was filed on 12th January 2021. Therefore, the petition has been filed within the period of limitation.
17. The application filed in the prescribed Form No.1 is found to be complete.

18. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount is being above Rs. 1,00,000/-, the petition is admitted in terms of Section 7 (5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, 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 Securitization 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;
- e) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- f) The provisions of Section 14 (3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector

1
- Sd -

regulator and to a surety in a contract of guarantee to a Corporate Debtor;

- g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution Process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
19. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anurag Sharma and there is nothing adverse against him. In view of the above, we appoint Mr. Anurag Sharma, being Registration No. IBBI/IPA-002/IP-N00209/2017-2018/10728, registered address at No.40, LGF, National Park, Lajpat Nagar-IV, New Delhi, email: anurag.s.irp@gmail.com, Mobile No: 9811581119 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under section 15, 17, 18, 20 and 21 of IBC, 2016.
20. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
21. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also

directed to send the copy of this order to the Interim Resolution Professional at his email address forthwith.

I.A No. 362 of 2021

22. The instant application is filed by the Financial Creditor/Petitioner u/s 60 (5) of I& B Code, 2016 r/w Rule 11 & 32 of NCLT Rules, 2016 seeking to appoint a Special Officer to make an inventory of the assets and the books of account of the Respondent No.1 Company. On 07.12.2021, the Learned Counsel for the Petitioner appeared before this bench via video-conferencing and submitted that he is not pressing the instant application. In the circumstances, the instant **I.A No. 362 of 2021** is dismissed as not pressed.

- Sd -

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

- Sd -

**(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)**

Gayathri