

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

IB-98/ND/2020

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF

M/S INTEC CAPITAL LIMITED

Registered Address

AT 708, Manjusha Building

57, Nehru Place

New Delhi-110019

...Financial Creditor/Applicant

Versus

M/S INDIA OFFSET PRINTERS PRIVATE LIMITED

Registered Address

AT B-20/1 Okhla Industrial Area,

Phase-2, New Delhi-110020

...Corporate Debtor

Coram:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

**SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER
(TECHNICAL)**



Delivered on: 17.11.2021

Appearances:

Financial Creditor : Adv Mr. Sagar Bansal

Corporate Debtor : Mr. Kumar Vinayakam Gupta

ORDER

Per: Narender Kumar Bholra, Member (Technical)

1. This is an application filed on 20.11.2019 by the Financial Creditor namely, Intec Capital Limited against the corporate debtor namely, India Offset Printers Pvt. Ltd. under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
 - a. The Financial Creditor i.e., M/s Intec Capital Limited had been approached by Corporate Debtor i.e., M/s India Offset Printers Pvt. Ltd. for loan and made an application dated April, 2012 and 28.12.2012 for availing finance facility of Rs 81,00,000/- and Rs. 88,00,000/-



respectively. Based on the documents and information given to the Financial Creditor and the confidence shown to repay the loan amount, the Financial Creditor approved the loan applications of Corporate Debtor and issued a Sanction Letter dated 04.07.2012 for Rs. 81,00,000/- (Rupees Eighty One Lakh Only). Thereafter, the Corporate Debtor Financial Creditor entered into Loan Agreement bearing no. LNFBD01112- 130001484 dated 06.07.2012 with the Financial Creditor for availing above stated loan credit facilities for buying assets as mentioned in Point 10 of Schedule-II of Loan Agreement on which first and exclusive charges by way of hypothecation was created in the favour of financial creditor.

- b. It is submitted that the Corporate Debtor had deposited an amount of Rs. 28,35,000/- (Rupees Twenty-Eight Lakh Thirty-five Thousand Only) as collateral security payable at the end of tenure of repayment subject to payment of all dues and charges if any but in case of premature termination, no interest to be paid to the Corporate Debtor. As per the Loan Agreement dated

06.07.2012, the loan was disbursed on 06.07.2012 & 09.07.2012 vide Cheque no 304841 & 541238 and as per the said agreement, the financial creditor had financed loan for 36 months, bearing interest @ 14.72% p.a. on reducing basis. Corporate Debtor had to repay that loan in 36 monthly EMIs of Rs. 2,76,300/- (Rupees Two Lakh Seventy-Six Thousand Three Hundred Only). EMI was to be paid from 16.08.2012 onwards. Pursuant to the loan agreement and towards performance of the loan agreement, the Corporate Debtor duly handed over ECS/post-dated cheques to the financial creditor towards the repayment of loan.

- c. The Financial Creditor issued second Sanction Letter dated 28.12.2012 for Rs. 88,00,000/- (Eighty-eight lakhs only). Thereafter, the Corporate Debtor entered into Loan Agreement bearing no. LNFBD01112-130001908 dated 28.12.2012 with the Financial Creditor for availing above stated loan credit facilities for buying assets as mentioned in Point 10 of Schedule-II of Loan Agreement on which first and exclusive charges by way of

S-d-

hypothecation was created in the favour of financial creditor.

d. It is stated that the Corporate Debtor had deposited an amount of Rs. 30,80,000/- (Rupees Thirty Lakh Eighty Thousand Only) as collateral security payable at the end of tenure of repayment subject to payment of all dues and charges if any but in case of premature termination, no interest to be paid to the Corporate Debtor. The second loan facility was granted to the Corporate Debtor and as per the Loan Agreement dated 28.12.2012, the loan was disbursed on 29.12.2012 vide Cheque no. 522336 & 522341 and as per the said agreement, the financial creditor had financed loan for 48 months, bearing interest @ 13.98% p.a. on reducing basis. Corporate Debtor had to repay that loan in 48 monthly EMIs of Rs 2,37,000/- (Rupees Two Lakh Thirty-Seven Thousand Only). EMI was to be paid from 16.02.2013 onwards. Pursuant to the loan agreement and towards performance of the loan agreement, the Corporate Debtor duly handed over ECS/post-dated cheques to the financial creditor towards the repayment of loan.

g-r-d-r

- e. It is averred that the Corporate Debtor started making defaults in the repayment schedule in both Loan accounts and several legal proceedings were initiated against the corporate debtor and its guarantors. Despite repeated requests and reminders to Corporate Debtor and Its representatives in this regard, the Corporate Debtor had failed to regularize the Loan Account. It is stated that by not making the payment of the instalment despite repeated requests, the corporate debtor has wrongfully withheld the legitimate money and thereby have caused wrongful loss to financial creditor and wrongful gain to themselves.
- f. It is further averred that this act of corporate debtor constitutes the "Events of defaults" as defined under clause no 14 of loan agreement and further clause no 15 of loan agreement provides for the remedies of Financial Creditor in case of commission of "Events of Default" by the Corporate Debtor, including termination of Loan Agreement and enforce all or any of the security(ies) provided/furnished by the Corporate Debtor under Loan Agreement bearing No. LNFBD01112-130001484 &

LNFB01112-130001908. Thus, seeing the conduct of Corporate Debtor, in terms of the Loan Agreements, the Financial Creditor had sent "Termination Cum Invocation of Arbitration" notice dated 07.03.2015 to the Corporate Debtor. After giving several and opportunities to the Corporate Debtor, the Ld. Sole Arbitrator passed an award in favour of the Financial Creditor on 19.08.2015. Thereafter, in terms of said award, since no compliance was made by the Corporate Debtor, Financial Creditor was constrained to file an Execution Petition for the same and the matter is under proceeding in the court.

- g. It is submitted that towards the Loan Agreement bearing No. LNFB01112- 130001484 the Corporate Debtor had paid only Rs. 30,94,885/- (Rupees Thirty Lakh Ninety-Four Thousand Eight Hundred and Eighty-Five only) till date of LRN and after the date of LRN till date paid only Rs. 1,000/- (Rupees One thousand only) that too towards the cheque bouncing charges. Total outstanding amounts after adjustment of amount paid by the Corporate Debtor is Rs. 2,56,01,267/- (Rupees Two crore fifty-six lakhs one



thousand two hundred and sixty-seven only) and the calculation is valid up to 15.01.2019.

- h. It is further submitted that towards Loan Agreement bearing No. LNFBD01112-130001908 the Corporate Debtor had paid only Rs 14,74,400/- (Rupees Fourteen Lakh Seventy-Four Thousand Four Hundred Only) till the date of LRN and after the date of LRN no payment has been received. Total outstanding amounts after adjustment of amount paid by the Corporate Debtor and adjustment of collateral money is Rs 3,23,73,001/- (Rupees Three Crore Twenty-Three Lakh Seventy-Three Thousand and One Only) and that calculation is valid up to 15.01.2019.
- i. It is stated that the Financial Creditor has also filed complaints under Section 138 of the Negotiable and Instruments Act, 1881 against the Corporate Debtor for dishonoured ECS/Post-Dated Cheques (PDC) and also complaints against personal guarantor for dishonoured Security Post Dated Cheque (SPDC). In terms of the above stated facts and circumstances, it is evident that the Corporate Debtor has committed default in the



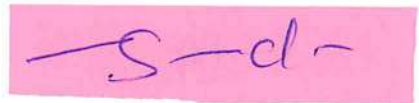
repayment of the Debt owed to the Financial Creditor and the Corporate Debtor also acknowledged the same in their balance sheets for FY 2016-2017 on 31.08.2017 and subsequently in 2017-2018 on 30.08.2018. Consequently, it is evident that the corporate debtor has become commercially insolvent and is unable to pay his debt. Therefore, it is submitted that this is a fit case for initiation of the corporate insolvency resolution process of the corporate debtor.

- j. In the view of the failure of the Corporate Debtor to pay Its Financial Debt, the Financial Creditor is constrained to file the present Application under section 7 of the code before this Hon'ble Tribunal. It is submitted that the applicant is not barred from filing the present application as provided under section 11 of the IB Code. It is submitted that Financial Creditor had preferred a Company Petition before this Hon'ble Tribunal vide IB-661/ND/2019 titled "Intec Capital Limited vs India Offset Printers (P) Ltd." which was withdrawn and liberty is given to the petitioner to file afresh petition for the same cause of action by disclosure of all details in the specified



Form as required. The information missing from the petitioner has been duly filed before this Hon'ble Tribunal in the present petition. It is humbly submitted that the Financial Creditor, i.e., Intec Capital Limited has approached this Hon'ble Tribunal by filling Application under Section of 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as I & B Code) against M/s India Offset Printers Pvt Ltd for initiation of insolvency proceedings for default in repayment of the above-mentioned amount along with interest. Hence, it is humbly submitted that Insolvency proceedings be initiated against M/s India Offset Printers Pvt. Ltd. for default of payment of Rs. 5,79,74,268/- (Rupees Five crore seventy-Nine Lakh Seventy-Four Thousand Two Hundred and Sixty-Eight Only).

3. The Corporate Debtor has appeared and filed its reply and submitted that the application is barred by the limitation. It is further argued that notice invoking arbitration clause under the loan agreements are inconsequential to determine date of default. Furthermore, Hon'ble NCLAT in a five judge Bench judgement (*V. Padmakumar v. Stressed Asset*



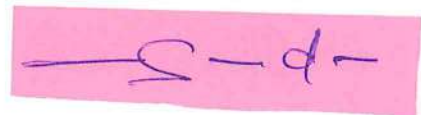
Stabilization Fund and Anr. Company Appeal (AT) (Insolvency) No. 57/2020) clearly stated that Balance sheet entries do not constitute an acknowledgment of debt. It is further submitted that no outstanding debt to trigger IBC, 2016 as the financial creditor has already secured attachment of the properties belonging to the corporate debtor in the execution proceedings, which are more than sufficient to take care of the entire award amounts. At the end the corporate debtor submitted that the present section 7 application is fraudulent, filed with a malicious intent other than for resolving the corporate debtor.

4. The financial creditor has also filed rejoinder to the reply of the corporate debtor and submitted that pre-requisite of filing application u/s 7 is existence of debt and default. It is stated that *V. Padmakumar v. Stressed Asset Stabilization Fund & Anr.*, relied on by the corporate debtor, has been already set-aside by Hon'ble Supreme Court in the matter of *Asset Reconstruction Company (India) Limited versus Bishal Jaiswal & Anr., Civil Appeal No. 323 of 2021*. The Applicant also relied on several judgments of Hon'ble NCLAT to show that proceeding under section 7 of IBC will not be impacted



by the other proceedings, hence, prayed that the CIR Process against the Corporate Debtor may be initiated.

5. This Adjudicating Authority has perused the petition, reply and rejoinder as well as heard the arguments advanced by both the parties. It is seen from the petition that the Corporate Debtor has admitted its liability towards Financial Creditor in its Balance Sheets for the year ending 31.3.2017 and 31.3.2018 (page no. 231 & 247 of Application refers). The evidence placed by the financial creditor is sufficient to establish the existence of debt as well as default in payment on the part of the Corporate Debtor. The Hon'ble Apex Court has clearly stated in *Innoventive Industries* that the moment it is established that there is a default in payment of financial debt by the corporate debtor, which is due and payable and the application is complete and no disciplinary proceedings is pending against the proposed RP then the adjudicating authority has no option but to admit the application. The Financial Creditor has fulfilled all the requirements of law. Accordingly, this Adjudicating Authority is inclined to admit



this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.

6. Mr. Sanjay Chopra having Regn. No.- IBBI/IPA-001/IP-P01568/2018-2019/12427 (Email ID: casanjaychopra@rediffmail.com) is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2 dated 10.11.2020. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

7. 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:

→ S → d →

- 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.
8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1)

S-d-

of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

9. 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.
10. 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., and make compliance with this order as per the provisions of IBC, 2016.
11. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.
12. 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.

Sd/-

13. The order is pronounced by this Adjudicating Authority
through Virtual Hearing



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



(P.S.N. PRASAD)
MEMBER (JUDICIAL)