

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1271/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Johnson Electric Company Limited

[CIN: U74999TN2009PTC072979]

...Financial Creditor/Applicant

V/s

Hridaynath Consultancy Private Limited

[CIN: U74120MH2010PTC208538]

...Corporate Debtor/Respondent

Order Dated: 20.01.2022

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Rahul Sarda a/w Aiqan Z. Memon, Advocates.

For the Respondent(s) : Mr. Uzair Kazi a/w Mr. Rihal Kazi i/b M&M Legal Ventures, Advocates.

ORDER

Per: Prabhat Kumar, Member Technical

1. This Application bearing C.P. (IB) No. 1271/MB/C-IV/2021 has been filed by Johnson Electric Company Limited, the Financial

Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Hridaynath Consultancy Private Limited, Corporate Debtor. The present Company Petition is filed on 15.12.2021.

The Brief Facts of the Case:-

2. The Financial Creditor is a Non-Banking Financial Institution and had advanced a loan to the Corporate Debtor under the registered Inter Corporate Deposit Agreement dated 27.07.2016 which was to be repaid within 6 months from disbursement and the date of repayment was more specifically agreed to be 31.01.2017. The Financial Creditor further submits that it called upon the Corporate Debtor to pay its outstanding amount vide letter dated 07.02.2017 within 7 days, whereupon, the Corporate Debtor requested the Financial Creditor vide letter dated 10.02.2017 to extend the time for repayment till 31.03.2017 (Pg. 29 of the petition).
3. There is no dispute as regards the quantum of debt and the default in repayment of the debt. The Corporate Debtor has contested the maintainability of the present petition on the ground of limitation stating that date of default as stated in Part IV is 31.1.2017 and the present petition has been filed beyond three years of the Date of default. The Financial Creditor has further submitted in its Rejoinder that even if its Letter dated 10.02.2017 is taken as admission, the period of limitation would expire on 09.02.2020.
4. The Financial Creditor has also filed Written Submissions and pleaded that it is now settled that the admission of debt/default/

liability extends the period of limitation even for the purpose of filing an application under section 7 of the Code.

5. The Corporate Debtor has also filed the Written Submissions pleading that the letters dated 10.02.2017 and 18.01.2019 do not extend the period of limitation and that there is no acknowledgement of debt and default therein.

Findings:

6. We have heard both the counsels and have gone through the pleadings available on records.
7. It is noted that the Corporate Debtor had sent a letter dated 10.02.2017 to the Financial Creditor seeking time to repay the said debt as called upon in Financial Creditor's letter dated 07.02.2017 on or before 31.03.2017 with interest thereon. The Corporate Debtor failed to pay the debt due on 31.03.2017 also.
8. In our view, the limitation shall run from 01.04.2017 i.e. the day following the extended period sought by the Corporate Debtor. Basis this, the limitation would expire on 31.03.2020.
9. The Hon'ble Supreme Court, vide its order dated 10.01.2022, ordered that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
10. In the present case, the period of limitation is expiring during the period ordered to be excluded by the Hon'ble Apex court. Hence, this petition having been filed on 15.12.2021 is not barred by limitation.

11. There is no dispute as to the existence of debt and occurrence of the default. The amount in default exceeds the threshold limit of Rs. 1 crore.
12. Considering the above facts, we opine that the nature of debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that admittedly there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor.
13. The Applicant has proposed the name of Ms. Sudha Bhushan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01519/2018-2019/12305] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 1271/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Johnson Electric Company Limited, Financial Creditor/ Applicant against Hridaynath Consultancy Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Ms. Sudha Bhushan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01519/2018-2019/12305], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)