

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) 1331/MB/2017

Under Section 7 of the I&B Code, 2016

In the matter of

SATYAPRAKASH AGARWAL and ors.

...Financial Creditor

v/s.

VISTAR METAL INDUSTRIES PVT.LTD.

...Corporate Debtor

Order Delivered on 14.10.2019

Coram: Hon'ble Member (Judicial) Mr. V.P. Singh
Hon'ble Member (Technical) Mr. Rajesh Sharma

For the Applicant: None Present.

For the Respondent: Adv. Diksnat Mehra.

Per Rajesh Sharma, Member (Technical)

ORDER

1. It is a Company Petition being CP (IB) No.1331/MB/2017 filed u/s 7 of Insolvency & Bankruptcy Code, 2016 by three Financial Creditors Mr. **Satyaprakash Agarwal, Mr. Rishi Aggarwal and Mr. Kamlesh** against **Vistar Metal Industries Private Limited**, the Corporate Debtor seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor claiming a default of Rs.2,01,00,000/- (Rupees Two Crore One Lakh Only) (including interest) towards the repayment of loan amount.
2. This Application is filed by Mr. Satyaprakash Agarwal representing himself and other Applicants. The Letter of Nomination dated 26.07.2017 issued by the other Applicants are annexed to the Application.
3. The Applicants have annexed their Bank Statement evidencing disbursements of the Loan amount along with the Certificates issued under the Bankers Book Evidence Act, 1891.



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4. The Applicants have also annexed Letters dated 15.12.2015 issued by the Corporate Debtor proposing full and final settlement for the repayment of the loan. The Corporate Debtor in the said letter has stated as follows

"After our several meetings in our office, we regret to inform you that there will be no interest obligation on the said repayment schedule as mentioned below as the steel sector is reeling under tremendous loss and hence there is no viability in our company to serve the interest component on the said outstanding dues as we are under too much pressure to stay solvent".

5. It is pertinent to mention here that the Corporate Debtor in the said letters undertook to make payments as per the payment schedule proposed by it without any interest and provided post dated cheques. However the cheques when presented were returned as dishonoured with Bank memo "Funds Insufficient". Copies of the Letters dated 15.12.2015, the cheques and the Bank Memos are annexed to the Application.
6. The Applicant claims that the loan granted is an interest bearing transaction and in support of its claim, has annexed copy of the Form 26A to the Additional Affidavit dated 16.09.2017 showing that the Corporate Debtor was depositing the Tax deducted at Source (TDS) on the interest as per section 194A of the Income Tax Act, 1961.
7. The Corporate Debtor has failed to honour its undertaking under Letters dated 15.12.2015 to make payments as per the schedule proposed and defaulted when the cheques were dishonoured. Copies of the Cheques and the Dishonour memos are annexed establishing the dates of default. The dates of default as per part IV of the Application for each applicant is provided below.

Financial Creditor	Default Amount	Date of Default
Financial Creditor 1	Rs.1,31,00,000/-	15.05.2016



Financial Creditor 2	Rs.40,00,000/-	15.03.2017
Financial Creditor 3	Rs.30,00,000/-	15.05.2017

8. The Corporate Debtor in its Affidavit in reply stated that, the company petition is not maintainable as there is no Loan Agreement to show that it is a loan and therefore there is no financial debt as per the provisions of the Code.
9. The Corporate Debtor in its Reply contends that there is no amount due in view of the settlement between the Applicants and Mr. Sher Singh Agarwal, chairman of the Corporate Debtor, as a property was transferred to the Applicants at a lower amount than the market value on 29.06.2016. Copy of the Agreement For Sale dated 22.06.2016 has been annexed to the written submissions filed by the Corporate Debtor. However, the fact that the land was sold in settlement of the loan extended to the Corporate Debtor is not put on record in the said Agreement. There is no document to show that the said sale of land was in settlement of the loan amount and hence cannot be considered as tenable.
10. We have heard the arguments of both sides and perused the records.
11. On perusal of the Bank Statements along with Bank Certificate issued under the Bankers Book Evidence Act, 1891 of the Applicants, it is established that the Loan amounts were disbursed to the Corporate Debtor. Form 26A annexed to the Additional Affidavit of the Applicants shows that the Corporate Debtor was paying the TDS on interest of the amounts so disbursed. It is now established that the Corporate Debtor has received monies on time value of money.
12. The letters dated 15.12.2015 issued by the Corporate Debtor to the Applicants to repay the amounts in due as per payment schedule proposed by the Corporate Debtor is an admission of its liability.
13. The dates of default are established from the Cheques and the dishonor memos which are annexed to the Application. The Application has been filed well within the period of limitation.



14. It is relevant to mention that the Hon'ble Supreme Court in the matter of Innoventive Industries Limited V. ICICI Bank & Anr. [(2018) 1 SCC 407], has held that the provisions of Section 7 become applicable as soon as a financial debt is established and there is existence of default. Hon'ble Supreme Court has expressed that the moment Adjudicating Authority is satisfied that default in repayment of debt had occurred; the process of insolvency is to be triggered unless the application is incomplete.
15. The Financial Creditor has stated that Rs.2,01,00,000/- (including interest) is due and payable by the Corporate Debtor to the Financial Creditors. The due dates are 15.05.2016, 15.03.2017 and 15.05.2017 to financial creditor 1, financial creditor 2 and financial creditor 3 respectively.
16. The Applicants have proposed the name of **Mr. Atul Jain** bearing registration No. **(IBBI/IPA-001/P-P00307/2017-18/10571)**, as Interim Resolution Professional with his consent in Form 2 declaring that no disciplinary proceedings are pending against him.
17. In light of the detailed discussions held hereinabove and considering the facts and circumstances of the case, this Bench is of the view that the transaction is within the definition of Financial Debt, hence the Application under section 7 deserves to be admitted.
18. This Application reveals that there is a debt as defined in Section 3(11) of IBC; there is a default within the meaning of Section 3(12) of IBC; the application of the Financial Creditor is complete; the amount of more than Rupees One lakh is due and no disciplinary proceedings are pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.

ORDER

The Application filed by Satyaprakash Agarwal and Ors. Under section 7 of the I&B Code 2016 against Vistar Metal Industries Private Limited, the 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:

1. 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 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 **Mr. Atul Jain** bearing Registration No. **(IBBI/IPA-001/P-P00307/2017-18/10571)** 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.



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/-

RAJESH SHARMA
Member (Technical)

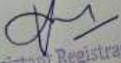
Sd/-

V.P. SINGH
Member (Judicial)

14th October 2019



Certified True Copy
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On 27/11/19


Assistant Registrar
National Company Law Tribunal Mumbai Bench