

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

CP (IB) - 1113/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Indiabulls Consumer Finance Limited
M-62 & 63, First Floor, Connaught Place,
New Delhi – 110001.

.... Petitioner

Vs.

Union Chains and Jewellers Private Limited
67/1, Dhanji Street, Ground Floor, Parsi
Gully, Zaveri Bazar, Mandvi, Mumbai-400
003.

.... Corporate Debtor

Order delivered on: 27.09.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Apex Law Partners, Advocates

For the Corporate Debtor: Mr. Sushant Valimbe and Mr. Abhinav
Tewari, Advocates

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I & B) Code, 2016 by Indiabulls Consumer Finance Limited (hereinafter called the 'Petitioner') through its authorized signatory seeking the Corporate Insolvency Resolution Process of Union Chains and Jewellers Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed breach of loan agreements by making default in payment of the monthly instalments in two loan agreements entered into the Corporate Debtor and the Financial Creditor.

2. The details of the above said two agreements (Annexure IV) are as follows:

- a. Loan agreement executed by and between the Corporate Debtor and the Financial Creditor dated 30.06.2017 for Rs. 50,50,000/- (Rupees Fifty Lakh Fifty Thousand Only).

- b. Loan agreement executed by and between the Corporate Debtor and the Financial Creditor dated 31.05.2018 for an amount of Rs. 18,17,693/- (Rupees Eighteen Lakh Seventeen Thousand Six Hundred Ninety-Three Only).
3. The petitioner contends that there have been successive defaults in payment of instalments on behalf of the Corporate Debtor and that the date of default is 5th November 2018.
4. The petitioner submits that the total amount disbursed by the Financial Creditor is Rs. 68,67,693/- (Rupees Sixty-Eight Lakhs Sixty-Seven Thousand Six Hundred and Ninety-Three Only) and after skipping of the instalments by the corporate debtor, the outstanding amount to be paid remains Rs. 40,35,454/- (Rupees Forty Lakhs Thirty-Five Four Only) as on 21.02.2019.
5. Two separate notices, both dated 14th December 2018, demanding the payment of all the outstanding amount, occurring from both the agreements, within 7 days of the receipt of the notice (Annexure IX) was duly served to the Corporate Debtor by the Financial Creditor.
6. A notice u/s 138 of the Negotiable Instrument Act with respect of Loan Account No: S000312907 was also sent to the Corporate Debtor as the post-dated cheque issued by the Corporate Debtor, upon presenting to the banker for encashment, could not be cleared on the ground of Insufficient funds. The petitioner contends that the Corporate Debtor ensured the Financial Creditor to accept the Post-Dated cheque as there will be sufficient balance in the account of the Corporate Debtor and relying on this statement, the loan was approved.
7. In support of all the contentions made by the learned counsel for the petitioner, the documents have been annexed and paid reliance upon which are as follows:
 - a. Copy of Certificate of incorporation dt.18.09.2018.
 - b. Copy of Loan Agreements dated 30.06.2017 and 31.05.2018.
 - c. Copy of Statements of Accounts.

- d. Copy of Foreclosure Statements.
 - e. Copy of Repayment Schedules.
 - f. CIBIL Report.
 - g. Copies of Notices dt. 14th December 2018 and 3rd January 2019 for repayment of loans.
 - h. Copy of Demand Draft.
 - i. Particulars of Claim.
8. The Petitioner enclosed the statement of account for the loan wherein it was found that the amount claimed in the Petition is as per the statement of account. The statement of account further reveals that there are defaults in payment of dues.
9. On the other hand, the director of the Corporate Debtor Mr. Rakesh Singhvi in his written submission has rejected all the allegations stating them to be untrue and devoid of any merits.
10. The Corporate Debtor also mentions about the arbitration proceeding invoked by the petitioner themselves pursuant to clause 22 (a) of the Loan Agreement and under section 21 of the Arbitration and Conciliation Act, 1996, which is pending and hence that the petitioner has wrongfully used the weapon of the IBC by deliberately suppressing this fact.
11. The Corporate Debtor submitted that it was agreed between them that during pendency of the arbitration proceeding, no proceeding except the one under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be initiated.
12. The Corporate Debtor further submitted that the Petitioner had taken signature on blank application form, loan agreements and other documents along with bank PDC cheques and an ECS mandate for repayment of loan even before the loan was sanctioned. Also, the Corporate Debtor mentions that till date they have not received the formal sanction letter and hence they are not aware of the exact interest rate, amounts and fees or charges and PDCs from the Petitioner even though the EMI was being paid through ECS

facility on time and that the corporate debtor has intimated this to the financial debtor from time to time.

13. In support of the contentions made by the counsel for the Corporate Debtor, the following documents have been submitted:
- a. Copy of Signatory details of the Corporate Debtor.
 - b. Copy of referral of dispute to arbitration by the financial creditor dt.04/06/2019.
 - c. Copy of details of Arbitration Proceedings.
 - d. The copy of the E-Mail correspondences made by the corporate debtor to the financial creditor.

ORDER

This petition is filed by the Indiabulls Consumer Finance Limited for initiating Corporate Insolvency Proceedings against Union Chains and Jewellers Private Limited. After perusal of the papers and hearing both the sides, this court is pleased to file the following order:

14. Primarily, it is to be noted that loan agreement was entered into by and between the Corporate Debtor and the Financial Creditor. Based on the documents placed on record, we have come to a conclusion that there has been a default on the part of the Corporate Debtor defaulted in making the payment towards the liability to the Petitioner and the petition deserves to be admitted. An amount was disbursed by the Petitioner, however, there is default in debt servicing by the Corporate Debtor. Despite repeated requests and reminders, the Corporate Debtor failed to repay the dues.
15. The objection raised by the Corporate Debtor is with regards to an existing Arbitration Proceeding, resulting into a pre-existing dispute between the parties, causing this petition to be non-maintainable. This argument of the Corporate Debtor cannot be allowed because it is a well settled principle of law that, any dispute between the parties with regards to a debt cannot be a ground for rejection of an application under Section 7 of the Code. Once a default in terms of Section 4 of the Code is established and all other requirements are fulfilled, the insolvency resolution process has to be triggered.

Furthermore, it has been established that Section 7 of the Code is free from any bar of pendency of civil suit or arbitration proceeding which would operate in the case of 'Operational Creditor'.

16. The Corporate Debtor vide his reply has also acknowledged the fact that they have made their last payment as on 05.10.2018, after which approximately an amount of Rs. 33,00,000/- has been paid by them. If this argument of the Corporate Debtor were to be considered and it was to be assumed that they have made payment of the said amount, it would still leave over quite a considerable amount of debt unpaid, and this submission made by them has to be treated as an admission of debt on their part.
17. This bench has found that the Corporate Debtor has nowhere denied the debt amount not filed which can show that the claim is false or cannot be allowed but vide his reply he has simply raised various averments as mentioned above which are not tenable.
18. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
 - (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(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.

- (II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 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 25.09.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, 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 the Code.
- (VI) That this Bench hereby appoints, Mr. Ankur Kumar, having office at 18th, 10th Floor, Pinnacle Corporate Park, G-Block, Bandra-Kurla Complex, Bandra – East, Mumbai – 400 051; having Registration No. IBBI/IPA-002/IP-N00113/2017-18/10283 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

19. Accordingly, this Petition is admitted.

20. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)