S.No.4

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
28-04-2023 AT **10:30 AM**

CP (IB) No.59/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:
SMT. Pushpa Soni **…Financial Creditor**

VS

Jairam Foundry Pvt Ltd **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

Orders pronounced. Recorded vide separate sheets. In the result, this Company Petition is allowed. Corporate Debtor is put under CIRP. Mr. Malireddy Ramana Reddy is appointed as Interim Resolution Professional. Moratorium ordered as per the terms and conditions.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – 1

CP (IB) No. 59/7/HDB/2022

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of NCLT Rules, 2016.

Between

1. Smt. Pushpa Soni
   R/o. 2-4-540, Road No.2, New Nagole, Kothapet,
   Hyderabad, Rangareddi, Telangana- 500 035.
2. Smt Sujatha Bung
   R/o. H.No. 6-3-596/63/8/2, Venkataramana Colony,
   Near Bhagath Singh Colony, Khairatabad,
   Hyderabad, Telangana- 500 004.
3. Sri Mahesh Kumar Lahoti
   R/o. 19-1-888/1/49 to 51, Devi Bagh, Hussainialam,
   Bahadurpura, Hyderabad, Telangana- 500 064.
4. Sri Mahesh Kumar Lahoti
   R/o. 19-1-888/1/49 to 51, Devi Bagh, Hussainialam,
   Bahadurpura, Hyderabad, Telangana- 500 064.

… Applicant/Financial Creditors

Versus

M/s. Jairam Foundry Private Limited
SY No.21, Mahadevpur Village,
Nemuragomula Gram Panchayat, Bibi Nagar Mandal,
Nalgonda, Telangana.

… Respondent Company/Corporate Debtor

Date of Order: 28.04.2023

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON’BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON’BLE MEMBER (TECHNICAL)

PARTIES/COUNSELS APPEARANCE:-

For the Financial Creditor: Shri. Y.Suryanarayana, Advocate.

For the Corporate Debtor: Shri C.Raghu, Counsel

PER: BENCH

1. This Petition is filed by Petitioners under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/s. Jairam Foundry Private Limited (hereinafter referred to as “Corporate Debtor”), alleging non-payment of Rs. 3,48,78,965/- together with interest.

2. The contentions put forth by the Financial Creditor are :

2.1 It is averred that financial creditors and the promoters of the corporate debtor are known to each other since long as they belong to same business community.

2.2 It is averred that due to trust on the promoters of corporate debtor, financial creditor has lent amount of Rs.1,44,70,439/- to corporate debtor as unsecured loan since 2012.

2.3 It is averred that the amount has been transferred to the account of corporate debtor with an assurance that it shall be repaid on demand along with interest @24 % to Late Sri Sampath Kumar Lahoti and @18% p.a to other Financial Creditors.

2.4 It is averred that in respect of the debt owed to Late Sri Sampath Kumar Lahoti, the instant Application is filed by his legal representative i.e Mr.Mahesh Kumar Lahoti.

2.5 Further averred that corporate debtor was paying interest to the financial creditor at irregular intervals at arbitrary rates of interest. Despite of several reminders, the corporate debtor has defaulted in paying the Principal amount as well as interest amount.

2.6 The balance sheet of the corporate debtor for the financial year 31.03.2018 clearly discloses the names of three financial creditors, but the corporate debtor had computed incorrectly.

2.7 It is averred financial creditor demanded for loan in March, 2021 and hence the corporate debtor issued cheques to Sri Mahesh Kumar Lahoti and Late Sri Sampath Kumar Lahoti for Rs.17,00,000/-. But to but due to sudden demise of Sri Sampath Kumar Lahoti on 24.03.2021, the cheque could not be presented and approached the corporate debtor for an amount of Rs.26,52,000/-, whereas corporate debtor had issued three cheques for Rs.23,00,000/-, Rs.1,00,000/-, Rs.2,50,000/- total of Rs.26,50,000/-.

2.8 But the cheques got dishonoured and thus Shri Mahesh Kumar Lahoti filed complaint C.C.No.2644 of 2021 before Hon'ble VIII Metropolitan Magistrate, Hyderabad under Section 200 of the Cr.P.C for offence committed under Section 138 of Negotiable Instrument Act which was pending for adjudication.

2.9 It is further averred that on demand of Shri Mahesh Kumar Lahoti, for Rs.1,44,82,788/- as on 31.03.2021, corporate debtor once again gave cheque for Rs.30,00,000/- for part repayment, which was dishonoured on 22.09.2021 and thus Shri Mahesh Kumar Lahoti, filed complaint C.C.No.2643 of 2021 before Hon'ble VIII Metropolitan Magistrate, Hyderabad under Section 200 of the Cr.P.C for offence committed under Section 138 of Negotiable Instrument Act which was pending for adjudication. Hence the date of default of Late Sri Sampath Kumar Lahoti and Shri Mahesh Kumar Lahoti is 04.09.2021 and 20.09.2021.

2.10 With respect to other two financial creditors Smt.Pushpa Soni and Smt Sujatha Bung, it is submitted that corporate debtor sought time to repay the loan but failed to do so. Hence the default in respect of Smt.Pushpa Soni and Smt Sujatha Bung is 30.09.2021.

2.11 Thus averred that the total outstanding amount as on date of filing this Application is Rs.3,48,78,965/-. Hence prayed the Tribunal to initiate CIRP against the corporate debtor as per the provisions of the I&B Code, 2016.

3. Reply filed by the corporate debtor in brief is as below:

3.1 Corporate debtor denied the averments made by the financial creditor. It is averred that the present petition filed under section 7 is not maintainable.

3.2 Further averred that 2nd Applicant Smt Sujatha Bang is one of the Director of Respondent Company and in the cause title it is not mentioned who is representing the respondent Company. Thus the petition ought to have been rejected on this ground.

3.3 It is averred that with regard to interest the Applicants has computed 18%, whereas the respondent Company is paying 12% per annum which is not disputed by the 1st Applicant since 2012-13. It is averred that Applicants cannot claim 18% interest.

3.4 It is averred that the TDS deducted and the working sheet of page no.89-92 shows the interest part how it is calculated. Further submitted that there is no interest part mentioned in the contract.

3.5 It is averred that with regard to 4th Applicant Rs.10,00,000/- has been paid as on 19.08.2021 and an amount of Rs.5,97,255/- is pending which is not stated in the Application.

3.6 It is averred that an amount under Cheque No.236721 dated 30.03.2021 for Rs.17,00,000/- was paid through RTGS, which has not been stated in the Application.

3.7 Further averred that the applicants together basing on individual financial transactions cannot file a joint Application under Section 7 of I&B Code. Further it is stated that there is no default on the part of respondent company to the extent of the admitted interest being paid and if any balance is left respondent is ready to pay the same.

3.8 It is stated that late Sampath kumar Lahoti, father of 3rd Applicant is the accountant of 2nd Applicants relatives firm and 3rd Applicant is her employee. Applicants 3&4 are one and same.

3.9 It is further stated that the present application is abuse of process and is liable to be dismissed.

4. As per the directions of this Tribunal Learned Counsel for corporate debtor filed memo dated 25.11.2022 regarding the statement of account certified by the Chartered Accountant.

5. Reply to the memo dated 25.11.2022 has been filed by the financial creditor reiterating the facts mentioned in the petition and regarding the statement of account certified by the chartered accountant.

6. Written submissions filed by the financial creditor by reiterating the facts mentioned in the Petition and also the memo dated 14.02.2023.

7. In the light of the above contentions the point that emerges for our consideration is:

(i) Whether a financial debt of a sum over rupees one crore is due and payable by the respondent to the Applicant. If so, whether the respondent has defaulted in repayment of the same?

8. We have heard Mr.Y.Suryanarayana, Learned Counsel for Financial Creditor and Mr. C.Raghu, Learned Senior Counsel for the Corporate Debtor. Perused the record.

Point.

Whether a financial debt of a sum over rupees one crore is due and payable by the respondent to the Applicant. If so, whether the respondent has defaulted in repayment of the same?

9. According to the Ld. Counsel for the Applicant, due to trust on the promoters of corporate debtor, the financial creditor has lent amount of Rs.1,44,70,439/- to corporate debtor as unsecured loan in the year 2012 by transferring the said amount to the account of corporate debtor. It is further stated that the corporate debtor agreed to repay the same on demand together with interest @24 % to Late Sri Sampath Kumar Lahoti and @18% p.a to other Financial Creditors. Further it is stated that corporate debtor was paying interest to the financial creditor at irregular intervals at arbitrary rates of interest. The balance sheet of the corporate debtor for the financial year 31.03.2018 clearly discloses the names of three financial creditors, but the corporate debtor had computed incorrectly. Since the corporate debtor, despite several reminders defaulted in paying the Principal amount as well as interest amount, the present application has been filed.

10. In order to assert the defence of the respondent we refer to the following pleading in the counter affidavit filed by the Corporate Debtor which is as below:

"It *is submitted that, the manner in which the working sheets have been filed at Page nO.89-92 shows that the applicants have computed interest @ 18% per annum. Whereas, admittedly the respondent company was paying interest @ 12% per annum which is not disputed by them since 2012-13 in respect of the 1st*

Applicant. The working sheet filed at Page No. 95 Annexure -8 of the 1st Applicant clearly shows that we have been paying the interest @ 12% per annum. For example on 31.03.2012 as per working sheet at Page No.89 we have paid an amount of Rs. 1,23,164/- which is @12% per annum. Whereas the applicants have calculated @ 18%. The Applicants cannot claim @ 18%. Similarly as on 01.04.2013 TDS of Rs. 10,206/- was deducted which mean the interest is calculated @12% per annum. The same was never objected by the 1st Applicant not nay notice has been issued to us. Therefore the computation of interest @12% per annum is binding on the Applicant. Moreover we have paid interest @12% per annum lastly for the period 2020-21 on 09.08.2021 ie., Rs. 3 lakhs by way of RTGS and on 01.04.2020 deduction of TDS @ Rs. 18,724/- shows the interest is calculated @ 12% per annum."

11. Thus, from the above pleading it is as clear as crystal that, the corporate debtor is disputing only the rate of interest payable on the "sum it had borrowed" from the Applicants and not the debt as claimed by the applicants. Here it may be stated that in this case even if any dispute as to the rate of interest payable exists, the same will not impact the threshold jurisdiction of this Tribunal, in as much as the Principal sum due and payable by the Corporate Debtor as claimed in the Applicant by all the applicants is Rs.14,470,439/-as on the date of filing this application.

12. Be that as it may, this Tribunal allowed both sides to file a calculation chart prepared by a Chartered Accountant, calculating the interest @12% p.a. The calculation sheets prepared by Chartered Accountant engaged by the Applicants and Respondents, also discloses that sum due and payable by the corporate debtor even @12% interest, exceeds rupees one crore. Therefore, irrespective of the contest as regards the "quantum of interest" payable on the sum that corporate debtor had availed as loan from each of the Applicants is insignificant.

13. In so far as the plea of the respondent that, the claim of debt of each of the Applicants since does not exceed rupees one crore, each of the Applicant should file separate Application, is concerned, we may state that the same is unsustainable, since under Section 7 of IBC provides for a joint Application, which is as mentioned below:

A financial creditor either by itself or jointly with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

14. Therefore, we have no hesitation to hold that the Financial Creditor has established that the Corporate Debtor herein had availed credit facilities of a sum over Rs.1 crore and had defaulted in repayment of the same. Thus, we are satisfied that existence of financial debt as well as its default are established by the applicant. We have also found that the application as failed is in order.

15. Therefore, this Adjudicating Authority **admits the Petition** under Section 7 of IBC declaring moratorium for the purposes referred to in Section 14 of IBC, with following directions:

A. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

B. 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.

C. 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.

D. That the order of moratorium shall have effect from the date of this order till the completion of 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, whichever is earlier.

E. This Bench hereby appoints of Shri. Malireddy Ramana Reddy as Interim Resolution Professional, having Reg. No. IBBI/IPA-

003/ICAI-N-00308/2020-2021/13452, whose address is : 8-3191/155 (16/A) Vaishnavis Sai Saurabh Residency,Vengal Rao Nagar ,Beside Sai Darshini Tiffin Centre ,Hyderabad,Telangana ,500038 and Email: ramanareddycsrp[at]gmail[dot]com. He has given his AFA which is valid till 23.02.2024 and Form -2.

F. That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under Section 13 of Insolvency and Bankruptcy Code, 2016.

G. The Financial Creditor is directed to send a Copy of this Order to the appointed Interim Resolution Professional and Registrar of Companies, Hyderabad for making appropriate remarks against Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

H. The Registry is directed to send a copy of this order to the Financial Creditor and Interim Resolution Professional appointed in this case.

I. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

J. Accordingly, this Petition is admitted.

-SD- -SD-

Charan Singh Dr. Venkata Ramakrishna Badarinath Nandula
Member Technical Member Judicial

Pavani