

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP (IB) No. 543/7/NCLT/AHM/2018

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE NATIONAL COMPANY LAW
TRIBUNAL , AHMEDABAD BENCH ON 15.03.2021

Name of the Company: Krishna Paper Trading Co.
V/s.
Kingston Paptech Pvt Ltd.

Section: Section 7 the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

CP(IB) No. 543 of 2018 is allowed and stands disposed of accordingly.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 15th day of March, 2021.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP (IB) No.543/7/NCLT/AHM/2018

(Application for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency & Bankruptcy Code, 2016)

In the matter of :

Krishna Paper Trading Co.

registered Office at :

4 & 5, Nathalal Estate,
Opp. Shakti Estate,
B/h. Gita Process Narol,
Ishanpur Highway,
Ahmedabad-382 443

..Financial Creditor

V/s

Kingston Paptch Pvt. Ltd.

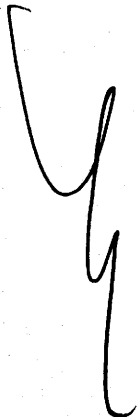
Registered office at:

A/904, 9th Floor, Solitare
Corporate park, Nr. YMCA Club,
S. G. Highway, Ahmedabad-380054

...Corporate Debtor

Order Reserved on 3rd March, 2021
Order Pronounced on 15th March, 2021

Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)



Appearance:

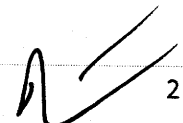
Learned Counsel Mr. Vaibhav V Goswamy for the Financial Creditor

Learned Counsel Mr. Nitin Y Divate appeared for the Corporate Debtor

ORDER

[Per: MADAN B GOSAVI, MEMBER(J)]

1. This Application is filed by the **Krishna Paper Trading Co.** (hereinafter referred to as the 'Financial Creditor') appears to be Proprietary Concern under Section 7 of the Insolvency & Bankruptcy Code, 2016, r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016, to start Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP') against the **Kingston Paptech Pvt. Ltd.,-** the Corporate Debtor, on the ground that, it has committed a default in paying the financial debt of **Rs. 37,10,972/-**. The date of default is stated to be 14-07-2015.
2. The Financial Creditor stated that by two separate RTGS it has given loan of Rs. 52,50,000/- to the Corporate Debtor to be payable on demand.
3. On 14.07.2015, the Corporate Debtor to paid sum of Rs. 37,10,972/- remaining balance amount of Rs. 22,50,000/- +



interest to be unpaid and committed default in paying the Financial debt, hence, the Applicant has filed this application to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

4. The Corporate Debtor was served with the Notice of this application. It appeared through Learned Counsel Mr. Nitin Y Divate. He has filed affidavit-in-reply to challenge the maintainability of the application on two technical grounds (a) Proprietary Firm cannot file an application under IB Proceedings. There is no evidence produced as to when the debt was due and payable, hence, there is no default (b) the certificate issued by the Information Utility (IU) is not produced under Section 7 (3) (a) of the Insolvency & Bankruptcy Code, 2016, hence, this application is liable to be rejected.
5. We heard Learned Counsel Mr. Vaibhav V Goswamy for the Financial Creditor and Learned Counsel Mr. Nitin Y. Divate for the Corporate Debtor.
6. It is not in dispute that the Financial Creditor gave loan of sum of Rs. 52,50,000/- to the Corporate Debtor out of that the Corporate Debtor returned sum of Rs. 30,00,000/-. The Corporate Debtor did not repay sum of Rs. 22,50,000/- and

interest accrued thereon. In view of this, we conclude that there is no dispute as to the financial debt was payable more than Rs. 1,00,000/- lacs and the Corporate Debtor committed default in paying the same. These are only two facts sufficient for considering the application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

7. The Corporate Debtor raised technical defence that Proprietary concern cannot be filed an application under IBC 2016. However, now Hon'ble NCLAT in the case of ***Neeta Saha v. Ram Niwas Gupta 191(IBC)156/2020*** has held that Proprietary concern being creditor can initiate Corporate Insolvency Resolution Process against the Corporate Debtor, so this technical defence is not maintainable. Another defence taken was that the Certificate of Information Utility is not produced, however, law does not mandate to produce such Certificate, law requires from the Financial Creditor to produce evidence of the debt and default by the Corporate Debtor, where in this case evidence is produced, hence, this technical defence is also not maintainable.
8. In view of the evidence on record, we conclude that Financial Creditor proved that the Corporate Debtor committed default

in paying the financial debt of **Rs. 37,10,972/-**. hence, required to be admitted into Corporate Insolvency Resolution Process.

9. The application is otherwise complete and defect free. The name of the IRP has been proposed whose consent is at page no.23 of the application, hence, we appoint the same person as IRP against him no disciplinary proceedings are pending.
10. In view of the above facts and legal position applicable thereto, we hold that this application is deserves to be admitted.
11. In the result, the application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 stands allowed in terms of following directions:

ORDER

1. **M/s. Kingston Paptech Pvt. Ltd.** the Corporate Debtor is admitted in Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency & Bankruptcy Code, 2016 and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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;

(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.

2. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

3. The Financial Creditor has proposed the name of the Interim Resolution Professional(IRP). Therefore, this

Adjudicating Authority hereby appoint **Mr. Tejas K. Shah, having regn. no. IBBI/IPA-001/IP-P00089/2017-18/10185** to act as an IRP under Section 13(1) (c) of the Code. The IRP did not give his fee schedule.

4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
5. We direct the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section

15 as required by Section 13(1) (b) of the Code.

6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two Lacs only) to the IRP within two weeks from the date of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority alongwith First Progress Report.
8. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned

Registrar of Companies, after completion of necessary formalities forthwith and upload the same on website immediately after pronouncement of the order.

9. CP(IB) No. 543 of 2018 stands allowed and disposed of accordingly.



**(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)**



**(MADAN B GOSAVI)
MEMBER (JUDICIAL)**

Signed on this, the 15th March, 2021

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