IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
Company Petition (IB)No.42/ALD/2019

(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016)

IN THE MATTER OF:

M/s MULTIWAL DUPLEX PRIVATE LIMITED

AND

IN THE MATTER OF

CORPORATION BANK

.... Applicant/Financial Creditor

VERSUS

M/s MULTIWAL DUPLEX PRIVATE LIMITED

.................Respondent/Corporate Debtor

ORDER DELIVERED ON : 12.09.2019

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Operational Creditor: Sh. Ankur Goyal, Advocate
For the Respondent/ Corporate Debtor: Sh. Swayambhoo Chandranshul

AS PER: Mr. Abni Ranjan Kumar Sinha, Member , Judicial.

Order

1. The present petition is filed under Section 7 of Insolvency and Bankruptcy Code,2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the petitioner/financial creditor ***i.e. Corporation Bank*** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor company ***M/s Multiwal Duplex Private Limited.***

Sd/-

2. The Applicant "***Corporation Bank***" is a Banking Institution and corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. **Sri. Arvind kumar Srivastwa** Chief Manager, has been authorised to file this application on behalf of Financial Creditor.

3. The Respondent **M/s Multiwal Duplex Private Limited**, incorporated on **08/05/1985** *(Having its Registered Office at, Bazpur Road Kashipur US Nagar Uttarakhand. CIN U21011UR1985PTC007180).* The authorised share capital of respondent is Rs. 1,80,00,00,00/- (Rupee Eighteen Crores Only) and Paid- Up share Capital is Rs. 1,80,00,00,00/- (Rupee Eighteen Crores Only).

4. The Corporate Debtor has changed its name from M/S Satnam Paper Mills private Limited to M/S Multiwal Duplex Private Limited on 06.06.2002 in accordance to Sec 23 of The Companies Act, 1956 which states as :

Sec 23. *Registration of change of name and effect thereof.*

(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

(Copy of the certificate of incorporation of change of name is annexed as Annexure No. 20. of the application).

Sd/-

5. Brief facts related to petition are as follows:

    i. The corporate debtor is a private limited company duly incorporated under Indian Companies Act,1956 by means of certificate of incorporation dated ***08.05.1985*** carrying on its manufacturing of duplex board and craft paper business.

    ii. The financial creditors sanctioned the loan of Rs. 20,00,00,000 (Rupees Twenty Crores Only) vide its ***credit sanction letter dated 25.02.2013*** through which cash credit facility was sanctioned to the company to meet working capital requirement against margin of 25% (on stocks) & 40% (on book – debts) bearing interest @ Base Rate plus 3.60%, i.e 13.85% per annum with monthly rests. All the terms and conditions of the sanction letter were accepted and acknowledged by the directors. ***(Copy of the sanction amount duly accepted dated 23-03-2013 annexed as Annexure 11 of the application.)***

    iii. The applicant also stated that to secure credit facility of Rs. 20 Crores availed by the company , the directors (Sri Waseem Ahmad Khan, Smt. Shagufta Khan and Naruk Khan) have taken their personal guarantees for repayment of facility together with stipulated interest availed by the company and in consideration thereof have executed, signed and delivered to the Financial Creditor Guarantee Agreement acknowledging therein their liability to repay the same as equal and co-extensive with the principal borrower.***(Certified true Copy of the Guarantee Agreement (ID-12001) dated 23.03.2013 is annexed as Annexure 14 of the Application).***

    iv. After availing the credit facility from the applicant bank, the directors have failed and neglected to keep their account regular and in order.

Hence the account of the corporate debtor company was classified and declared **as NPA on 30.08.2015** as per RBI Guidelines/norms.

v. Hence, the amount claimed by the Financial creditor as default against corporate debtor **is Rs.34,73,29,389.00/-(Rupees Thirty-Four Crores Seventy-Three Lakh Twenty-Nine Thousand Three Hundred and Eighty-Nine Only)** in cash credit Account **as on 22.01.2019** plus interest and other charges is due as outstanding against the directors jointly and severally, which is being legally recoverable from them being amount of debt due against them to the applicant bank.

vi. The respondent in the counter affidavit stated that due to good paying capacity and having sufficient security the Corporation Bank was ready to sanction financial assistance of Rs. 20 Crores to Corporate Debtor subject to issuance of no objection to PNB.

vii. It is also stated by the Respondent in the counter affidavit that the present application filed under Section 7 of IBC 2016 read with rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) rule, 2016 is not maintainable in the eyes of law as there is no verification of pleadings of the content of the case either in application or in separate affidavit as filed by the Financial Creditor and there is concealment of fact in the pleadings of the case regarding of *pari passu* charge over the movable and immovable property in question of financial creditor along with PNB, International Banking Branch, Delhi Road Moradabad and they also stated that Financial Creditor had not made PNB as party on array of party in memorandum of application. Thus, the application is not maintainable.

viii. It is also stated that Corporate Debtor had tried to settle the matter with Financial Creditor but they are not ready to settle the matter to one-time settlement and thus prayed that the application is liable to be dismissed with exemplary cost in favour of Corporate Debtor.

ix. It is further stated that Corporate Debtor i.e. Corporation bank had again submitted another settlement proposal dated 30.03.2019 for an amount of Rs. 13.00 Crores again for amicable settlement with financial creditor i.e. Corporation bank with cogent reasons. Aforesaid settlement proposal dated 30.03.2019 of Corporate Debtor i.e. M/s Multiwal Duplex Private Limited send through email is annexed as Annexure No. 7 of the counter Affidavit.

x. It is also stated in the counter affidavit by the respondent that learned Recovery Officer, Debts Recovery Tribunal, Dehradun had tried to auction sale of entire moveable and immoveable properties in question for an amount of Rs. 23.38 Crores at the instance of financial creditor i.e. Corporation Bank (Annexure No. 24 of Application) though there is also *pari passu* charge of Punjab National bank is over entire moveable and immoveable properties in question against its outstanding due and hence Corporate Debtor I.e. M/s Multiwal Duplex Private Limited had offered Rs. 14.00 Crores to Punjab National bank and Rs. 13.00 Crores to Corporation bank in their share proportion which is higher amount than auction sale amount as trying to realize through action sale but financial creditor i.e. corporation bank is not ready to settle the matter.

xi. Further stated that the application filed by financial creditor i.e. Corporation Bank is not supported with all material pleading and material documents under provisions of aforesaid Application under section 7 of the Insolvency and Bankruptcy code, 2016 read with Rule 4 of the Insolvency and bankruptcy (Application to Adjudicating

Authority Rule, 2016 hence same is not maintainable and is liable to be dismissed.

xii. It is further stated that Corporate Debtor i.e. M/s Multiwal Duplex Private Limited is not a wilful defaulter and it could not repaid its dues due to halt due to pollution issue raised by the Uttarakhand Environment Production & Pollution Control Board, Dehradun which adversely affected the business operations of the company as Uttarakhand Environment Protection 7 Pollution Control Board had issued direction to all pulp and Paper Industries to complete the charter implementations programme by 31.12.2012, which was extended up to 31.03.2013 and other reasons as stated above in preliminary submission and for that Corporate Debtor i.e. M/s Multiwal Duplex Private Limited was not at fault.

xiii. In reply to the counter affidavit petitioner stated that the Corporate Debtor was not good pay master and hence the present recovery proceeding was initiated against them and as regarding the maintainability is concerned the application is duly singed, stamp and verified by the authorised signatory of Financial Creditor and it deals with the default of Corporate Debtor and not for mortgage properties of Corporate Debtor thus there is no concealment of facts regarding *pari passu* charges so the petition is maintainable and regarding adding PNB in array of party the petitioner in its reply stated that PNB is not a necessary and proper party as it relates only to Financial Creditor and Corporate Debtor and there is debt and default on part of the corporate debtor.

xiv. It is also submitted that in reply to the counter affidavit that the applicant has strictly followed all the provisions and procedure of The

RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 (51 of 1993) and SARFAESI Act, 2002, the Insolvency Bankruptcy Code 2016 and no action of the applicant bank is unreasonable or arbitrary and/or in violation of any statutory provisions.

xv. It is also stated in reply to the counter affidavit that the financial creditor made all its efforts to settle the matter amicably, but there was no reciprocal response from the applicants except to delay the process. It is also submitted that the statutory notice was duly served on corporate debtor and allegations made against bank are false and frivolous thus prayed for petition to be allowed.

6. Though the pleadings have been completed, but the learned counsel for the corporate debtor at the date of hearing filed an affidavit stating that **the Corporate Debtor has no objection if this Adjudicating Authority appoints an Interim Resolution professional .** This bench vide its order dated **05.09.2019** has taken this on record.

7. We have gone through the contents of the petition , the counter affidavits filed by the respondent and reply to the counter affidavit filed by the petitioner and documents annexed there of.

8. Further it is matter of record that the Corporate debtor had acknowledged the debt on **22.02.2016** by executing letter of acknowledgement of debt ***Annexed as Annexure 17 of the application*** and the petition is filed on **13.02.2019** which is within the limitaion period as per Sec 18 of the Limitation Act,1963.

9. Ld. Counsel for the Financial Creditor submitted that in order to prove the Existence of the Financial Debt; they have annexed following documents:

   i. The Copy of board resolution dated 08.10.2013 stating the company will avail credit facility of Rs. 20 crores from Corporation Bank, Moradabad with terms and conditions dated 25.02.2013 . ***(The Copy is annexed as Annexure-5 of the application)***

   ii. Applicant has also annexed the copy of the loan application dated **15.01.2013**, Credit Sanction Intimation dated **25.02.2013.** ***(The copy is annexed as Annexure -6 and Annexure -7 of the application).***

   iii. The copy of letter of undertakings from the borrowers accepting the terms and conditions of the loan account dated 23.03.2013. ***(The copy is annexed as Annexure -11 of the application)*** and copy of guarantee agreement dated 23.03.2013 ***(Annexed as Annexure -14 of the application).***

   iv. The applicant also annexed the letter of acknowledgement of debt in respect of balance outstanding dated 22.02.2016. ***(The Copy is annexed as Annexure- 16 of the application)***

   v. Copy of the Registration of mortgage/charge registered by ROC Uttarakhand***(Copy is annexed as Annexure- 16 of The Application).***

10.From the perusal of the counter affidavit filed on behalf of the respondent I find that respondent has raised the question of maintainability on the ground referred in the counter affidavit. I have carefully examined the ground mentioned on counter affidavit along with the provisions contained Under Section 7 of IB Code. The relevant provision of Section 7 (1), (2), (3) as quoted below :

Section 7: Initiation of corporate insolvency resolution process by financial creditor:

(1) A financial creditor either by itself or jointly with[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.

Explanation. *—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

11.Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

a. Whether there is duly established financial debt.

b. Whether there is default in payment by the corporate debtor.

c. Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

12.The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank ,(2017)205 Comp Cas 57(SC)*** ***held :***

"The scheme of Sec 7 stands in contrast with the scheme under Sec 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in sec 8(1) of the Code. Under Sec 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub Section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing –i.e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor goes out of the clutches of the Court.

On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is 'due', i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some further debt. It is only when this is prove to the satisfaction of the adjudicating authority may reject an application and not otherwise".

13.In the case ***of Ajay Agarwal vs. Central Bank of India (2018) 208 Comp Cas 402 (NCLAT)*** Hon'ble NCLAT held :

"When in case a "Corporate Debtor" commits a default a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the "financial creditor" to satisfy itself that a default has occurred. Other considerations, such as the existence a dispute or discrepancy are irrelevant, so long it has not been disputed the same debt is due and is payable to the financial creditor and the corporate debtor has defaulted."

14.Therefore, in view of the aforesaid decisions, I would like to consider whether petitioner has succeeded in establishing the fact that there is financial debt or default in part of corporate debtor in making payment of debt.

15.From the perusal of averments made in the application filed on behalf of petitioner, in counter affidavit filed by the respondent and reply to the counter affidavit filed by the petitioner, I am of the considered view that petitioner has succeed in establishing that the loan of Rs. 20,00,00,000 (Rupees Twenty Crores Only) is given to corporate debtor and that has not been paid by the Corporate Debtor and Corporate debtor has admitted this fact by filing an additional affidavit on 05.09.2019 stating in para 3 that the corporate debtor has no objection if this Adjudicating Authority appoints IRP in the case.

16. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. It further appears that there is default in non-payment of the debt owed by the corporate debtor, applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Therefore application filed U/S 7 of IBC deserves to be admitted.

17. The Financial Creditor has proposed the name of **Mr Manish Agarwal, Registration Number IBBI/IPA-002/IP-N00223/2017-18/10904** for appointment as Interim Resolution Professional(IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. ***(Copy of Form -2 is annexed as Annexure-2 of***

the Application) and there is default in the payment of the financial debt which is more than Rs One Lakh. Therefore, as per section 7(5)(a) of the code, the present application filed U/s 7 of the IB Code is admitted.

18. **Mr Manish Agarwal, Registration Number IBBI/IPA-002/IP-N00223/2017-18/10904** is appointed as Interim Resolution Professional(IRP). Further, a moratorium under the provision of section13 & 14 of the Code is declared prohibiting the following:

    i. *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

    ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

    iii. *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(54 of 2002);*

    iv. *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*

It is further directed that:

(i) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period*

(ii) *The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

19. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.

20. The Registry is further directed to communicate the copy of this order to Financial Creditor and Corporate Debtor and IRP through email and speed post.

21. List on **27.09.2019** for the filing of the progress report.

Date : 12.09.2019

-Sd-

Abni Ranjan Kumar Sinha

(Member Judicial)