

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP (IB)/19/GB/2019

Under Section 7 read with Sections 14 & 33 of the
Insolvency & Bankruptcy Code, 2016

In the matter of:

Shital Kumar Poddar & Another : Applicants / Financial Creditors

-Versus-

Innovate Ventures (India) Pvt. Ltd. : Corporate Debtor

Order delivered on 16th September, 2019

Coram:

Hon'ble Mr. Venkata Subba Rao Hari, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : None

For the Corporate Debtor : Mr. Rakesh Sarmah, Advocate

ORDER

The petition is allowed. Mr. Shashi Agarwal is appointed as IRP as per separate order of date.

Member (Technical)
Adjudicating Authority

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 16th day of September, 2019.

//DeKa/16-09-2019//

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CP (IB)/19/GB/2019

Under Section 7 read with Sections 14 & 33 of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Shital Kumar Poddar & Another : Applicants / Financial Creditors

-Versus-

Innovate Ventures (India) Pvt. Ltd. : Respondent / Corporate Debtor

Order delivered on 16th September, 2019

Coram:

Hon'ble Mr. Venkata Subba Rao Hari, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : Mr. Vikash Vaishya, Advocate
Mr. S. Kakati, Advocate

For the Corporate Debtor : Mr. S. Khound, Advocate

ORDER

Per Sri Ashutosh Chandra, Member (Technical)

The above application is filed by two individuals Mr. Shital Kumar Podar and Mrs. Deepti Poddar, who are hereinafter called as Financial Creditors (FC) under Section 7 of the IB Code, 2016 against Innovative Ventures (India) Pvt. Ltd., hereinafter called as Corporate Debtor (CD) for initiation of corporate insolvency resolution process (in short CIRP).

2. The brief facts of the case are that the first applicant Mr. Shital Kumar Poddar, is the husband of the second applicant Mrs. Deepti Poddar. The CD who is doing business by providing innovative educational products and services has approached the second

applicant for a loan in a sum of Rs.25.00 lacs (Rupees Twenty Five lacs only) and accordingly, the second applicant advanced the said sum to the CD by way of five post-dated cheques of Rs.5.00 lacs (Rupees Five lacs only) each and both the parties also entered into an agreement dated 14-03-2016 repayable with interest at 24% per annum and additional bonus interest @ 2% per annum at the time of final liquidation of the loan amount within twenty months. Subsequently, the CD failed to pay either the principal loan amount or the interest due to the second applicant. Therefore, the second applicant got issued a legal notice dated 08-02-2019 through her advocate Mr. Vikash Baishya and the CD having received the said notice neither sent any reply nor cleared the amount due to the FC.

3. The CD also approached the first applicant for financial assistance in a sum of Rs.10.00 lacs (Rupees Ten lacs only) and accordingly, the first applicant has also advanced the same to the CD and both of them have also entered into an agreement dated 27-06-2016 whereunder the CD agreed to discharge the amount within a period of five months with interest @24% per annum and additional bonus interest @2% per annum at the time of final liquidation of the loan amount. Subsequently, the CD has neither paid the principal amount nor the amount due under the above agreement and, therefore, the first applicant got issued a legal notice dated 03-05-2017 through his advocate Mr. Swarban Kumar Biswas. The CD having received the said notice has neither paid the amount nor sent any reply.

4. It is also pleaded in the application that the CD after rigorous follow ups and reminders by the applicant, has paid a sum of Rs.1.50 lacs (Rupees One lac Fifty thousand only) to the first applicant and an amount of Rs.4.50 lacs (Rupees Four lacs Fifty thousand only) to the second applicant on different dates. As the CD failed to discharge the entire loan liability of both the applicants, they have jointly filed the above application under Section 7 of the Code.

5. The CD filed affidavit in reply opposing the above application mainly contending that both the applicant are residing and working for gain at Kolkata and in furtherance thereof have advanced loan to the CD to the tune of Rs.25.00 lacs (Rupees Twenty Five

lacs only) and Rs.10.00 lacs (Rupees Ten lacs only) respectively and disposed the amount from Kolkata and, therefore, the applicants indulged in doing money lending business without possessing any valid license under the Bengal Money Lenders Act, 1940 and, therefore, the amount lent by the applicants cannot be treated as financial debt and the applicants have neither any right to recover the same nor to file the above application before this Tribunal against the CD.

6. Reference has also been made to some resolutions passed by the CD to the effect that a loan of Rs.25.00 lacs (Rupees Twenty Five lacs only) would be taken from Mascot Petrochem Pvt. Ltd. and hence that the CD had no authority to take a loan of Rs.35.00 lacs (Rupees Thirty Five lacs only) from the applicants. Further, it has been said that the alleged debt was barred by limitation.

7. In support of the above contention, the CD relied upon the decision of the Hon'ble High Court of Kolkata reported in (1993) 2 Kolkata Law Journal 135 in Shib Kumar Todi Vs. Amal Chand Champalal.

8. We have considered the submissions of the CD with regard to the application made by the applicants / FCs. The main contention of the CD is that the alleged debt is not a legal debt and is, therefore, not enforceable, especially as the applicants did not have a valid license under the Bengal Money Lenders Act, 1940. We are unable to accept this contention. The present application is filed under Section 7 of the Code of 2016, which is a separate Code in itself. With regard to the intent and purpose of this Code, Section 5 (8) has been inserted so as to define a financial debt. According to this provision a financial debt is a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes a loan borrowed against payment of interest. Thus, so far as the Code of 2016 under which the present application has been filed and these proceedings have been undertaken, the debt in question, amounting to Rs.35.00 lacs (Rupees Thirty Five lacs only) from both the applicants, very much falls within the above definition of financial debt. On a consideration of the dates on which the amounts were taken, as also the terms agreed to, it is clear that the CD owes the debt to the FC and which falls within the definition of the meaning of financial debt and, therefore,

would attract the provisions contained in Part II of Chapter III of the Code of 2016. The reference made by the CD to the Bengal Money Lenders Act, 1940 would not be applicable once a specific provision defining a financial debt has been inserted under the Code of 2016, as mentioned above.

9. As far as the case of Shib Kumar Todi relied upon by the CD is concerned, the same is clearly distinguishable on facts and the nature of proceedings pending before this Tribunal is also different. The proceedings pending before this Tribunal are "resolution proceedings" and not "recovery proceedings" as in that case. As regards the other submission made by the CD, somewhat in passing, with regard to its resolutions of raising loan from Mascot Petrochem Pvt. Ltd., we find the same to be irrelevant to the issue as the debt is admitted and was indeed taken from the FC. Regarding the limitation issue raised by the CD also we find that the debt of Rs.25.00 lacs (Rupees Twenty Five lacs only) was raised on 25-03-2016 and Rs.10.00 (Rupees Ten lacs only) on 02-07-2016, and both the debts had conditions regarding the period within which they would be liquidated, being twenty months and five months respectively. The period of limitation would commence from the date fixed for repayment. Hence, the above application being filed on 31.05.2019 is within three years, ie. within the limitation.

10. In view of foregoing, not accepting the pleas of the CD, we admit the application and deem it a fit case for initiation of CIRP with reference to the CD, Innovate Ventures (India) Pvt. Ltd., and it is accordingly ordered.

ORDER


- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of Innovate Ventures (India) Pvt. Ltd.*
- (ii) *We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*

- (iii) *The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.*
- (iv) *Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:*
- 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 (54 of 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.*
- (v) *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.*
- vi) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (vii) *The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.*

- (viii) *Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of the corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*
- (ix) *Necessary public announcement as per Section 15 of the IBC, 2016 may be made.*
- (x) *Mr. Shashi Agarwal, opposite Udayan Club, 21N, Block-A, New Alipore, Kolkata – 700 053, Email: shashiagg@rediffmail.com having registration No.IBBI/IPA-001/IP-P00470/2017-18/10813 is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.*
- (xi) *The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant as per rules.*
- (xii) *Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional, and all others concerned, by Speed Post as well as through e-mail.*
- (xiii) *The Interim Resolution Professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.*

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


Member (Technical)


Member (Judicial)