



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-205(ND)/2021

IN THE MATTER OF:

Hero Fincorp Limited
Registered office at :
34, Community Centre,
Basant Lok, Vasant Vihar
New Delhi – 110057

...Applicant/Financial Creditor

VERSUS

DCP India Private Limited
Registered Office at:
B-39, near PVR Plaza,
Block -B, Connaught Place,
New Delhi-110001

...Respondent

Section: 7 of IBC, 2016

Order Delivered on : 27.09.2022

CORAM:


SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Abhishek Naik

For the Respondent : None.

(IB)-205(ND)2021 
Hero Fincorp Ltd. Vs. DCP India Pvt. Ltd.



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Hero Fincorp Limited (for brevity, the '**Applicant/ Financial Creditor**') has filed the present application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against DCP India Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, DCP India Private Limited is a Company incorporated on 14.01.2004, under the provisions of erstwhile Companies Act, 1956 with CIN U15492DL2004PTC124070, having its registered office at B-39, near PVR Plaza, Block -B, Connaught Place, New Delhi-110001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 2,00,00,000/- and Paid-up Share Capital is Rs.1,67,26,550/- as per the master data annexed with the Petition.

3. It is stated by the Applicant that the *Circa* June, 2017, the Respondent through its Director Mr. Gaurav Jain approached the Financial Creditor to seek a financial facility in the nature of Working Capital Demand Facility for Rs.15,00,00,000/- (Fifteen Crore) for incremental growth of the Respondent. Based on the representation



made by the Respondent, the Financial Creditor vide letter dated 19.06.2017 sanctioned a loan of Rs.15,00,00,000/- (**'Loan Amount'**) for a tenure of 12 months at the interest rate of 11.50% per annum in favour of the Respondent. Subsequently, the Master Facility Loan Agreement and Supplementary Agreement dated 20.06.2017 were executed by and between the Parties.

4. It is further stated by the Applicant that as per the sanction letter dated 19.06.2017 read with aforesaid loan and supplementary agreement both dated 20.06.2017, the Respondent agreed to repay the Loan Amount with interest at 11.50% p.a., and penal interest of 2 % in case of delay in repayment.

5. It is submitted by the Applicant that *Circa* 2019, various loan account(s) of the Respondent were declared as Non-Performing Assets (NPA) by various banks/financial institutions. The Respondent has also defaulted in repayment of the loan amount sanctioned by the Financial Creditor. Hence, the Financial Creditor vide its notice dated 27.05.2019 recalled the loan facilities provided by it to the Respondent and directed the Respondent along with the Personal Guarantors to repay the amount within seven days.

6. It is further submitted by the Applicant that thereafter, the Financial Creditor presented two Cheques dated 09.09.2019 issued by the Corporate Debtor for a collective amount of Rs.10,83,65,229/-to its banker for realization of debt as on 22.05.2019. However, the said



Cheques got dishonored with remarks on the Cheque return memos as “*Kindly contact drawer/Drawee and please present again*”. Consequently, the Financial Creditor issued legal notice through its Counsel demanding the payment of the outstanding amount within fifteen days. However, no payment was received from the Respondent or its Directors. Subsequently, Criminal Complaint being No. 4094 / 2020 was filed by the Financial Creditor against the Respondent and its Directors under Section 138 read with Section 141 of the Negotiable Instrument Act, 1881 for dishonoring of aforesaid two Cheques. The case is now pending adjudication before the Hon'ble Court of Ms. Sonika, Metropolitan Magistrate, South District, Saket Court, Delhi.

7. It is stated by the Applicant that, in the meantime, vide its letter dated 16.01.2020 referred its claim *qua* financial debt against the Respondent and its Directors to be adjudicated before Sh. Jai Narayan Yadav, District Judge (Recd.), Sole Arbitrator. The Arbitrator issued notice of appearance on 24.02.2020 and thereafter, gave opportunity to the Respondent and its Directors to file reply on various dates *i.e.*, 30.06.2020; 22.07.2020 and 27.08.2020). As the Respondent and its Directors neither appeared nor filed their reply(s) before the Arbitrator, the Respondents were proceeded *ex-parte*. The Arbitrator vide its award dated 29.10.2020 against the Respondent and its Directors, directed them to deposit Rs.11,58,27,061.28/- with future interest at the rate @ 11.50% p.a. and penal interest @ 2% from the date of initiation of arbitration till realization.



8. That the details of the total amount of default and the date of default are mentioned in the Part IV of the application, which are reproduced below for the sake of convenience:

PART - IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED AND DATE(S) OF DISBURSEMENT	<p>Rs.15,00,00,000/- (<i>Rupees Fifteen Crores Only</i>) sanctioned vide Letter dated 19.06.2017;</p> <p>Rs.12,50,00,000/- (<i>Rupees Ten Crores Fifty Lacs only</i>) disbursed in several tranches through multiple loan facilities as mentioned below:-</p> <p>i) Loan Account Nos.</p> <p>HCFDELDDL00003561468; HCFDELDDL00003560719; HCFDELDDL00003561306; HCFDELDDL00003561314; HCFDELDDL00003560604; HCFDELDDL00003560609;</p>

		<p>HCFDELDDL00003560151; HCFDELDDL00003560783; HCFDELDDL00003560791;</p> <p>True Copy of the Sanction letter dated 19.06.2017 is annexed herewith as ANNEXURE A - 5.</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND	<p>Rs.15,94,84,246.25/- (<i>Rupees Fifteen Crores Ninety-Four Lacs Two Hundred Forty Six and Twenty Five Paise only</i>) inclusive of interest on loan amount @ 11.50% and penal interest @ 2%, as on 09.02.2021</p>
	DATES ON WHICH THE DEFAULTS OCCURRED	<p>27.05.2019 27th May, 2019 (<i>Date of Loan Recall Notice</i>)</p> <p>Computation Sheet of Financial Debt as on 09.02.2021 is annexed herewith as ANNEXURE A - 6.</p>



9. That from perusal of the Part IV of the Application it is observed that the Applicant has claimed an amount of Rs. 15,94,84,246.25/- inclusive of interest on loan amount @ 11.50% and penal interest @2% as on 09.02.2021 as an unpaid financial debt and 27.05.2019 to be the 'date of default'.

10. The Financial Creditor has relied on the following documents to prove the existence of the financial debt.

- a) Master Facility Loan Agreement including Supplementary Agreement both dated 20.06.2018.
- b) Copy of Sanction Letter dated 19.06.2017.
- c) Computation Sheet of Financial Debt as on 09.02.2021.
- d) Ex-Parte Arbitration Award dated 29.10.2020.
- e) Loan Recall Notice dated 27.05.2019.

11. Basing on the aforesaid documents, the Financial Creditor has prayed for initiation of CIRP against the Corporate Debtor.

12. This Adjudicating Authority has issued notice which was accepted by the Ld. Counsel appearing for the Respondent on 09.04.2021. From the perusal of the order sheet, it is observed that despite opportunities, the Respondent failed to file the reply. Hence, its right to file reply was closed vide order dated 09.11.2021.

13. The matter was heard on 23.09.2022. Since there was no representation by or on behalf of the Respondent despite repeated



calls, therefore, the Respondent was proceeded ex parte vide order dated 23.09.2022. The matter was reserved for orders.

14. We have perused the documents available on record and heard the Ld. Counsel for the Applicant. The Applicant has been able to satisfy this Bench that it had provided financial facility to the Respondent, which is in the nature of Financial Debt. Further, we notice that the debt of the Applicant has already been adjudicated by the Ld. Arbitrator vide Arbitration Award dated 29.10.2020 in the Arbitration case No. ARB/JN/HF/1/1/2020. The copy of the Award has been placed on record at Page 39 of the Application. Since the Respondent has neither filed its reply nor addressed its arguments, it is presumed that it has nothing to say in the matter.

15. In the given facts and circumstances, the present Application being complete and the Applicant having established the default in payment of the Financial Debt being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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.”


16. As proposed by the Financial Creditor, this Bench appoints Mr. Ramesh Chander Sawhney as IRP having Registration No. IBBI/IPA-001/IP-P00274/2017-18/10518 (Email: casawhney@yahoo.co.in), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

“Mr. Ramesh Chander Sawhney as IRP having Registration No. IBBI/IPA-001/IP-P00274/2017-18/10518, (E-mail ID : casawhney@yahoo.co.in) is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”



17. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. A copy of this Order shall immediately be communicated to the Financial Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their record.


(L. N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)