IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB)No.2684/NCLT/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of:
Avanse Financial Services Limited
…Financial Creditor/ Applicant
V/s
Onus Enterprises Private Limited
...Corporate Debtor / Respondent

Order Dated: 03.03.2020

Coram: Hon'ble Member (Judicial):Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. B. Gopalkrishnan a/w Adv. Ishita Merchant i/b SNG and Partners, Advocates.
For the Respondent: None Present

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This is an application being C.P. (IB) No. 2684/NCLT/MB/2019 filed by **Avanse Financial Services Limited,** the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Onus Enterprise Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Application is filed by Mr. Sandeep Upadhyay, authorised signatory of Financial Creditor, claiming a total default of Rs.36,77,582/- (Rupees Thirty-Six Lakh Seventy-Seven Thousand Five Hundred and Eighty-Two Only) including interest @19% p.a., bounce charges and penal charges as on 09.07.2019. The date of

Default is 31.10.2018. The statement for particulars of claim amount is annexed to the application.

3. The Applicant submitted that Term Loan of Rs.30,45,000/- (Rupees Thirty Lakh Forty-Five Thousand Only) was sanctioned by the Applicant to the Corporate Debtor as per Loan Agreement dated 11.05.2018. Copy of the said loan agreement is annexed to the application. The Applicant further submitted that the credit facility sanctioned was un-secured therefore no charge was created by the Applicant on any of the assets of the Corporate Debtor.

4. The Applicant further submitted that the Corporate Debtor failed to repay the outstanding dues, therefore the Applicant issued recall notice dated 06.08.2018 to the corporate debtor demanding the repayment of the outstanding loan amount.

5. The Applicant submitted that as the corporate debtor failed to pay the loan amount to Applicant the account of the corporate debtor was classified as Non-Performing Asset on 31.10.2018.

6. The Applicant submitted that the copy of statement of Loan Account of the Corporate Debtor showing total outstanding amount of Rs. 34,77,107/- (Rupees Thirty-Four Lakh Seventy-Seven Thousand One Hundred and Seven Only) as on 30.06.2019 is annexed to the application.

7. The Applicant filed present Application on 12.07.2019. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 28.08.2019. The Applicant filed its Affidavit of Service of Notice on 28.09.2019. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor chose not to file any objections in its defence.

8. There was no representation on behalf of the Corporate Debtor at the time of hearing. We have heard the Applicant and perused the records.

9. The Applicant has stated that Rs.36,77,582/- was due and payable by the Corporate Debtor to the Applicant as on 09.07.2019. The account of the Corporate Debtor was declared as Non-Performing

Asset w.e.f. 31.10.2018. The Applicant filed Application on 12.07.2019. Thus, the current Application filed by Applicant is not barred by the law of Limitation.

10. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than ₹1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant and there is default by the Corporate Debtor in repayment of the loan amount. The Corporate Debtor has not filed any reply and therefore, we have not received any objection on record against the application filed for initiation of CIRP against the corporate debtor.

11. The application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.

12. The Applicant has proposed the name of Mr P Shivan Raju, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00496/2017-2018/11596] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against her.

13. The petition under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 7 of I&B Code, 2016, presented by **Avanse Financial Services Limited,** Financial Creditor/ Applicant against **Onus Enterprise Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is

admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints **Mr P Shivan Raju,** a registered insolvency resolution professional having Registration Number **IBBI/IPA-002/IP-N00496/2017-2018/11596** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
RAJESH SHARMA	**BHASKARA PANTULA MOHAN**
Member (Technical)	Member (Judicial)
03.03.2020	