

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT No. IV, NEW DELHI

C.P. No. IB-1731/(ND)/2019

IN THE MATTER OF:

M/s MAYOGA INVESTMENTS LIMITED

...Financial Creditor/Applicant

VERSUS

M/s M.K. OVERSEAS PRIVATE LIMITED

...Corporate Debtor/Respondent

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')

Judgment delivered on:19.09.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (J)

SHRI HEMANT K SARANGI

HON'BLE MEMBER (T)

PRESENT:

For the Petitioner

:Mr. Nagesh P, Adv.

Mr. Avinash Sharma, Adv.

For the Respondent

:Ms. Vishakha Gupta, Adv.

MEMO OF PARTIES:

M/s MAYOGA INVESTMENT LIMITED

Having its registered office at:

Office No. 714, 7th Floor,
Gold Crest Business Centre,
Opp Mannubhai Jewellers Lt Road
Borivali West, Mumbai City,
Maharashtra- 400092

...FINANCIAL CREDITOR/APPLICANT

Versus

M/s M.K. OVERSEAS PRIVATE LIMITED

Having its registered office at:

39/5864, Basti Harpool Singh,
Sadar Bazar, Delhi-110006

...CORPORATE DEBTOR/RESPONDENT

JUDGMENT

PER-SH. HEMANT K. SARANGI, MEMBER (T)

1. The present application is filed under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Mayoga investment limited claiming to be 'financial creditor' (for

brevity 'Applicant') has filed this application, through its authorised representative Mr. Gaurav Sarada authorized by the board resolution dated 01.07.2019, with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, M/s M.K. Overseas Pvt. Ltd. (for brevity 'Respondent').

2. M/s Mayoga Investment Ltd. was incorporated on 08.05.1980 as public limited company incorporated under the Companies Act, 1956, having CIN U65990MH1980PLC022604. The registered office of the applicant company is situated at Off No. 714, 7th Floor, Goldcrest Business centre, Opp. Mannubhai Jewellers L T Road, Borivali, Mumbai city Maharashtra- 400092.
3. The Corporate Debtor namely M/s M. K. Overseas Private Limited (CIN U25209DL1987PTC029976) was incorporated on 14.12.1987 under the provisions of the Companies Act, 1956. The registered office of the respondent company is situated at 39/5864, Basti Harphool Singh, Sadar Bazar, Delhi-110006. Its authorized share capital is Rs. 14,00,00,000/- and paid up capital is Rs.13,80,00,000/- which is based on the details

given in master data as reflected on the official website of Registrar of Companies. Since the registered office of the corporate debtor is in Delhi, this Tribunal being Adjudicating Authority has territorial jurisdiction in respect of respondent corporate debtor as per the provisions of sub-section (1) of Section 60 of the Code.

4. The applicant states that the Corporate Debtor had requested for availing Business Loan facility of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) from the applicant. A business loan agreement was entered in to between the applicant and the respondent on 25.04.2019, whereby the terms and conditions were stated and mutually agreed between the parties. The loan was for a period of 30 days and could not be extended further, payable with interest at the rate of 1.5% per month.

5. The applicant further states that, in order to secure the loan facility, the borrower issued post dated cheque. The applicant has placed on record the following documents in support of loan and credit facilities sanctioned to the Corporate Debtor:

a) Copy of the Business Loan Agreement;

- b) Copies of letter dated 01.06.2019 by the corporate debtor to the financial creditor for confirming the balance as on 31.05.2019 along with the ledger extract showing the credit entry of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) from the applicant;
- c) Copies of the cheques bearing no. 000413 and 000414 issued for Rs.25,00,000/- and Rs.37,500/- respectively, as security for the loan amount;
6. It is further submitted by the applicant that the Corporate Debtor failed to adhere to the repayment schedule of credit facilities and defaulted in the repayment of the loan. Consequently, the applicant submitted the two security cheques bearing no. 000414 and 00041 issued by the respondent for encashment against the repayment of the loan amount. The two above mentioned security cheques were not encashed due to insufficient funds in the account of corporate debtor and were returned by the bank. The copies of returned cheques along with the return memo stating 'insufficient funds' as the reason for return has also been annexed with the application.

7. In Part-IV of the Application, the Financial Creditor has given the details of the total amount of the financial debt and the transactions on account of which the debt fell due.

PARTICULARS OF FINANCIAL DEBT	
1. TOTAL AMOUNT OF DEBT GRANTED AND DATE (S) OF DISBURSEMENT	TOTAL AMOUNT OF DEBT IS RS.25,00,000/- (RUPEES TWENTY FIVE LAKHS ONLY) DATE OF DISBURSEMENT- 03.05.2019
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED	AMOUNT CLAIMED- 25,00,000/- (RUPEES TWENTY FIVE LAKHS ONLY) ALONGWITH 1.5% INTEREST PER MONTH DEFAULT OCCURRED ON- 04.06.2019

8. In its reply the respondent states that it was suffering from short term cash crunch and decided to avail the said credit facility to pay off its creditors. Accordingly, On 25.04.2019 the respondent entered into Loan Agreement with the applicant. The respondent in its reply accepts all the terms and conditions, as well as its liability to pay the applicant.

Although, it talks about taking time from the applicant but no such proof has been brought forward by it.

9. In its reply the respondent also expresses his willingness to pay off the debt and settle the matter with the applicant, However, no such steps have been taken by it so far.
10. Facts which are material to the controversy raised may first be noted. The Applicant has provided a loan/ credit facility to the Corporate Debtor sanctioning credit facility of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only), as per the Loan Agreement dated 25.04.2019. As on 04.06.2019, a total sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) became due and payable by the Corporate Debtor to the Applicant being the principal loan amount, along with interest as per the loan agreement dated 03.05.2019.
11. Having heard learned counsels for the parties we are of the considered view that the Financial Creditor has succeeded to make out a case for triggering the Corporate Insolvency Resolution Process. The material on record clearly goes to show that the Corporate Debtor had availed the loan facility and has committed default in the payment of the said debt amount. The applicant 'financial creditor' has placed on

record evidence in support of the claim as well as to prove the default. The Corporate Debtor by its own admission in reply acknowledges the existence of financial debt. Merely because respondent has stated that it is willing to settle the debt and in spite of being given various opportunities for repayment, the respondent failed to make payment. There is no bar for Financial Creditor from proceedings under the provisions of Code. All the more so when the Corporate Debtor has failed till date in making efforts of settling the debt. There is no document placed on record by Corporate Debtor to show that payment of debt, as claimed by the applicant, is made or is not due and payable.

12. Under sub-section (5)(a) of section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

- (i) Default has occurred;
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

13. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default has occurred and debt has remained unpaid. Thus, the application warrants admission as it is complete in all respects and is admitted initiating CIRP as prescribed under the Code.

14. The 'Financial Creditor'- applicant has proposed the name of Insolvency Resolution Professional, Mr. Suresh Kumar Jain, address at 3775/3 Kanhaiya Nagar, Delhi – 110035 and having registration No. IBBI/IPA-001/IP- P01179/2018-19/11839, mobile No. 9911219473 and email id suresh1958@rediffmail.com. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or ICAI. In addition, further necessary disclosures have been made by Mr. Suresh Kumar Jain as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

15. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
17. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Suresh Kumar Jain to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of

receipt of this order by the Financial Creditor. The amount however 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. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (T)

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (J)