IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO.701
IB-2432/PB/2019

IN THE MATTER OF:

Mr. B. A. Chandrasherkara Setty and Ors
... Petitioner/ Financial Creditors

VERSUS

M/s. Intec India Limited Ltd
...Respondent/Corporate Debtor

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on 26.05.2023

CORAM:
SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets. IB-2432/PB/2019 stands allowed.

Sd/-	**Sd/-**
(Rahul Bhatnagar)	**(P.S.N Prasad)**
Member (Technical)	**Member (Judicial)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-2432/(PB)/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

1. **B. A. Chandrashekara Setty**
2. **B. C. Padmavathi**
3. **B. C. Kishore Kumar**
4. **B. C. Kanakavalli**

All R/O: No. 2, Taylors Road,
Kilpaur, Chennai- 600010

…Petitioners/
Financial Creditors

Versus

M/s. Intec India Limited
At: B4/35, Basement,
Safdarjung Enclave, New Delhi - 110029

…Respondent/
Corporate Debtor

Coram:

Shri. P.S.N Prasad, Member (Judicial)
Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Petitioner: R.A. Iyer, Adv
Counsel for Respondent: Adv. Rajesh Bohra & Adv. Sangeeta Bohra

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 26.05.2023

1. This petition has been filed by Mr. B. A. Chandrashekara Setty and others to initiate corporate insolvency resolution process (hereinafter referred to as "CIRP") against M/s. Intec India Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "the Code") for the alleged default on the part of the Respondent in repayment of debt of Rs. 2,78,93,014/- (Rupees Two Crores Seventy Eight Lakhs Ninety Three Thousand and Fourteen). The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

i. The Applicants No 2 and 3 are promotors and directors of M/s VC Appliances Pvt Ltd.

ii. That the Petitioners have furnished a loan of Rs. 2 crores to the Corporate Debtor on 01.07.2018 re-payable with interest at 27% in three months.

iii. That the Corporate Debtor has failed to make timely repayment of the said sum or even interest thereon, despite multiple extensions afforded by the Petitioners to the Corporate Debtor.

iv. The CD offered to provide to M/s VC Appliances Pvt Ltd stock in consideration for them paying the petitioners dues. The said proposal was accepted, however, the CD faild to provide anu such stocks as promised.

v. The Corporate Debtor has acknowledged the factum of receipt of loan from the Petitioners by multiple correspondences, and even its e-mail/letter dated 24.01.2018

vi. The Corporate Debtor's audited books of accounts, duly signed by its directors also discloses the debt advanced by the Petitioners herein as loans in its books of accounts.

2. Consequent to the notice issued by this Tribunal, the CD filed its reply in which the following contentions were made:

i. That there is no agreement with regards to the existence of the loan amount and the interest thereon. The claim of the petitioners is based on an email, which is entered by one of the petitioners that too in the capacity of VC Group and not in his individual capacity. VC Group is not at all the petitioner. While the email is from the VC Group whereas the amount has been disbursed by petitioners in their individual capacity with no understanding whatsoever and therefore, the case of the petitioners is not at all covered under financial debts. None of the clause of financial debt as defined under sub-section 8 of Section 5 of the IBC Code, 2016 is attracted

ii. The Respondent relies upon judgement *of Sanjay Kewalramani V. Sunil Parmanand Kewalramani & Ors [Company Appeal (AT) (Insolvency) No. 57 of 2018]*, Order dated 02.02.2018 ,where in inter alia it was held by the Hon'ble NCLAT that merely grant of loan by the Financial Creditor and its admission by the Corporate Debtor in the absence of substantive evidence as to prove the disbursement of loan amount by the alleged Financial Creditor that too for consideration for the time value of money will not treat the petitioner as a Financial Creditor, till it shows that the arrangement complies with the substantive definition or any one or other clause of section 5(8) of the IBC.

iii. That the communication of temporary loan is made by Mr. Amarjit Singh, who is not authorized at all by the board of director of the Answering Respondent to take loan and there is no resolution specifically passed for Mr. Amarjit Singh to take loan. It is in violation of MOA/AOA and is in contravention to provisions of the Companies Act, 2013.

3. To counter the submissions made by the CD, the Petitioner, in its rejoinder, has submitted as under:

I. It is submitted that the receipt of the monies by the Corporate Debtor against payment of interest demonstrates the disbursal of monies by the Applicants against consideration for the time value of money as defined by Section 5(8) of the Code.

II. It is submitted that the receipt of the monies by the Corporate Debtor against payment of interest demonstrates the disbursal of monies by the Applicants against consideration for the time value of money as defined by Section 5(8) of the Code.

III. That Mr. Amarjit Singh is the Chief Executive Officer (CEO) of the Corporate Debtor, and has routinely dealt with the Applicants as well as other persons on behalf of the Corporate Debtor. Mr. Amarjit Singh held out himself to be the CEO of the Corporate Debtor. This position has not been dislodged by Corporate Debtor by producing any document in their position. The Corporate Debtor by letter dated 24.01.2018 confirmed the transaction and directed M/s. VC Appliances Private Limited to pay the interest to the Petitioners on behalf of the Corporate Debtor against its Sale invoice raised on M/s. VC Appliances Private Limited and adjust the same on the outstanding of the supply of material. The aforesaid interest payment clearly demonstrates that amount advanced by the Petitioner is a Financial Debt and also that Mr. Amarjit Singh is the person authorised by the Respondent. The Corporate Debtor, nor its Board of Directors had at any relevant juncture attempted to return the monies advanced by the Applicants, or even notify the Applicants to not demand repayment of the principal amount or interest from it, on the grounds that Mr. Amarjit Singh was not authorised to obtain loan from the applicant.

4. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.

5. The Corporate Debtor relied on the judgment of *Sanjay Kewalramani V. Sunil Parmanand Kewalramani & Ors [Company Appeal (AT) (Insolvency) No. 57 of 2018]*, Order dated 02.02.2018. wherein it was held in the judgment that mere grant of a loan by the Financial Creditor and its admission by the Corporate Debtor, in the absence of substantive evidence to prove the disbursement of the loan amount by the alleged Financial Creditor, especially for consideration for the time value of money, will not classify the petitioner as a Financial Creditor. We are not satisfied with the submission made by the CD. In the present case, the Petitioner has annexed a bank account statement showing the disbursal of the debt to the bank account of the Corporate Debtor. Moreover, the Corporate Debtor has acknowledged the loan taken from the Petitioners in its audited books of accounts of 2020-2021 duly signed by its Directors.

6. Further, the petitioner has provided an email dated 27.06.2017, wherein the CEO of the CD, from the official email ID of the company, requested the Petitioners for a loan of Rs. 2 Crore along with interest at 27% for 3 months. The copy of the email dated 27.06.2017 is reproduced below: -

ANNEXURE - F (Colly)

Gmail

Chandrashekara Setty <bac.vcgroup@gmail.com>

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Temperay Loan of Rs 2 cr for 90'days

1 message

Amarjit Singh <amarjit@intecgroup.org> Tue, Jun 27, 2017 at 5:04 PM

To: bac.vcgroup@gmail.com

Dear Mr B A Chandershkhar jee

This reference to our discussion regarding the temporary loan in the tune of ₹2crore @27% for 3 months...

For our urgent payment against the LC..

Kindly take the loan on our behalf and obliged.

The letter in this regard is flowing by courier....

Regards,

Amarjit Singh

Intec Group

Another email dated 24.01.2018 was annexed with the Petition, in which the Petitioner acknowledged the loan taken from the Petitioners. The said email is reproduced below: -

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intec
The Joy of Technology!

Intec India Limited
B-4/35, Lower Ground floor
Safdarjung Enclave, New Delhi - 110029, India
+91-11-4167 6644 / 4105 7744
info@intec.co.in | www.intec.co.in

24th January 2018

V C Appliances PVt. Ltd.
2, Taylors Road
Kilpauk- Chennai
Kilpauk (C)
Tamil Nadu -600 010

Kind Attn. Mr. Chandrashekhar

Dear Sir

As we have taken loan of Rs. 50.00 Lacs each from the following

Ms. B C Kankavalli
Mrs. B C Padmavathi
Mr. B. A. Chandrashekara Setty
Mr. B. C. Kishore Kumar

We hereby authorize you to please pay one quarter interest to all above on behalf of the company against our Sales Invoice No 206 dt. 29.12.2017 for Rs. 15,96,500/- and debit our account and adjust the same from our outstanding against the supply of material.

Kindly send us approval on our above request to pass the necessary entry in our books of accounts.

Thanking you

Yours truly

For INTEC INDIA LIMITED

AMARJIT SINGH
CEO

Based on the above discussions, we are satisfied that the loan was given by the petitioners in their individual capacity to the Corporate Debtor.

7. On the issue of the absence of a valid board resolution/authorization for the CEO to take a loan of Rs. 2 Crores, we are of the considered view that the outsiders (the petitioners herein) are not privy to the

MOA or AOA of the company. Hence, they are not expected to know whether the CEO of the CD is authorized to take the loan on behalf of the company or not. Furthermore, the payment was made to the bank account of the Corporate Debtor and not to the CEO personally. It appears to us that the contention raised by the Corporate Debtor is merely an afterthought to avoid the present proceedings. In any event, the Corporate Debtor is bound to return the principal amount along with interest to the Petitioners.

8. Mere reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that CD had availed the loan and has committed default in repayment of the outstanding loan amount.

9. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

10. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

11. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Lekhraj Bajaj for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00039/2016-2017/10078. The Proposed IP has a valid AFA which is valid upto 21.11.2023. Accordingly, this Adjudicating Authority, hereby appoints Mr. Lekhraj Bajaj (Email –

lekhrajbajaj@rediffmail.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> "(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 the possession of the corporate debtor."

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

16. The office 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, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Let copy of the order be served to the parties.

Sd/- Sd/-

(Rahul Bhatnagar) **(P.S.N Prasad)**
Member (Technical) **Member (Judicial)**