

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.355/ALD/2019
(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority
Rule, 2016)

IN THE MATTER OF

Ram Alloy Castings Private Limited

.....*Applicant/Financial Creditor*

VERSUS

Trimurti Concast Private Limited

.....*Respondent/Corporate Debtor*

ORDER RESERVED ON : 27.11.2019
ORDER DELIVERED ON : 24.12.2019

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Sh. Sagar Mehrotra ,Advocate
For the Respondent/ Corporate Debtor: Sh. Faizan Siddiqui, Adv, Sh. Rahul Singh, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor on grounds of its inability to liquidate its financial debt.
2. As per averments made in the petition, the Corporate Debtor and the applicant had entered into a loan facility Agreement dated 20.12.2014, whereby a loan amount of Rs.3,59,00,0100 was disbursed by the applicant to the corporate debtor and the Corporate debtor was under obligation to pay the entire amount on or before 07.01.2019 along with interest @ 18%p.a. compounded annually and penal interest @ 2% p.a. on the defaulted interest was payable. However, the corporate debtor defaulted in making payment of the entire amount and demand was raised by the financial creditor vide its letter dated 05.01.2018 for which reply was received on 20.01.2019 expressing apologies and

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stated that due to shortage of funds the payment could not be honoured and further assured that the overdue payment shall be made within next 10 days. However, till 10.02.2019 no payment was received.

3. After the expiry of more than a month, on 15.03.2019, the financial creditor issued letter demanding a sum of Rs.3,59,00,000/- plus interest @ 18% along with penal interest @ 2%p.a then again a recall notice dated 08.04.2019 was send for recall of entire amount. However, despite repeated demands, the corporate debtor failed to pay off the debt to the financial creditor.
4. Pursuant to the mutual terms of loan, amount is due from the year 2014 and the date of default is 07.01.2019. The total amount due as on date of default is Rs. 3,59,00,000/- along with interest @18 %p.a compounded annually.
5. The Corporate debtor has been duly served by the speed post as well as e-mail. Pursuant to the court notice issued to the corporate Debtor, Advocate Faizan Siddhiqui, appeared on behalf of corporate debtor and counter affidavit has been filed on behalf of the respondent but after that it is a matter of record that although several opportunities were granted but the Corporate Debtor has chosen not to contest the case and no one further appeared in the matter.Hence vide order dated 27.11.2019, the case is fixed for exparte hearing and on the date of hearing also the respondent opted not to appear, and then the matter was heard.
6. From the perusal of averments made in the application filed on behalf of petitioner and counter affidavit filed on behalf of the respondent ,this adjudicating Authority finds, the Corporate Debtor in the Counter affidavit admits the debt and states that the said loan amount could not be made as the Corporate Debtor was facing financial crunch.

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7. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.) Whether there is duly established financial debt.

ii.) Whether there is default in payment by the corporate debtor.

iii.) Whether, the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

8. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in August, 2019 is well within limitation, being within three years from the date of the cause of action. It is seen that the amount in default is in excess of Rs. 1,00,000/- being the minimum threshold limit fixed under IBC.

9. Further, the corporate debtor in the reply filed by them has admitted the default of the debt and applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Considering the circumstances this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted.

10. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:-

(i) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting all of the following, namely: —

(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;

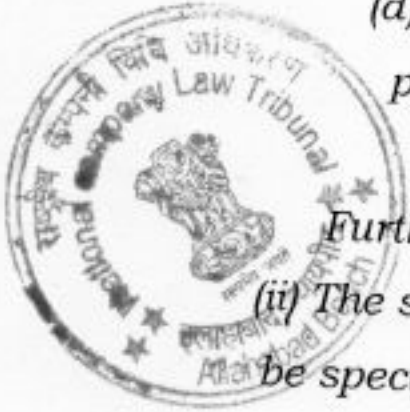
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(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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.



Further:

(ii) 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.

(iii) 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.

(iv) The order of moratorium shall have effect from the date of such order till the completion of the corporate Insolvency Resolution Process.

11. The Operational Creditor has proposed the name of **Mr. Sanjay Kumar Dewani, Registration Number IBBI/IPA-001/IP-P00423/2017-18/10746** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

12. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

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13. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

14. List on 13.01.2020 for the filing of the progress report.

Date: 24.12.2019



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JUSTICE RAJESH DAYAL KHARE

MEMBER (J)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

[Handwritten signature]
24/12/19

S. A. MEHDI
DESIGNATED REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD U.P.

FREE OF COST COPY

Compared by me
[Handwritten signature]
24/12/19