

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

(IB) 397 (ND)/2021

IN THE MATTER OF:

Mr. Hemant Kumar Gupta

R/o 35, Kamyani Kumj, Plot No. 69,

I.P. Entn. Patparganj, Delhi-110092

..... APPLICANT/FINANCIAL CREDITOR

VERSUS

M/s Astitva Capital Market Pvt. Ltd.

Flat No. 307, 3rd Floor,

New Delhi House, Barakhamba Road,

New Delhi-110001

....RESPONDENT/CORPORATE DEBTOR

SECTION: U/S 7 of IBC, 2016

Order delivered on: 25.11.2021

CORAM:

Mr. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)



ORDER

AS PER, Mr. DHARMINDER SINGH MEMBER (JUDICIAL)

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 Respondent/Corporate debtor on grounds of its inability to liquidate its financial debt.
2. The facts mentioned in the application in brief are as follows:
 - a. The applicant executed short term loan agreement with the corporate debtor according to which the loan amount will be refunded within 6 months without interest but in case of default an interest @10% will be charged.
 - b. It is the case of the applicant that applicant has paid Rs. 1,28,00,000/- on various dates from 23.09.2019 to 18.11.2020. Thereafter, since the corporate debtor has failed to repay the loan, the applicant recalled the entire loan amount vide notice of demand dated 10.05.2021.
 - c. In support of its claim the applicant has placed copy of Loan agreement, Bank account Statements and Acknowledgement of accounts certified by corporate debtor from 01.04.2019-31.03.2020.
3. As per part-IV, the amount of default is Rs. 1,28,00,000/- alongwith interest of Rs. 6,96,666/-.
4. The Corporate debtor in its reply to the application submits that:

- i. The company has been facing a very high liquidity/fund crunch due to non-materialization of receivables amounting to Rs. 7.96 Crores as on 31.03.2019.
 - ii. That due to sudden demise of Sh. Yadvendra Sharma as on 02.12.2020, in coronavirus pandemic analogous with other with other financial obligations, the corporate debtor has to shut down its business operations.
5. Heard the Parties and perused the case records.
6. Since, it is an admitted fact that the corporate debtor is not able to liquidate its debt. The application of applicant filed under section 7 of the Code is complete and loan of applicant has not been denied by the corporate debtor, infact there is an acknowledgement of account by the corporate debtor.
7. The applicant has proposed name of Mr. Gaurav Srivastava, having IBBI registration number IBBI/IPA-003/IP-N00285/2020-2021/13253. Mr. Gaurav Srivastava has given his written consent in Form-2. The written consent has been filed alongwith the application.
8. In order to trigger CIRP under Section 7 (5) of the Code, the Adjudicating Authority is required to satisfy the following conditions:

“(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary


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proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) Default has not occurred or the application under subsection (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application”

9. If it is established that default has occurred and no disciplinary proceeding is pending against the IRP and application is complete, then Adjudicating Authority has no option but to admit the application; if any of the condition is lacking, the application is liable to be rejected.
10. From the facts, it is seen that the applicant falls within the definition of Financial Creditor. The material placed on record further confirms that applicant had disbursed loan facilities to the corporate debtor which were acknowledged by corporate debtor and the corporate debtor has committed default in repayment of the outstanding financial debt.
11. We are satisfied that the present application is complete in all respects and the applicant is entitled to claim outstanding financial debts and that there has been default in payment of the financial debt. Consent of the IRP is enclosed with application. Under such circumstances, this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent. Accordingly, this petition is admitted.



12. Mr. Gaurav Srivastava, having IBBI registration number IBBI/IPA-003/ IP-N00285 /2020-2021/ 13253 with email id: SRIVASTAVA.LAW@GMAIL.COM is hereby appointed as Interim Resolution Professional (IRP) for the Corporate Debtor.

13. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the IRP immediately (within 3 days) with regard to admission of this application under Section 7 of the Code.

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

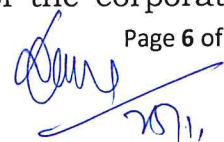
- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate 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.”


15. 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 [Sec 14(2) of the Code]. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government in consultation with any financial regulator. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 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.

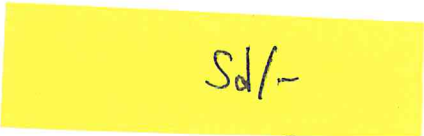
16. The IRP shall perform all his functions contemplated, inter-alia, by Sections 17, 18 and 21 of the Code and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations and shall file reports before adjudicating authority. It is further made clear that all the personnel connected with the corporate debtor, its promoters or any other persons associated with the Management of the corporate debtor are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing day to day affairs of the corporate

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debtor. The IRP 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.

17. The applicant is directed to deposit a fee of Rs. 2 lakh to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to the applicant to be recovered as CIRP cost.
18. The office is directed to communicate a copy of the order to the applicant, the corporate debtor, the IRP and the Registrar of Companies, New Delhi at the earliest possible but not later than seven days from today.


(SUMITA PURKAYASTHA)
MEMBER (T)


(DHARMINDER SINGH) 27/11/21
MEMBER (J)

NOTE

Pronounced today in open court in pursuance of power under Rule 151 of NCLT Rules, 2016 as Ms. Sumita Purkayastha, Hon'ble Member (T) is not holding Court today.


Court Officer
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