

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 592/Chd/Chd/2019

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

M/s Intec Capital Ltd.

708, Manjusha Building
57, Nehru Place
New Delhi-110019

....Petitioner-Financial Creditor

Vs.

M/s Sarthak Logistics Pvt. Ltd.

At: SCO 34-37, First Floor
Sector-9D, Chandigarh-160017 (India)

Also at:

SCO 137, First Floor, MDC Urban Estate
Sector-5, Panchkula,
Haryana-134109 (India)
CIN: U60200CH2010PTC032567

...Respondent-Corporate Debtor

Judgment delivered on: 22.12.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. Aabhas Singh, Advocate

For the Respondent-Corporate Debtor : Proceeded ex parte on 24.11.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **M/s Intec Capital Ltd.** (hereinafter referred to as 'Petitioner/Financial Creditor') through Sh. Dhruv Khanna, Authorized Representative under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Sarthak Logistics Pvt. Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Sh. Dhruv Khanna with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 18.11.2010 under the Companies Act, 1956. The company having its registered address at SCO 34-37, First Floor, Sector 9D, Chandigarh-160017. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-4 (Pg No.27) of the petition.

3. The brief facts of the case are that:-

3.1 The financial creditor approached the corporate debtor for loan and made an application dated 18.05.2015 for availing finance facility. The financial creditor approved the loan for 84 months, bearing interest @16.75% p.a. on a reducing basis and issued sanction letter dated 30.05.2015 for Rs.56 Lakhs (loan agreement bearing No.LNCHD03415-160005735). The loan was disbursed on 12.06.2015 and 13.06.2015 vide cheques No.608598

and 608597. The EMIs were to be paid on every 5th day of each month through ACH payment mode. The corporate debtor mortgaged agricultural land and the financial creditor has taken security post-dated cheques from Rajat Saini, Swati Saini, and Asha Saini.

3.2 The corporate debtor started making repayment of EMIs of Rs.1,13,633/- from 05.07.2015. However, after the disbursement of the loan amount, the corporate debtor started making a default on the repayment of EMIs. The financial creditor issued a notice of termination and reference to arbitration dated 15.04.2017 thereby terminating the loan account and demanding the due amount of Rs.47,93,617/- after adjustment of collateral security deposit of Rs.6,00,320/-. The corporate debtor paid only Rs.19,72,708/- till the date of LRN and after the date of LRN till date paid only Rs.1,16,101/-. Therefore, the outstanding demand is of Rs. 1,09,78,628.81/- up to 31.08.2019. The corporate debtor had filed complaints under the Payments and Settlement Act, 2007 read with the Negotiable Instruments Act, 1881. The arbitration award dated 03.11.2017 was passed, since no compliance was made by the corporate debtor, the financial creditor was constrained to file an execution petition bearing No.1314/2018. The corporate debtor has committed a default in repayment of debt.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 1,09,78,628.81/- (Rupees One Crore Nine Lakhs Seventy Eight Thousand Six Hundred Twenty Eight and Paisa Eighty One Only) and date of default is 10.03.2017 besides other date when the EMI cheque presented got bounced on its presentation, the last payment towards EMIs and other charges was received on 28.02.2017. Copy of certificate of registration of financial creditor

as NBFC issued by RBI (Annexure A-1), computation sheet along with supporting documents (Annexure A-5), bank account statement (Annexure A-6 & A-7), arbitral award dated 03.11.2017 (Annexure A-8), Loan agreements (Annexure A-9), loan disbursement statement (Annexure A-10), sanction letter dated 30.05.2015 (Annexure A-11), Board resolution (Annexure A-12), Balance sheet (Annexure A-13), Loan Termination-cum-Arbitration Notice (Annexure A-14) is attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 06.01.2020 to show cause as to why this petition be not admitted. The Affidavits of service were filed vide Diary No. 1292 dated 17.02.2020 and Special Diary No.232(A) dated 18.08.2022. On 23.08.2022 none has appeared on behalf of the respondent despite substituted service nor any reply was filed, therefore, respondent has been proceeded against ex parte. The short written submissions have been filed by the applicant vide Diary No.01156/4 dated 18.10.2022.

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 10.03.2017. The present petition is filed vide diary No.5703 dated 17.10.2019. It can be said that the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by copy of certificate of registration of financial creditor as NBFC issued by RBI (Annexure A-1), computation sheet along with supporting documents (Annexure A-5), bank account statement (Annexure A-6 & A-7), arbitral award dated 03.11.2017 (Annexure A-8), Loan agreements (Annexure A-9), loan disbursement statement (Annexure A-10), sanction letter dated 30.05.2015 (Annexure A-11), Board resolution (Annexure A-12), Balance sheet (Annexure A-13), Loan Termination-cum- Arbitration Notice (Annexure A-14) is attached with the main petition.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Sunil Kumar Aggarwal, had been proposed as Interim Resolution Professional (IRP), however, vide IA No.1614/2022, Mr. Bhupinder Sethi was proposed as the new IRP. Therefore, it is deposed by way of affidavit that no disciplinary proceedings are pending against him. Form No.2 dated 16.08.2022 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Bhupinder Sethi are attached at Annexure-B of the application. The Law Research Associate of this Tribunal has checked the credentials of Mr. Bhupinder Sethi, and there is nothing adverse against him. In view of the above, we appoint Mr. Bhupinder Sethi, Registration No.IBBI/IPA-001/IP-P02144/2020-2021/13366, Email: ip.brsethi@gmail.com, Mobile No. 9779194490, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Bhupinder Sethi shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated

24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those

authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that 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. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to

adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

14. The petition is admitted accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

December 22, 2022

SD/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)