NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH (COURT-II)

(IB)-2240(ND)2019

IN THE MATTER OF:

HI-Tech Resource Management Limited
1st Floor, 4A
New Road, Alipore
Kolkata-700027 ...Financial Creditor

VERSUS

Overnite Express Private Limited
11099-C East Park Road
New Delhi-110005 ...Corporate Debtor

Section: 7 of IBC, 2016

Judgment Delivered on: 02.03.2020

CORAM:

CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner	:	Ms. Shalini Sati Prasad and Mr. Meher Tandon, Advocates
For the Respondent	:	Mr. Rishi Manchanda, Advocate

6/3/20

JUDGMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed, under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Hi Tech Resources Management Limited (for brevity 'Financial Creditor') through its authorized representative Mr. Ritesh Saraogi, who is duly authorized vide Board Resolution dated 22.08.2019, with a prayer to initiate the Corporate Insolvency process against M/s Overnite Express Limited (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s Overnite Express Limited is a Company incorporated on 27.11.1986 under the provisions of Companies Act, 1956 with CIN No. U64120DL1986PLC026209, having its registered office 11099-C East Park Road New Delhi-110005.

3. The Authorized Share Capital of the Corporate Debtor is Rs.4,00,00,000 and Paid-up Share Capital of the Company is Rs.42,25,000 as per the Master Data annexed.

4. It is averred by the Financial Creditor that :

"A sum of INR 1,00,00,000/- (Indian Rupees One Crore) was lent and advanced by the Financial Creditor to the Corporate Debtor on 03 May 2018 as and by way of Inter Corporate Deposit.

The said sum was transferred by the Financial Creditor from its bank account maintained with DBS Bank, Kolkata to the Bank Account of the Corporate Debtor bearing A/c No. 01068130000029 maintained with Yes Bank, New Delhi on 03 May 2018 by way of RTGS."

5. The Financial Creditor has submitted that on 06.11.2018 the Corporate Debtor by way of issuance of two Letters expressed its inability to honor the terms of the Inter-Corporate Loan and offered to make re-payment in four installments through four post-dated Cheques of Rs.25,00,000 each provided for re-payment, whereas only one Cheque of Rs.25 Lakh out of the aforesaid four Cheques got honored on presentation and the rest of the three Cheques were dishonored upon presentation due to the remark of 'Funds Insufficient' by the Yes Bank.

6. The Financial Creditor has stated in the Part IV of its Application that the principal amount of default is Rs.75,00,000 along with applicable interest @14% per annum and the date of default is 18.04.2019.

7. That the Financial Creditor has placed the following documents on record to establish existence of the financial debt/default :

(i) Letter dated 02.05.2018 issued by the Corporate Debtor whereby Corporate Debtor had requested Financial Creditor to make the Corporate Deposit of Rs.1,00,00,000 for 187 days @14% P.A.

(ii) Letter dated 03.05.2018 issued by the Financial Creditor with respect to transfer made by the Financial Creditor in favour of Corporate Debtor.

(iii) Demand Promissory Note dated 03.05.2018 issued by the Corporate Debtor in favour of Financial Creditor.

(iv) Copy of Dishonored Cheques issued by the Corporate Debtor in favour of the Financial Creditor, details of which are reproduced below :

Cheque No	Date	Amount (in Rs.)
662625	15.12.2018	25,00,000
662627	05.01.2019	25,00,000
662629	01.02.2019	25,00,000

8. That despite opportunities, Corporate Debtor did not file any reply. That during the course of the arguments, the Corporate Debtor failed to give satisfactory reasons as to why the CIR Process shall not be triggered against it.

9. In the light of above facts and circumstances, the Financial Creditor has been successful in establishing the 'default' of above Rs.1,00,000. This Bench is, therefore, inclined to initiate CIR process against the Corporate Debtor.

10. 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 Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :

"(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."

11. As proposed by the Financial Creditor, this Bench appoints Mr. Anil Tayal as an IRP having IBBI Registration No. IBBI/IPA-001/IP-P01118/2018-19/11818 (Email: caaniltayal@gmail.com and Mobile No. 7982747748), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

12. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will 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.

13. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.

-Sd-
(L. N. Gupta)
Member (T)

-Sd-
(Ch. Mohd. Sharief Tariq)
Member (J)