

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-1724 (PB)/2018

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

In the matter of:

M/s Khanna Jewellers Private Limited

.... Applicant/ Financial Creditor

Vs.

M/s Lifetime Infotech Private Limited

.... Respondents/ Corporate Debtor

Judgment delivered on: 25.09.2019

CORAM:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the Petitioner: Mr. Manik Dogra, Mr. Rohan Jaitley,
Mr. Kapil Rustogi,
Mr. Dhruv Panda, Advocates

For the Respondent(s): Mr. Harsh Sethi,
Mr. Sarvapriya Makkar, Advocates



ORDER

S. K. Mohapatra, Member

1. M/s Khanna Jewellers Private Limited claiming to be the financial creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent company M/s Lifetime Infotech Private Limited, referred to as the corporate debtor.
2. The Respondent company M/s Lifetime Infotech Private Limited (CIN U72200 DL2006 PTC 147242) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 08.03.2006 under the provisions of the Companies Act, 1956. The registered office of the respondent corporate debtor is situated at 3, Munirka Marg, Vasant Vihar, New Delhi – 110057. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal



having territorial jurisdiction over the place is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Mr. Balbir Patyal, duly authorized in terms of resolution of the Board of Director's meeting dated 28.11.2018 of the applicant company, has preferred the present application on behalf of the applicant company for initiation of corporate insolvency resolution process against the respondent corporate debtor under the Code.
4. It is appropriate to mention that the applicant M/s Khanna Jewellers Private Limited is a company incorporated under the Companies Act, 1956 on 09.10.1973 and has its Registered Office situated at 2623-27, Khanna Bhawan, Bank Street, Karol Bagh, New Delhi-110005.
5. The applicant has filed the present application under Section 7 of the Code in the requisite FORM-1 to initiate Corporate Insolvency Resolution Process against the respondent Corporate Debtor. Form-1 filed under Section



7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 shows that the required information and other facts as prescribed have been furnished. The applicant has annexed to the application detail particulars of 'financial debt' including documents, records and evidence of default as required under subsection 3 (a) of the Code. On a bare perusal of the requisite Form 1 reveals that the same is complete in all respect and there is no infirmity in the same.

6. Sub-section (3) (b) of Section 7 of the Code further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Adarsh Sharma, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001/ IP-P01256/ 2018-19 / 12045 resident of J6A, Kailash Colony, New Delhi-110048 with email - id adarsh@adarshca.com. Mr. Adarsh Shamra has agreed to accept the appointment as the interim resolution professional and has signed a communication dated



04.12.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Adarsh Sharma as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has also been satisfied.


7. It is thus seen that the requirement of sub-section (2) of Section 7 of the code stands satisfied as the present application filed under Section 7 is complete. There is also no dispute that no disciplinary proceeding against the proposed IRP is pending.
8. It is the case of the applicant that the present proceeding is the second round of application for initiation of insolvency process against the respondent Corporate Debtor. The earlier application for initiation of Corporate Insolvency Process was withdrawn after the settlement between the Corporate Debtor and the



applicant Financial Creditor was arrived at. The settlement was essentially about restructuring of repayment of financial debts including interest along with execution of Guarantee and Mortgage Deeds on agreed terms in order to secure the debt.

9. It is alleged that the Corporate Debtor again defaulted in repayment of the aforesaid agreed repayment in terms of the Settlement Deed dated 19.02.2018. The background facts leading to the filing of the earlier insolvency proceedings and execution of Settlement Deed dated 19.02.2018 are explained in the application.

10. There is no dispute that the applicant had filed an application under Section 7 of the Code being Company Petition No. (IB) -557 (PB)/ 2017 for initiation of Corporate Insolvency Resolution Process in respect of the respondent company M/s Lifetime Infotech Private Limited. A perusal of order dated 23.02.2018 passed therein shows that both the parties had filed joint application for withdrawal of the petition enclosing Settlement Agreement describing the payment schedule, which was taken on record. The application was



accordingly dismissed as withdrawn in terms of the settlement vide order dated 23.02.2018.

11. It is stated in the application that in furtherance of the Settlement Agreement dated 19.02.2018, certain other deeds and documents were executed between the Financial Creditor and Corporate Debtor which are as follows:

- i. Mortgage Deed dated 19.02.2018 executed by Share Street Pvt. Ltd. in favour of the Financial Creditor.
- ii. Guarantee Agreement dated 19.02.2018 executed between Vinod Saluja and the in Financial Creditor.
- iii. Registration of charge with Registrar 'of Companies and certificate issued in favor of Applicant/ Financial Creditor by M/s Share Street Pvt. Ltd.

12. It is the case of the applicant that as per Clause 1 of the Settlement Agreement dated 19.02.2018 executed between the parties, the Corporate Debtor undertook to repay the Principle Loan amount of Rs. 18,00,00,000/- to



the Financial Creditor in terms of the installments as provided in the Schedule-A of the settlement agreement. The principle amount was contemplated to be paid by way of advance cheques of various amounts starting from 15.03.2015 till 30.10.2020 as stipulated at Schedule-A of the mutually settled agreement.

13. As per Clause 1.1 of the Settlement Agreement, with effect from 01.04.2018, the respondent Corporate Debtor (*Borrower*) was to pay to the applicant Financial Creditor (*Lender*) interest on the outstanding principle amount @ 15 % per annum. As per the agreement interest was required to be paid in terms of Schedule B of the Settlement Agreement.

14. It is the further case of applicant that Clause 3.1 provides for the consequences of the delay or default in respect of principal and interest amount. As per Clause 3.1, any default in payment of two consecutive installments of interest as provided in Schedule B will constitute an *'Event of Default'*. As Per the schedule of payment two interest installments were due and payable on 01.07.2018 and 01.10.2018 respectively. The payment

of interest due and payable on 01.07.2018 was not paid within 45 days of the cure period along with penal interest as stipulated in Clause 3.1. Therefore, it was not rectified in terms of the settlement agreement which resulted in first default. In regard to the interest due and payable on 01.10.2018, it has not been paid since the cheque no. 475555 dated 01.10.2018 was dishonored with remarks 'Insufficient Funds'. The payment of interest due and payable on 01.10.2018 was not paid within 45 days of the cure period along with penal interest and not paid even till date; therefore, it is not rectified and has resulted in second consecutive default as stipulated in Clause 3.1. As such, it is claimed that in terms of the Clause 3.1, the '*Event of Default*' has occurred on 16.11.2018. In terms of the agreement, upon occurrence of the Event of Default the entire outstanding Principal Amount along with Interest and Penal Interest has become due and payable by the Corporate Debtor to the Financial Creditor.

- 15.** At Part IV of the application it is claimed that as on 16.11.2018 an amount of Rs. 17,58,48,320/- including principal, interest and penal interest has become due and



payable. A detailed chart showing working of calculation has been placed on record.

- 16.** The respondent corporate debtor has filed its reply on 07.02.2019. Rejoinder to the reply was filed by applicant on 14.02.2019.
- 17.** We have heard the learned counsels for the parties and have perused the case records.
- 18.** The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code, an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.
- 19.** The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code and precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.



20. In the present case Clause 1.1 of the Settlement Agreement dated 19.02.2018 executed between the parties clearly provides for interest to be charged on the loan amount and as per mutual agreement the loan is recoverable with applicable interest *interalia* from the respondent borrower. The corporate debtor had undertaken the liability to repay the loan along with the agreed interest which has a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest.

21. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*' of the respondent corporate debtor so as to prefer the present application under Section 7 of the Code.

22. The application filed by the applicant financial creditor has to be admitted under sub-section 5 (a) of Section 7 of the code, on satisfaction that:

I. *Default has occurred.*

II. *Application is complete, and*



III. No disciplinary proceeding against the proposed IRP is pending.

23. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

24. The main contention of the respondent is that it does not owe any legally recoverable financial liability to the petitioner financial creditor. In this connection it is seen that the petitioner financial creditor withdrew its first round of litigation as respondent entered in to a Settlement Agreement dated 19.02.2018. In view of the settlement the initial default in repayment of loan was deferred as per the restructure of the payment schedule. Admittedly respondent had issued various cheques towards repayment of the financial debt. There is clear presumption that the cheque had been issued for

payment of a debt and to discharge the liability. There is nothing on record to rebut such presumption. Accordingly, respondent signing the post-dated cheques in favour of financial creditor for repayment of debts and interest clearly remains liable. Such cheques issued by respondent in favour of financial creditor have been dishonoured and accordingly there is an occurrence of default by the corporate debtor.

25. However, before parting various other objections raised by the respondent corporate debtor are discussed below.

26. Respondent has alleged that the disbursement of loan was in violation of Section 186 of Companies Act, 2013 and therefore not a legally recoverable debt. It is also alleged that the disbursement is in violation of different Money Lending Acts and that the mortgage deed is an unstamped and unregistered document and therefore cannot be relied upon.

27. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has



observed that, once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. *The adjudicating authority / tribunal is not required to look in to any other criteria for admission of the application.*

28. Respondent, admittedly titled itself as the borrower and signed the settlement agreement and issued cheques in favour of the applicant financial creditor for the repayment of the debt. The issues raised by applicant like long business relationship, excessive interest, illegal disbursement, market value, agreement one sided, arbitration clause etc. are unrelated issues which are not required to be looked into in the present Section 7 application filed under the Code.

29. The present application is based on the settlement agreement filed before the Adjudicating Authority while withdrawing the earlier Section 7 application. Respondent now cannot be permitted to breach such settlement nor



the fact of dishonour of cheques issued by it can be overlooked. The settlement agreement was entered into subsequent to the initial disbursement of loan, and therefore has nothing to do with the provisions of the Companies Act, 2013. Once there is a debt and default and the application are complete, Adjudicating Authority is bound to admit the application. Any facts unrelated or beyond the requirement of the Code are not required to be considered and such narrations cannot be a ground to reject the application filed under Section 7 of the code.

- 30.** Learned counsel for the respondent further argued that as per clause 3 of the settlement agreement, at best the liability of repayment of the principal and interest could be taken out from the sale proceeds of the mortgaged property on fair market and mutually agreed valuation. In this regard it is seen that the liability of respondent borrower and that of guarantor and mortgagor, is joint and several. Besides respondent borrower has issued various cheques for payment of the debt. Applicant Lender, therefore, is very much within its



right to elect to recover its debt from the respondent borrower alone.

31. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default for at least Rs. 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

32. The corporate debtor is entitled to point out to the Adjudicating Authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim is not due i.e. it is not payable in law or in fact. Respondent Corporate Debtor has miserably failed to raise any good defence against the petition and also has failed to place its updated financial statement to show that no financial debt is due.

33. In the aforesaid background it is seen that the applicant clearly comes within the definition of Financial Creditor. Respondent Corporate Debtor has defaulted to pay the debt in terms of the Settlement Deed dated



19.02.2018. Advance Cheques issued by the respondent in favour of the applicant got dishonored due to 'Insufficient Funds'. The material placed on record confirms that the respondent corporate debtor committed default in repayment of the financial debt. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP.

34. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

35. Mr. Adarsh Sharma having registration number IBBI / IPA-001/ IP-P01256/ 2018-19 / 12045 resident of J6A, Kailash Colony, New Delhi-110048 with email - id adarsh@adarshca.com. is appointed as an Interim Resolution Professional.

36. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lac with the Interim Resolution Professional namely Mr. Adarsh Sharma to meet out the



expenses 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the Financial Creditor.

37. 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.

38. 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.”

- 39.** 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.

40. 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 tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution



Professional would be at liberty to make appropriate application to this 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.

- 41.** 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.


(M.M. KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (T)

Deepak Kumar

Company Petition No. (IB)-1724(PB)/2018