IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 135
CP(IB) 353 of 2020

Order under Section 7 IBC

IN THE MATTER OF:

Ravinder Kumar Agarwal Proprietor of Santosh Fashion ....**Applicant**
V/s
Jay Bharat Fabrics Mills Ltd ....**Respondent**

Order delivered on ..13/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

IN NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

CP (IB) No.353/NCLT/AHM/2020

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter of :

Mr. Ravindra Kumar Agarwal,
Proprietor of Santosh Fashion
Having address at:
D-403, Alok Paradise Vastral,
Ahmedabad-382418 ... **Financial Creditor**

Versus

M/s. Jai Bharat Fabrics Mills Limited
CIN:L17119GJ1988PLC010430,
Having registered Office at:
802, Saffron building Nr. Panchwati five
Rasta, Ambawadi, Ahmedabad,
Gujarat- 380006 .... **Corporate Debtor**

Order reserved on : 07.09.2021
Order pronounced on : 13.09.2021

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

Appearance:

For the Financial Creditor : Ld. Adv. Mr.. Aditya Pandya
For the Corporate Debtor : Ld. Adv. Mr.. Harmish K Shah

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. This application filed by the Financial Creditor, namely, Mr. Ravinder Kumar Agarwal Proprietor of Santosh Fashion against the Corporate Debtor, namely, Jay Bharat Fabrics Mills Limited, for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**). The amount of default has been claimed at Rs. 5,00,000/- and @12% p.a. interest and default date as on 01.01.2020.

2. The facts, in brief, are that the Applicant- Financial Creditor gave a loan of Rs. 5,00,000/- on 12.03.2019 as per MOU dated 12.03.2019 to the Corporate Debtor. However, the Corporate Debtor failed to repay the loan on due date i.e., 31.12.2020. The Financial Creditor issued a Demand Notice on 17.01.2020 by giving three days' time to repay the loan which was not complied with by the Corporate Debtor. Thereafter, the Financial Creditor has filed this application.

3. Learned Counsel for the Financial Creditor appeared and drew our attention to MOU dated 12.03.2019. As proof of

payment, the copy of cheque has also been enclosed. The proof of disbursement has not been disputed by the Corporate Debtor.

4. Learned Counsel for the Corporate Debtor appeared and submitted that due to liquidity crunch and adverse business circumstances payment could not be made.

5. We have considered the submissions made by both the parties and material available on record. It is noted that Corporate Debtor has failed to repay the amount which was given by the Financial Creditor to Corporate Debtor on 12.03.2019 as per MOU dated 12.03.2019. There is an admitted debt which is due and payable both in law and in fact. A default has occurred in the payment thereof. It is also noted that the name of IRP has been proposed vide an affidavit dated 10.06.2021 by changing the name of earlier proposed IRP. The letter of withdrawal of earlier IRP and consent letter of new IRP are on record. The application is otherwise complete and defect free. Hence, all the conditions of Section 7 of IBC, 2016 stand complied with. Consequently, this application is liable to be admitted.

6. Though, we have admitted this application as it meets basic requirements of Section 7 of IBC, 2016. However, we make it clear that at any stage of CIRP, if facts of this application being of collusive nature or filed for purposes other than the insolvency resolution of the Corporate Debtor, this Adjudicating Authority, after taking cognizance of facts/material which may be brought before us in this regard, may pass appropriate orders of admission of Corporate Debtor into CIRP under the provisions of Section 65 of IBC, 2016.

7. We admit this application and pass the following order:

<u>ORDER</u>

I. The Corporate Debtor M/s. Jay Bharat Fabrics Mills Limited, is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.

II. We appoint Mr. Naresh Chanshyamchandra Bheda, Registration No. IBBI/IPA-002/IP-N00953/2019-2020/13009, having address at: B-604, Fairdeal House, Nr. Swastik Cross Road, Navrangpura, Ahmedabad-380009, under section 13(1) (c) of the IB Code as IRP.

III. That the Moratorium under Section 14 of the Code shall come to effect from 13.09.2021 till the completion of 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 Corporate Debtor under Section 33, as the case may be.

IV. That the Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

V. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

VI. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.

VII. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia,* by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

X. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. **50,000/- (Rs. Fifty Thousand)** as fees & expenses till the COC decides about his fees / expenses.

XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

XII. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

8. Accordingly, CP (IB) No. 353 of 2020 is allowed and stands disposed of.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 13th day of September, 2021

Rajeev Kumar Sen/Stenographer