

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – II, CHENNAI**

IBA/49/2019

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **INMA International Limited**

Indian Overseas Bank,

Rep. by its Assistant General Manager,
Cathedral Branch,
No.762, Anna Salai,
Chennai – 600 002.
Through Mr.L.Prabakar,
Assistant General Manager.

... Financial Creditor

-Vs-

INMA International Limited,

Rep. by its Chairman and Managing Director,
Sri.G.Rathinavelu,
No.251 (Old) and 292,
Avvai Shanmugam Salai,
Gopalapuram,
Chennai – 600 086.

... Corporate Debtor

Order Pronounced on 13th April 2022

CORAM:

(PHYSICAL HEARING)

**Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor: Mr.F.B.Benjamin George, Advocate
Ms.Shilpa, Advocate*

For Corporate Debtor: Mr.Sai Krishnan, Advocate

ORDER

**Per: Justice (Retd.) RAMALINGAM SUDHAKAR,
PRESIDENT**

Under Adjudication is an Application that has been filed by

Indian Overseas Bank (hereinafter referred to as '*Financial*

Creditor”) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, ‘IBC, 2016’) r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **INMA International Limited** (hereinafter referred to as ‘*Corporate Debtor*’). The prayer made is to admit the Application, initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a Bank Registered under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its branch office at Chennai. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN:U31300TN1999PLC043708 which was incorporated on 09.12.1999 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.251 (Old) and 292, Avvai Shanmugam Salai, Gopalapuram, Chennai – 600086. As per Part III of the application, the Financial Creditor has proposed the name of one Mr.M.V.Gangadharan, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.14,08,75,444.17/- (Rupees Fourteen Crore Eight Lakh Seventy-Five Thousand Four-Hundred Forty-Four and Seventeen Paise only) is being claimed by the Financial Creditor as the financial debt as on 15.10.2018 along with the future interest. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

4. It is averred in the application that the Corporate Debtor had lastly availed MCC (Miscellaneous Cash Credit) facility to the tune of Rs.13 crore (combination of existing clean cash credit of Rs.5 crore and CCH limit of Rs.8 crore), with permission to avail LC as sub-limit to an extent of Rs.3 crore and inland Letter of Credit to the tune of Rs.6 crore based on sanction letter dated 27.09.2013.

5. It is further averred that the Corporate Debtor has to pay Rs.14,08,75,444.17/-(Rupees Fourteen Crore Eight Lakh Seventy-Five Thousand Four-Hundred Forty-Four and Seventeen Paise only) as an outstanding towards the MCC facility, as on 15.10.2018 with the future interest at a contracted rate to the Financial Creditor. The Statement of Accounts of the above-said facilities are filed in page 316 of the typed set filed by the Applicant.

6. It was submitted by the Learned counsel for the Applicant that the Financial Creditor had caused demand notice dated

27.01.2015, under SARFAESI, Act to the Corporate Debtor with the request to pay a sum of Rs.16,51,98,135.20/- (Rupees Sixteen Crore Fifty-One Lakh Ninety-Eight Thousand One Hundred Thirty Five and Twenty Paise only) as the outstanding amount as on date of notice together with future interest thereon at the contractual rate. Since, the Corporate Debtor has not replied to the demand notice the Financial Creditor had taken possession of the property mortgaged on 28.07.2015 and issued possession notice to the Corporate Debtor, against which the Corporate Debtor has not taken any action, which shows the Corporate Debtor has no grievance against the action of the Financial Creditor.

7. Thereafter, the Corporate Debtor had requested the Financial Creditor to stop the e-auction process vide letter dated 31.12.2015 and to consider the One-time settlement proposed in the letter dated 27.1.2015. Pursuant to that Financial Creditor permitted the Corporate Debtor to operate the account within the existing limit of Rs.11.25 crore (Rupee Eleven Crore Twenty-Five Lakh only) subject to the payment of Rs.5.57 crore (Rupees Five Crore Fifty-Seven Lakh only) along with the approximate interest of Rs.25 lakh (Rupees Twenty-Five Lakh only) on or before 10.01.2016.

8. It was further submitted that the Financial Creditor has not accepted the OTS proposal of the Corporate Debtor and advised

the Corporate Debtor to pay the amount immediately. In turn, the Corporate Debtor has filed S.A.No.20 of 2016 before the DRT-III, Chennai and obtained an order (13.01.2016) against the Financial Creditor to stay all proceedings pursuant to the sale notice dated 19.12.2015, subject to the condition that the CD has to remit Rs.1 crore to the credit of the loan account on or before 24.01.2016 and a further sum of Rs.3.5 crore (Rupees Three Crore Fifty Lakh only) to the credit of the loan account on or before 10.02.2016.

9. It was further submitted that the Corporate Debtor has complied with the above order, but failed to pay the balance amount as undertaken. After that, the Corporate Debtor requested for OTS Rs.14 crore (Rupees Fourteen Crore only) as offered earlier vide letter date 22.08.2016, which was again denied by the Financial Creditor.

10. It was further submitted that the Corporate Debtor nowhere denied avilment of the loan and classification of the loan as NPA and in the series of communication exchanged between the Financial Creditor and the Corporate Debtor, the former demanded to repay the outstanding.

11. It was further submitted that the Corporate Debtor had filed the writ petition WP No.1421 of 2017, against the Financial Creditor regarding mistakes in the CIBIL report which were also

dismissed by the Hon'ble High Court of Madras after rectifying the mistake in the report. In such circumstances, the Financial Creditor preferred this application and sought initiation of CIRP against the Corporate Debtor for the non-payment of the outstanding amount of Rs.14,08,75,444.17/- (Rupees Fourteen Crore Eight Lakh Seventy-Five Thousand Four-Hundred Forty-Four and Seventeen Paise only).

12. On the other hand, the Learned Counsel Appeared on behalf of the Corporate Debtor submitted in the counter that the application OA.No.633 of 2016 filed by the Financial Creditor and the Securitization Application filed by the Corporate Debtor were pending before the DRT-II, Chennai Bench.

13. It was further submitted that in the writ petition WP No.1421 of 2017, the Hon'ble High Court of Madras has given liberty to the Corporate Debtor to claim damages against the Financial Creditor for the mistake the made in the CIBIL score of the Corporate Debtor.

14. Subsequently, the Corporate Debtor filed a counterclaim in C.C.No.6 of 2018 in OA No.633 of 2016 before DRT-II Chennai wherein vide order dated 30.05.2019, DRT held that the Financial Creditor is not entitled to any interest for the financial facilities sanctioned to the Corporate Debtor from the date of sanction till

the date of filing OA No.633 of 2016 and directed the Financial Creditor to adjust the payment made by the Corporate Debtor towards the principal amount from the date of sanction of the financial facilities till the date of the order and if there was any balance in the principal amount, the Financial Creditor is entitled to recover that with the interest at the rate of 6% per annum. The key issue is on the rate of interest.

15. It was further submitted that as per the order passed by the DRT-II Chennai vide order dated 30.05.2019, in C.C.No.6 of 2018 and OA No.633 of 2016 there are no dues or outstanding payable by the Corporate Debtor to the Financial Creditor and hence sought dismissal of this application.

16. It was further submitted by the Learned Counsel for the Corporate Debtor in the written submission that in the appeal preferred by the Financial Creditor against the above said DRT order, the DRAT, Chennai vide its order dated 14.11.2019, held that the Financial Creditor herein is entitled for 9% rate of interest on due amount from the sanction till realisation of the credit facility and rejected the counterclaim of the Corporate Debtor. Aggrieved by the order of DRAT the Corporate Debtor had filed WP.No.33396, 33398 & 33399 of 2019 before Hon'ble High Court of Madras wherein interim injunction has been granted in favour of Corporate



Debtor in the order dated 04.12.2019, which was further extended and still in force.

17. We have heard learned counsel for both parties. On perusal of the documents on record, it can be seen that in the order dated 14.11.2019, passed by DRAT Chennai in RA No.111/2019 it was held as follows

"21. ... in view of the facts and circumstances of this case, the appellant bank is entitled for recovery of interest from the date of sanction till the date of filing OA also @ 9% p.a simple. From the date of order till date of realisation rate of interest is also @ 9% p.a simple. Loss to the bank is the gain for the borrower. The Presiding Officer has rightly rejected the counterclaim treating that relief in interest will be equal to the amount of counterclaim. ..."

It is further seen that in the order dated 04.12.2019, of the Hon'ble High Court of Madras it was held as follows

*"5. In the light of the above facts and circumstances, this Court is of the considered view that a prima facie case has been made out for grant of interim orders for the reason that the petitioner appears to have made substantial payments and despite that further action is contemplated against the properties of the petitioner company, which may result in irreparable loss and grave hardship to him and the balance of convenience as on today lies in favour of the petitioner. Hence there shall be an order of ad-interim injunction, as prayed for till 21.01.2020. However, it is made clear that **till the disposal of the writ petition, the writ petitioners shall not create any third party rights in respect of the properties in question.**"*

On reading the above-said orders, it appears that the dues of the Corporate Debtor is above Rs.1 lakh and the CD had admitted the

default in making payment to the Financial Creditor and the only dispute is the rate of interest that the CD is liable to pay to the Financial Creditor. The order of the Hon'ble High Court of Madras has restrained the creation of any third party interest in respect of the properties of the Corporate Debtor. It will not prevent this Adjudicating Authority from entertaining this application for proof of debt and default. In this regard, it would be relevant to refer the decision in **Suneet Dewan Vs. Shriram Transport Finance Co.** wherein the Appellate Tribunal held that

"6. Learned counsel for the Appellant submitted that there is a dispute about the quantum of payment. However, merely because the Appellant has disputed the claim it will not affect the right of the 'Financial Creditor' to file application under Section 7."

18. From reading Section 7 of the Insolvency and Bankruptcy Code, 2016

"Section 7: Initiation of corporate insolvency resolution process by financial creditor:

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under subsection (2) is complete, and there is no disciplinary 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:"



makes clear that if the Adjudicating authority is satisfied with the default as stated in Section 7(5)(a), it can trigger CIRP against the Corporate Debtor. We may also refer to a decision of the Hon'ble Apex Court in ***Innoventive Industries Ltd Vs. ICICI Bank & Anr***, wherein it was held as follows

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise"

19. It is also relevant to refer to the decision of the Hon'ble Appellate Tribunal in ***Canara Bank v. Deccan Chronicle Holdings Limited***, wherein it was held that

"7. ... 'Moratorium' will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. ..."

This makes clear that the Corporate Debtor will not be prejudiced to proceed further with the pending writ petition in the Hon'ble High Court of Madras.

20. With the aforesaid observations and considering the facts and circumstances of the case as well as the position of Law, we

are of the view that the debt and default is clear from para 9 above. Thus, the Application filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

21. The Financial Creditor has proposed the name of one **Mr. Mudappallur Varieth Gangadharan**, having Registration Number **[IBBI/IPA-001/IP-P00438/2017-2018/10761]**, (**e-mail ID: mvgfca@gmail@gmail.com**) as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

22. As a consequence of the Application being admitted in terms of Section 7 of the IBC, 2016, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice RAMALINGAM SUDHAKAR
Hon'ble PRESIDENT

Gopishankar D