THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH

(through web-based video conferencing platform)

IA No.935/2020
And
CP(IB) No.275/Chd/PB/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:-
M/s Intec Capital Limited

CIN: L74899DL1994PLC057410

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

E-mail:- complianceofficer@inteccapital.com, IBC@Inteccapital.com

…Financial Creditor

Versus

M/s Ten K Overseas Limited

CIN: U51909PB2010PLC033732

VPO Ramgarh, Chandigarh Road, Ludhiana, Punjab- 141010

Email:- nikhil306@hotmail.com

…Corporate Debtor

Judgment delivered on 22.04.2022

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

Present through Video Conferencing :-

For the Petitioner-Financial Creditor	:-	Mr. G.S. Sarin, Practicing Company Secretary

Respondent-Corporate Debtor proceeded ex-parte vide order dated 26.11.2021

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

CP(IB) No.275/Chd/PB/2020

1. The instant petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the '**Code**') read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the '**Rules**') by Intec Capital Limited (for short hereinafter referred to as the '**financial creditor-petitioner**') for initiating Corporate Insolvency Resolution Process (CIRP) against Ten K Overseas Ltd. (for short hereinafter referred to as the '**corporate debtor-respondent'**). The present petition has been filed in Form 1 as prescribed in Rule 4 (1) of the Rules. The petition is supported by affidavit of Mr. Chandan authorized signatory for the financial creditor. The board resolution authorizing filing of the petition under Section 7 of the Code has been annexed as Annexure A-3 to the petition.

2. The respondent-corporate debtor namely Ten K Overseas Ltd. having CIN: U51909PB2010PLC033732 is a company incorporated on 25.03.2010 having its registered office at VPO Ramgarh, Chandigarh Road Ludhiana, Punjab, 141010, and therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the respondent-corporate debtor has been annexed as Annexure A-2 to this petition

3. The brief facts as stated in the petition is that in the month of February 2011, the petitioner-financial creditor was approached by respondent-corporate debtor through its promoter/shareholders/directors/representatives, who submitted an application for the purpose of availing loan facility for their business. Pursuant to the

discussions between the parties and based on the representations made, information provided through documents and assurances given regarding timely repayment of all money due along with agreed interest by the respondent-corporate debtor, the petitioner-financial creditor agreed to sanction and disburse loan/financial facility of Rs.3 Crores to the respondent-corporate debtor and other co-applicants. Accordingly, sanction letter dated 25.02.2011 (Annexure A-12) was issued. Thereafter, the respondent-corporate debtor executed a loan agreement dated 18.03.2011 (Annexure A-9) along with other transitional documents for availing the loan/financial facilities and subsequent to the execution of the aforesaid agreement, the loan amount of Rs.3 Crores to the respondent-corporate debtor.

4. It is stated that as per the terms and conditions of the Loan Agreement dated 18.03.2011 and the sanction letter, the loan of Rs. 3 Crore was granted for a period of 48 months at an interest rate of 7.75% per annum on reducing basis and the respondent-corporate debtor was required to repay the said loan in 48 equally monthly instalments of Rs.8,18,750/- (Rupees Eight Lac Eighteen Thousand Seven Hundred and Fifty only) which fell due on the 16th day of each calendar month starting from April, 2011. It is further stated that as per the terms agreed between the parties, the respondent-corporate debtor duly handed over post-dated cheques to the petitioner-financial creditor towards the repayment of loan. However, subsequent to the disbursement of the loan facilities since inception of granting financial facility by the petitioner-financial creditor, the respondent-corporate debtor failed to maintain adequate amount in the bank account as a result of which the cheques were dishonoured by the banker and the payments were not made to the petitioner-financial creditor as per repayment schedule.

5. It is further stated that the respondent-corporate debtor through its representatives approached the petitioner-financial creditor and expressed its/their inability to pay the monthly EMI of Rs.8,18,750/- principally and originally agreed in the loan agreement and thus, failed to honour the monthly EMIs. Thereafter, the respondent-corporate debtor submitted its representation requesting the petitioner-financial creditor to restructure the repayment schedule for a further period of 60 months and accordingly, EMIs for first 6 months were agreed to Rs.4,50,000/- each, next 6 months Rs.5,00,000/- each and for remaining 48 months the EMIs were agreed to Rs.7,47,000/- each starting from 16.01.2012 to 16.12.2016, however, the respondent-corporate debtor miserably failed to comply with the requisites and failed to honour the terms of payment according to Addendum-cum-Deed of Settlement dated 22.03.2012 (Annexure A-10) and thus, according to the petitioner-financial creditor the deed stands automatically terminated without any notice and the respondent-corporate debtor is liable for all legal consequences.

6. It is alleged that the respondent-corporate debtor had mischievously and intentionally entered into the agreements and issued cheques with ulterior designs and the same showed the corporate debtor's intention to commit and perpetuate fraud and the petitioner-financial creditor made repeated requests to the respondent-corporate debtor, however, despite repeated requests, the respondent-corporate debtor failed to regularize the loan account and by not making the payments as per the agreed repayment schedule, the respondent-corporate debtor wrongfully withheld the legitimate monies owed to the petitioner-financial creditor, thereby causing wrongful gain to itself and wrongful loss to the petitioner-financial creditor. Thus, the petitioner-financial creditor was compelled to recall the loan

agreement dated 18.03.2011 and Addendum-cum-Deed of Settlement vide loan recall notice-cum-arbitration notice dated 01.08.2014.

7. According to the petitioner-financial creditor after considering total loan amount, payments received, overdue instalments, principal outstanding, interest on delayed payments and other charges as per the agreed terms and conditions under various transitional documents, a sum of Rs.9,71,44,072/- (Rupees Nine Crore Seventy One Lac Forty Four Thousand and Seven Two only) as on 30.06.2020 stands due and payable. Thus, the non-payment by the respondent-corporate debtor of the scheduled instalments for repayment of amounts owed to the petitioner-financial creditor has resulted in default and the total amounts outstanding to the respondent-corporate debtor is a financial debt, thereby making the petitioner a 'financial creditor' under the provisions of the Code.

8. In Part-IV of Form-1, total amount claimed to be in default is stated to be Rs.9,71,44,072/- as on 30.06.2020. It is stated in Part-IV that the default occurred on various dates when the monthly EMI presented by the petitioner-financial creditor got dishonoured. It is also stated that respondent-corporate debtor also approached the petitioner-financial creditor to settle the matter multiple times over the years, but with unjust offer and last letter & e-mail acknowledging the debt was on 13.07.2020 (Annexure 16). The record of default, as mentioned in Part-V of Form-1, available with the Information Utility has been annexed as Annexure 8.

9. Notice in this petition was issued to the respondent-corporate debtor on 16.07.2021. In pursuance of order dated 16.07.2021, affidavit of service was filed by the petitioner-financial creditor vide Diary No.01270/2 dated 09.09.2021, wherein

it was stated that service through speed post on the respondent-corporate debtor could not be effected and the speed post had been returned undelivered, however, e-mail had been served on the e-mail address of the respondent-corporate debtor, as mentioned in master data available on the website of MCA. In the said affidavit, it has been deposed by authorized representative of the petitioner-financial creditor that the said e-mail had been delivered to the respondent-corporate debtor and the same has not been bounced back. Further, in compliance with the directions issued vide order dated 16.07.2021, the petitioner-financial creditor had also published the notice of hearing on 23.08.2021 in three daily newspaper, namely 'Financial Express' (English), 'Jansatta' (Hindi) and 'Punjabi Jagran' (Punjabi). However, none appeared on behalf of the respondent-corporate debtor and therefore, the respondent-corporate debtor was proceeded against *ex-parte*, vide order dated 26.11.2021.

10. We have heard Mr. G.S. Sarin, Practicing Company Secretary, for the petitioner-financial creditor and have carefully gone through the records.

11. The Authorized Representative for the petitioner-financial creditor has relied upon a decision of the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank and Another; (2018) 1 Supreme Court Cases 407,*** wherein it has been held as under:-

> *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate*

debtor itself or a financial creditor or financial creditor. A distinction is made by the Code between debts owed to financial creditors and financial creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an financial creditor means a person to whom an financial debt is owed and an financial debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an financial creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the financial debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the financial creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the financial creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in 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."*

12. Section 7(5) (a) of the Code reads as under:-

"(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; or
(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:
Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority."

Section 7(5) of the Code provides for admission of the application where the Adjudicating Authority is satisfied that (a) a default has occurred; (b) the application under sub-section (2) of Section 7 is complete; (c) there is no disciplinary proceedings pending against the proposed Resolution Professional. The satisfaction of the three conditions is being examined below.

13. The first condition is that a default has occurred. From the facts narrated above and documents relied upon by the Petitioner, we find that the default has occurred.

14. The second condition is that the application under Section 7(2) is complete. No objections in this regard were raised during the hearing of the petition. We have discussed the contents of the application above and in absence of any rebuttal to the facts, we conclude that the application is complete.

15. The third 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. Vivek Bansal, Registration No.IBBI/IPA-001/IP-P-01475/2018-19/12249, has been proposed as Interim Resolution Professional by petitioner-financial creditor. Form 2 dated 23.07.2020 filed by the proposed Interim Resolution Professional has been annexed as Annexure 5 to the petition, wherein Mr. Vivek Bansal has certified that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of ICAI. He has also affirmed that he is eligible to be appointed as a Resolution Professional in respect of the corporate debtor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporation Persons) Regulations, 2016.

16. In this background when facts have remained unrebutted and further in view of the satisfaction of the conditions provided for in Sections 7(5) of the Code, the petition for initiation of CIRP in the case of M/s Ten K Overseas Limited, is admitted and accordingly, we declare the moratorium in terms of Section 14 of the Code, and 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; 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.

17. 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 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor. 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 corporate debtor under Section 33 as the case may be.

18. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vivek Bansal and there is nothing adverse against him. In view of the above, we appoint Mr. Vivek Bansal, bearing Registration No.IBBI/IPA-001/IP-P-01475/2018-2019/12249, E-mail: irp.vivekbansalca@gmail.com, M:- 9815869228, 9814400622, as the Interim Resolution Professional.

19. The following directions are issued in respect of the appointment of the Interim Resolution Professional: -

i.) The term of appointment of Mr. Vivek Bansal, shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) The petitioner-financial creditor is directed to deposit an amount of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) with the

Interim Resolution Professional to meet the immediate expenses of the CIRP, within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors to the financial creditor to be recovered as the CIRP costs.

iii.) 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 inventory of assets of the Corporate Debtor;

iv.) 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 moral;

v.) 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;

vi.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all co-operation 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;

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee;

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

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

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This application has been filed by the applicant-financial creditor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking direction of restraining the respondent-corporate debtor from alienating the moveable/immovable/stock of the corporate debtor.

In view of above order of admission and initiation of CIRP proceedings against the respondent-corporate debtor passed in CP(IB) No.275/Chd/PB/2020, the instant application has been rendered infructuous and the same is disposed of accordingly.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

April 22nd, 2022
MK