

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No. 421/7/NCLT/AHM/2019

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 24.03.2021

Name of the Company:

Usmangani Habibbhai Kasmani

V/s

Shreeya Peanuts Pvt Ltd

Section:

7 of the Insolvency and Bankruptcy Code, 2016

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)

Dated this the 24th day of March, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No.421/7/NCLT/AHM/2019

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

In the matter of:

Mr. Usmangani Habibbhai Kasmani
Bungalow No.2, Panchratna, Vihar,
Near Sai Baba Temple, Ever-Shine City,
Vasai (E), Thane, Maharashtra – 401202,
India.

... Petitioner/Financial Creditor

V/s.

M/s. Shreeya Peanuts Private Limited,
N.H. No.8B, Nr. Pipaliya Toll Naka,
Pipaliya – Gondal Road,
Gondal, Rajkot,
Gujarat – 360311.

... Respondent/Corporate Debtor


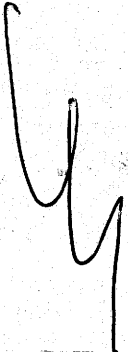
**Date of Hearing: 15th March, 2021
Date of Pronouncement: 24th March, 2021**

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Learned Senior Counsel Mr. Rasesh Sanjanwala, for the
Petitioner/ Financial Creditor.

Learned Senior Counsel Mr. Navin Pahwa, for the Respondent/
Corporate Debtor.



[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)

1. Mr. Usmangani Habibbhai Kasmani filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against M/s. Shreeya Peanuts Private Limited, the Corporate Debtor to initiate Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the financial debt of Rs.5,09,33,204/-.
2. The following facts are not in dispute.
3. On 10.07.2015, the petitioner (the financial creditor) was appointed as the director of the Corporate Debtor on two conditions (i) he would pay a sum of Rs.1,66,50,000/- towards purchase of 33.33% shares of Corporate Debtor and (ii) he will infuse fund of Rs.5,75,000/- by way of unsecured loan. It is also not in dispute that the Petitioner approached the Bassein Catholic Bank Limited and took a loan of Rs.5,00,00,000/- by giving instruction to the bank to transfer the above loan amount directly in the account of the Corporate Debtor. He undertook to repay the loan in 84 equal monthly installments of Rs.8,82,632/-. It is also not in dispute that the Petitioner was to get Rs.8,00,000/- per month as remuneration as a director and also towards the repayment of the interest of the loan amount.

4. It is the contention of the petitioner that till May 2017, the Corporate Debtor paid him amount towards remuneration and interest of the loan. Thereafter, it committed default in paying so. Hence, this application is filed to start the Corporate Insolvency Resolution Process of the Corporate Debtor.
5. The Corporate Debtor has been served with the notice of this application. It has appeared through one of its director Mr. Abhay Thummar. He filed affidavit in reply.
6. We have gone through the contentions of the Corporate Debtor in affidavit in reply. In Para 7.11 of the affidavit in reply. The Corporate Debtor admitted that the Petitioner has, indeed, infused the fund of Rs.5,75,00,000/- as unsecured loan through own funds and by way of loan through a Bank which was directly remitted to the Corporate Debtor.
7. The Corporate Debtor had contended in its defense that the Petitioner and one Mr. Dahyabhai Thummar had entered in business of Civil Construction (developing and plotting etc.), Some dispute arose in between them. The Petitioner has filed a commercial suit for specific performance of Memorandum of Understanding dated 25.09.2019, which was executed in between the partnership

firm and the petitioner. It is still pending. Pointing of above dispute in detail, the Corporate Debtor contended that in view of the long standing commercial relations and the dispute in between the Petitioner and Mr. Dahyabhai, the Petitioner cannot be a Financial Creditor of the Corporate Debtor. The Corporate Debtor contends that this application under Section 7 is not maintainable due to that dispute.

8. We heard the Learned Sr. Counsel Mr. Sanjanwala for the Petitioner / Financial Creditor and the Learned Sr. Counsel Mr. Navin Pahwa for the Corporate Debtor at length. We have gone through the evidence and material on record.
9. At the outset, we make it clear that the dispute between petitioner and one Mr. Dahyabhai Thummar vis-a-vis their partnership by name - Galaxy Enterprise has no relevance as far as this proceeding is concerned. The Corporate Debtor was never the party in that dispute at any point of time. The fact remains to be admitted is that the Petitioner procured 33.33% shares of the Corporate Debtor. He was appointed as the Director of the Company on condition that he to bring in the business by way of unsecured loan to the extent of Rs.5,75,00,000/-. It is also not in dispute that the Petitioner did infuse the amount as the loan by taking personal loan from Bassein Catholic Co-Op. Bank Limited. In view of the above admitted facts,

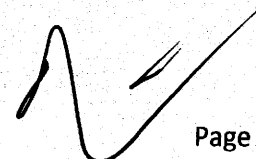
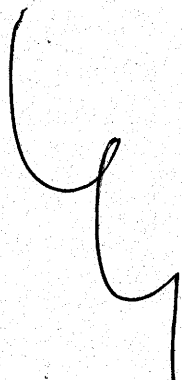
we fail to understand and appreciate the Corporate Debtor's defense that the Petitioner is not Financial Creditor of the Corporate Debtor. We reject this defense in Toto.

10. These takes us to consider whether the Corporate Debtor committed default in paying the Financial Debt?
11. It is not in dispute that the Petitioner was to get sum of rupees eight lakhs per month from the Corporate Debtor towards his remuneration and towards the interest to be paid by him on the loan. The fact is also admitted that nothing was received from the Corporate Debtor since May 2017 (letters to the bank at Annexure B and Annexure C). It is not in dispute that from 29.05.2017, the Corporate Debtor stopped paying the Petitioner sum of rupees eight lakhs per month towards remuneration and interest of loan amount. We hold that the Corporate Debtor committed default in paying the debt in form of un-secured loan by the Petitioner to the Corporate Debtor. That amount is more than rupees one lakh (i.e. the threshold limit of the debt amount stated under Section 4 of the Insolvency and Bankruptcy Code, 2016 to initiate the Corporate Insolvency Resolution Process). From the above facts we hold that the Corporate Debtor has committed a default in paying the debt

12. The Financial Creditor suggested name of one Mr. Sunil Kumar Agarwal, having registration number: IBBI/IPA-001/IP-P01390/2018-2019/12178 for the appointment as the Interim Resolution Professional against whom, no disciplinary proceedings pending.
13. The application is defect free and, hence, we direct the Corporate Debtor to be admitted in CIRP by following order:

ORDER

1. The Corporate Debtor, **M/s. Shreeya Peanuts Pvt. Ltd.** is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.
2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - 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;



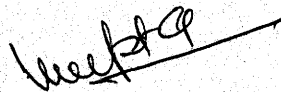
- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
4. We hereby appoint **Mr. Sunil Kumar Agarwal**, having **Registration No. IBBI/IPA-001/IP-P01390/2018-2019/12178**, **Office Add: 98, Vardhan Towers, near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad - 380014**, **email: Anil91111@hotmail.com**, to act as an **Interim Resolution Professional** under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.

5. 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 under Section 19 of the Code extending 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, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
6. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate

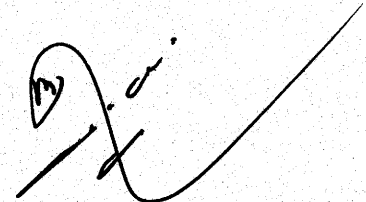
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Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

9. The Registry is directed to communicate a copy of 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 seven working days and upload the same on website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.421/7/NCLT/AHM/2019** stands admitted.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)