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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH- III**

CP-IB-619/ND/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF

M/s Intec Capital Ltd

...Financial Creditor/Applicant

Versus

M/s Jagtar Singh and Sons Hydraulics Private Limited

...Corporate Debtor/ Respondent

MEMO OF PARTIES

**M/s Intec Capital Ltd.
708, Manjusha Building
57, Nehru Place
New Delhi- 110019**

...Financial Creditor/Applicant

Versus

**M/s Jagtar Singh and Sons Hydraulics Private Limited
C-1/ B Mansarover Garden,**

Ue



[Handwritten signature]
4/9/19

New Delhi- 110015

...Corporate Debtor/Respondent

Coram:

R. VARADHARAJAN,
Hon'ble Member (JUDICIAL)

K.K. VOHRA,
Hon'ble Member (TECHNICAL)

Counsel for the Petitioner: Mr. Shrey Painaik (Advocate)

Counsel for the Respondent: Mr. Inderjeet Singh (Advocate)

ORDER

Delivered on: 03.09.2019

1. This is an application which has been filed by the Applicants under the provisions of Insolvency and Bankruptcy Code, 2016 who claim to be the Financial Creditor (FC) of the Respondent Company which has been termed as the Corporate Debtor (CD). The transaction leading to filing of the present Application as reflected in the Application is stated to be as under:

a. The FC had been approached by CD for availing a Loan for purchase of assets (Machinery) for an aggregate principal amount of Rs.3,18,00,000/-. On the basis of



the documents and information given to the FC and the confidence shown to repay the loan amount, the loan application of the CD was approved.

- b. A Sanction letter dated 22.3.2013 was issued and the FC entered into a Loan Agreement with the CD bearing No.012/920/LNPIT00712-130002234 dated 28.3.2013. The said loan was disbursed on 30.3.2013 vide Cheque No.333738 and 083168. The CD was to pay the Monthly EMIs to the FC in 5 years in 60 installments along with an Interest Rate of 13.746% per annum.
- c. The said amount of monthly EMI of Rs.7,27,425/- was to be paid by CD on 1st of each month till the next five years starting from 01.05.2013. The CD started repaying EMIs for the loan from 01.5.2013 as per the payment schedule and thereafter the CD started making defaults in the repayments.
- d. The total amount including overdue EMIs and other charges was Rs.41,66,428/- up to 31.5.2016. The CD re-approached the FC for a fresh loan equivalent to overdue EMIs and other charges and a fresh sanction was given to the CD vide letter dated 31.5.2016 for Rs.41,32,383/-. The said loan Agreement bearing No.LNPIT03516-170006753 was to be repaid by 36 EMIs of Rs.1,57,818/- each starting 5.7.2016. The Security provided for this loan was in the form of exclusive Hypothecation of the existing Machinery of the CD.
- e. The remaining EMIs of loan Account No. LNPIT00712-130002234 dated 28.3.2013 of Rs.7,27,425/- was to continue as per initial loan agreement. Even after issuing Loan Recall Notice dated 14.7.2017 for original loan for which 13 EMIs had become due, the CD failed



to pay the same and even started defaulting on the second loan.

- f. The cheques issued by the CD for the first loan were dishonored against which the FC filed 6 complaints under the Negotiable Instruments Act, 1881 which is under adjudication with the CMM Saket District Court, Delhi. Further, Arbitration proceedings are also pending in the case of original loan.
- g. The cheques issued by the CD under the second loan agreement also dishonored which was for an amount of Rs.41,32,383/- against which the FC issued a notice under Section 138 of the Negotiable Instruments Act 1881 to the CD and Co-borrowers.
- h. By not making the payment of the installments after repeated requests the CD has constituted the 'act of defaults' as defined under the Agreement.
- i. The FC has stated in its petitioner that the CD has become commercially insolvent and is unable to pay its debt. As a result, it is a fit case for initiation of the Corporate Insolvency Resolution Process (CIRP) of the CD.

2. The contentions made by the Corporate Debtor (Respondent) in the reply filed on 07.06.2019 are as follow:

- a. The present Application filed by the Applicant/ FC is an abuse of the process of law as the same has been filed with malafide intention.
- b. The Respondent states that, the FC has already invoked the Provisions of Arbitration and



Conciliation Act, 1996 and elected Arbitral Tribunal as First Forum for adjudication of disputes unilaterally under the Standard Agreement. The FC has initiated Arbitration Proceedings in respect of Loan Account Bearing Number LNPIT00712130002234 (First Loan Account) which is pending adjudication and the said fact has not been placed before the Hon'ble Tribunal for the reasons best known to the Financial Creditor.

- c. The CD intimated the Financial Creditor not to file up any ECS to its erstwhile Account No. 31865798221 maintained with the SBI branch at Nehru Place, New Delhi. The CD also requested to change the mandate of ECS to the other bank as its account was already declared as NPA because of which electronic clearing could not be honored towards repayment of loan.
- d. There is no default in respect of Second Loan as the CD has been regularly paying equated monthly installments.
- e. The cheques which according to FC were dishonored in respect of second loan account are false as the same was transferred by way of NEFT afterwards; therefore there is no default attributable to CD.

3. Since the CD had agreed to pay monthly installments as per agreement dated 28.03.2013 and it failed to pay several monthly installments resulting in a default of Rs. 1,42,63,397 for the First Loan Agreement on date 16.12.2019 and Rs. 13,02,531 including overdue interest and other charges for Second Loan Agreement. Since facts clearly disclose the existence of default as defined under 3(12) of IBC, 2016 on the part of the CD in relation

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to a Financial Debt owed to the FC, the Petition is liable to be admitted.

4. The Petitioner has proposed Mr Piyush Moona, registered with Insolvency Professional Agency of Institute of Cost Accounts of India having registration number IBBI/IPA-001/IP-P00990/2017-18/11630, as the Interim Resolution Professional (IRP) and a 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. The IRP appointed shall take 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.
5. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under the 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 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

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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.”

6. However during the pendency of the moratorium period in terms of Section 14(2) 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 moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

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

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



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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."

8. Based on the above terms, the Application stands admitted in terms of Section 7 of the Code and the Moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent 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 copy of this order forthwith by the Registry.

-Sol-

(K.K. VOHRA)
MEMBER (TECHNICAL)



-Sol-
08/09/2019

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

[Signature]
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
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