

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

TCP No. 1 of 2021

CP/114/2003

(On the file of the Hon'ble High Court of Madras)

*In the matter of **Hindustan Photo films manufacturing Company
Limited***

Canara Bank

Head Office
Debenture Trustee Department
Executor, Trustee and Taxation Section
BGSE Towers
51, 1st Cross, JC Road
Bangalore

..... Applicant

-Vs-

Hindustan Photo Films Manufacturing company Limited
Indu Nagar
Ooctacammand
The Nilgiris- 643005

..... Respondents

Order Pronounced 7th January, 2022

CORAM :

**R.SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant : Mr. Ravi, Advocate
For Respondents : M.L.Ganesh, Mr. N. Somasundar
Mr. Dev Eshwar, Mr.Siddartha Muraka,
Advocate.*

ORDER

Per: R.SUCHARITHA, MEMBER (JUDICIAL)

This Application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to as IBC, 2016") by Canara Bank (hereinafter called as "Financial Creditor") for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz, M/s Hindustan Photo Films Manufacturing Company Limited (hereinafter called as "Respondent").

2. In Part-II of the Application, the only the name and the Registered office of the Corporate Debtor is only mentioned. The Address of the registered office of the Corporate Debtor is mentioned as Indhu Nagar Udhagamandalam, Tamil Nadu- 643 008.

3. The Corporate Debtor herein is a Public Sector Enterprise which Is a 100% subsidiary of Union of India had established a factory under the Ministry of Heavy Industries in the year 1967 for the purpose of constructing an Industrial Plant for manufacture of photographic films.

4. From Part-IV of the Application, the total amount claimed in default is **705,35,73,814/-**-(Rs. 30,24,90,000/- towards principal

and 675,10,83,814/ towards interest at 13% per annum compounded on a half yearly basis).

5. The relevant facts to decide this Application on merits are listed below:-

1. The Petitioner is the Debenture Trustee of Hindustan Photo Films Manufacturing Ltd., (hereinafter referred to as the Company) who had issued 13% Non Convertible Debentures of Rs.1000/- each aggregating to Rs.128 Crores to the below mentioned Debenture Holders during 1988 and the due date for the said redemption of the said debentures was indicated as 1995.

2. Further, For securing the said bonds and loans availed from the lenders, the Company had executed security agreement/s securing the properties situated at Ooty consisting of 12.19 acres and at Ambattur consisting of 4.49 acres in the State of Tamil Nadu by creating security interest in favour of the Petitioner as the Debenture Trustee supported by various Debenture Trust documents executed by the Corporate Debtor. In terms of the said agreements/s, the Corporate Debtor raised funds against debt securities with an express undertaking that

it shall redeem the said amounts in accordance with the terms and conditions of the above said agreements.

3. The Respondent Company had availed Working Capital Credit limits from the State Bank of India Consortium for which second charge over the subject properties have been extended.

4. The Corporate Debtor failed to pay the remuneration to the Debenture Trustees, as agreed by the Corporate Debtor under their Debenture Trust Deed. The Corporate Debtor had also failed to repay the credit limits availed from the above mentioned Lenders.

5. The said Corporate Debtor became sick unit, a reference was made to the Board for Industrial and Financial Reconstruction (BIFR). In the year 2003, BIFR by its order dated 31.03.2003 took the view that the Corporate Debtor should be wound up as it didn't have a viable future. The BIFR had forwarded the said order to the Hon'ble High Court of Madras and the same was numbered as C.P. No 114 of 2003.

6. The Corporate Debtor preferred Appeal No.98 of 2003 before the Appellate Authority (AAIFR). The AAIFR vide order dated

07.06.2005 dismissed the said Appeal and upheld the order passed by the BIFR.

7. The Corporate Debtor challenging the said order of the AAIFR had filed a Writ Petition in WP.No.20017/2005. The Hon'ble High Court by order dated 29.08.2015 dismissed the Writ Petition and upheld the order passed by BIFR.

8. Proceedings were initiated by the Debenture trustee holders and the secured working capital lenders against the Corporate Debtor herein under the SARFESI Act and section 13(2) demand notice was sent to the Corporate Debtor for a claim amount of Rs. 18756,58,00,000/- with interest thereon for a period of 60 days. Since No response from the Corporate Debtor, possession notice was issued on 15.12.2016 and symbolic possession of the property situated in Ambattur, Chennai was taken.

9. The Petitioner had filed Application C.A. No.429/2019 for transferring C.P. No.114/2003 to the Tribunal, Chennai Bench to initiate Corporate Insolvency Resolution Professional under the IBC, 2016. The Hon'ble High Court of Madras had allowed the transfer of C.P. No.114/2003 in C.A. No.429/2019 on

18.05.2020. Further, Hon'ble High Court of Madras had directed the Official Liquidator to file the report.

6. The Ld. Counsel for the Applicant submitted that, this is a clear case of debt and default could be ascertained as the Board for Industrial and Financial Reconstruction vide order dated 03.01.2003 had directed the Winding up of the Corporate Debtor.

7. No Counter statement has been filed by the Respondents herein.

8. Heard, the submissions of both the parties and perused the documents including the pleadings placed on record and on comprehensively hearing both the parties, this Tribunal is satisfied that, in this said Application, a clear case of debt and default has arisen.

9. This Tribunal also places on record the order of the Board for Industrial and Financial Reconstruction (BIFR) dated 30.01.2003.

10. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

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.

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.

11. The Financial Creditor has proposed the name of **MR.C.PRABAKARAN**, Reg. No. *IBBI/IPA/-001/IP-P01596/2018-2019/12444* (email id:- gkecpn@gmail.com) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 11.01.2022. The proposed IRP who is appointed shall 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

12. As a consequence of the Application being admitted in terms of Section 7 of the Code, 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 respondent 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 respondent 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 respondent 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 respondent.

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;

13. However during the pendency of 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.

(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 arrangement 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.

14. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which 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:

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.

15. 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 Financial Creditor 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 Interim Resolution Professional above named shall also be furnished with copy of this

Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita Varshini.