

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMNABHA SWAMY- MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA -MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 27.09.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 356/7/HDB/2019
NAME OF THE COMPANY	RCI Cash Management Pvt Ltd
NAME OF THE PETITIONER(S)	Pashupati Mechandise Pvt Ltd
NAME OF THE RESPONDENT(S)	RCI Cash Management Pvt Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Savani Desraj Shreyas Singh	Adv	9963182052	
Breetham Kumar Reddy for Chandha Gupta	Advocate for Respondent	9100583252	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order pronounced in the open Court.

Vide separate order.



MEMBER TECHNICAL



MEMBER JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.356/07/HDB/2019
U/s. 7 of the Insolvency & Bankruptcy Code, 2016,
Read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of:-

M/s. RCI Cash Management Services Private Limited

Between:-

Pashupati Merchandise Private Limited,
219C Old China Bazar Street,
Room No. B/1, Kolkata,
West Bengal – 700 001.

...Petitioner/
Financial Creditor

And

M/s. RCI Cash Management Services Private Limited,
RCI House, 1st Floor,
Survey No.83, Near Kompally,
Railway Bridge, Kompally,
Secunderabad, Telangana – 500 014.

...Respondent/
Corporate Debtor

Date of Order: 27.09.2019

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsels present:-

For the Petitioner/Financial Creditor:

Ms. Sravani Desiraju & Mr. G. Sai Prasanna, Counsels.

For the Respondent/Corporate Debtor:

Ms. Shraddha Gupta & Mr. Akash Varma K, Counsels.

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. Under consideration is a Company Petition filed by M/s. Pashupati Merchandise Private Limited (in short Petitioner/Financial Creditor), a Company registered under the Companies Act, 1956 and having its registered office at 219C, Old china Bazar Street, Room No. B/1, Kolkata – 700 001 against M/s. RCI Cash Management Services Private Limited

(in short Respondent/Corporate Debtor), a company registered under the Companies Act, 1956 having its registered office at RCI House, 1st Floor, Survey No. 83, Near Kompally Railway Bridge, Kompally, Secunderabad – 500 014 under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code 2016) r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short IB Rules 2016).

2. Brief facts of the present Application are as under:
3. That M/s. Vantage Vinmay Private Limited provided an amount of Rs. 1,79,50,000/- towards unsecured loan and the same was disbursed in different tranches from 23.10.2013 to 08.09.2014 to the Corporate Debtor. Subsequently the said M/s. Vantage Vinmay Private Limited was amalgamated with the financial creditor herein and according to the scheme of amalgamation, the assets and liabilities of M/s. Vantage Vinmay Private Limited stood transferred to the Financial Creditor. It was agreed by the Corporate Debtor that the loan amount will be paid in three years with interest @12% p.a. However, no payments have been made to the financial creditor. Upon verification of the accounts of M/s. Vantage Vinmay Private Limited, it was found that the said company provided a loan of Rs. 1,79,50,000/- and as on date a sum of Rs. 1,35,50,108/- is outstanding from the Corporate Debtor. The corporate debtor has also confirmed the outstanding loan amount as on 01.04.2016. However, even after repeated reminders, the Corporate Debtor has not made payments and it is deemed that the Corporate debtor is unable to pay its debts.
4. The learned Counsel for the petitioner/Financial Creditor while reiterating the above, submitted that the Respondent/Corporate Debtor is unable to pay its debts and therefore he has no other option except approaching this Adjudicating Authority under I & B Code seeking an order for commencing the Corporate Insolvency Resolution Process and

prayed for an appointment of IRP to take over the affairs of the Respondent/Corporate Debtor.

5. One of the directors of the Corporate Debtor who is holding 50% of the shares of the Corporate Debtor has filed a counter inter-alia stating as under:
6. That his role in the company was only limited to that of an Investor Director. The other whole time and executive director viz Shri. Sudip Kumar was the in-charge of the day to day affairs of the Company and the responding director was looking after the working capital and corpus requirements of the Corporate Debtor. There was a constraint for working capital and the responding director approached the petitioner/financial creditor for an inter-corporate loan of Rs. 2,00,00,000/- and the financial creditor has also accepted to disburse the loan amount. This was also intimated to the other whole time executive director. From the year 2016, the financial status of the company started deteriorating due to various reasons including the fraud committed by the employees of the Company. A criminal case was also filed before XII Addl Chief Metropolitan Magistrate, Hyderabad against the company and the directors. In view of the said criminal case, the Cyber Crimes Police Station has taken all the accounts of the company and its server and since then the company is shut. Since all the other whole time executive directors are not responding to any notices, the responding director who was involved in the day to day affairs of the company is forced to take all the notices and give reply. The Corporate debtor has not filed any balance sheet after the year 2015 and according to the signed balance sheet of the said year, the Corporate Debtor owes an amount of Rs. 2,74,04,000/- as unsecured loans to various body corporates.
7. The learned Counsel for the responding director while reiterating the above, submitted that the counter is filed to bring the current status of

the Corporate Debtor to the notice of this Tribunal and prayed for some additional time for the responding director to reach the management of the financial creditor and to arrive at some settlement with them.

8. The present petition was filed on 06.03.2019 and after scrutiny by the Registry, the same was first listed on 04.06.2019 and the Petitioner was directed to issue notice of date of hearing to the Respondent for appearance and the matter was adjourned to 27.06.2019.
9. During the hearing held on 27.06.2019, the counsel for Respondent requested time to file counter and the matter was adjourned to 15.07.2019 and again for the same reason was adjourned to 08.08.2019.
10. During the hearing held on 08.08.2019, the counsel for the Respondent stated that they are intending to settle the matter with the Financial Creditor and prayed time. At request, matter was adjourned to 23.08.2019 and for the same again adjourned to 03.09.2019.
11. During the hearing held on 03.09.2019, the counsel for the Respondent stated that talks for settling the matter have failed and he filed counter and furnished the same to the other side. On 12.09.2019, the matter was heard at length and was reserved for orders.
12. Heard both the sides and perused the record.
13. It is on record that the Corporate Debtor has availed unsecured loan from the financial creditor and it is also confirmed by the responding director. It is also on record that the company is not doing any business and it is unable to pay its debts. The responding director has also prayed only for time to settle the matter with the Financial Creditor. Therefore, it is proved that the Corporate Debtor is unable to pay its debts and has failed to make the payments to the Financial Creditor.
14. In view of the above, we are inclined to admit the instant petition.
15. In the instant Petition, the Petitioner has proved its case by placing documentary evidence viz., copy of the ledger Account of Corporate



Debtor as maintained by Vantage Vinimay Private Limited for the Financial Year 2013-14, 2014-15, 2015-16 and 2016-17 are enclosed as Annexure 7, copy of the Ledger Account of the Corporate Debtor as maintained by the Financial Creditor for the year 2017-18, 2018-19 are enclosed as Annexure 8, and Letter of confirmation issued by the Corporate Debtor to the Vantage Vinimay Private Limited confirming the outstanding balance dated 01.04.2016 is enclosed as Annexure 9, which prove that a default has occurred for which the present Corporate Debtor was liable to pay. In their counter affidavit, the Respondents have not denied the facts regarding the existence of 'financial debt' and 'default' committed by the Corporate Debtor.

16. The Hon'ble Supreme Court, while deciding the matter in the case of *INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017*, held as under:

".....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 subsection (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."

17. In the present case, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor regarding existence of 'financial debt' and occurrence of 'default'. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed the name of IRP after obtaining his written consent in Form-2. In view of the above, this Adjudicating Authority is inclined to admit the petition.

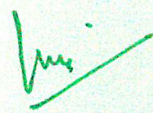


18. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.
19. This Adjudicating Authority hereby appoint Dr. K. Lakshmi Narasimha (IRP) as the name proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.
20. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:
- 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 (54 of 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.*

21. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
22. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
23. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
24. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
25. The address details of the IRP are as follows:-
- Dr. K. Lakshmi Narasimha, Ph.D (Law)
(IBBI/IPA-001/IP-P00107/2016-17/10214)
Off: H.No.1-11-20/13, Saleem Nagar-2,
Opp: Tahsildar Office/Revenue Bhavan,
Malakpet, Hyderabad – 500 036, Telangana.
Cell. No.9440986490
Email: ipdrkln17@gmail.com/klnoffice13@gmail.com
26. The present Petition is hereby admitted.


Dr. Binod Kumar Sinha
Member Technical

Rathi/Rk


K. Anantha Padmanabha Swamy
Member Judicial