THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No. 30/Chd/Pb/2020

Under Section 7 of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Mr. Dayashankar Verma And 103 Others
S/o Mataprasad, Barauda Khurd,
Post Bhadari, Braoda Kalan,
Jalaun, Uttar Pradesh-285205

….Financial Creditors/Applicants

Vs.

G.C.A. Marketing Private Limited
having its Registered Office at:
F 77, Civil Lines Bathinda, Punjab-115001
CIN No.U52599PB2005PTC028378

…Respondent-Corporate Debtor

Judgment delivered on: 16.06.2023

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

Present:

For the Petitioner-Financial Creditors : Mr. Nahush Jain, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide order dated 27.07.2022.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Mr. Dayashankar Verma and 103 others** (hereinafter referred to as 'Financial Creditors') under Section 7 of the

Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **G.C.A. Marketing Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Dayashankar Verma with the affidavit verifying the contents of the application appended thereto. Mr. Dayashankar Verma has been duly authorized to file the petition.

2. The Corporate Debtor is stated to be incorporated on 09.05.2005 incorporated under the Companies Act. The company having its Registered Office at: # F 77, Civil Lines Bathinda, Punjab-115001, CIN No.U52599PB2005PTC028378. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-A-3 of the petition.

3. Brief facts of the case are that the corporate debtor is alleged to have engaged in the business of Multi Level Marketing selling and marketing of FMCs, Ayurvedic, Desi Medicines, Herbal & Cosmetic Products with plants of Rattanjot, Jatropha Carcus, Kranj & Jojoba. The corporate debtor had been inviting applications for the alleged investment Scheme' through application forms and contract framing. As per the alleged marketing style of the corporate debtor, the sale of the plants to a prospective customer/farmer is under three types of payment plans viz. one-time payment plan, monthly payment plan & yearly payment plan. All the financial creditors/investors had invested in the "***Lumpsum Payment Plans under Single Installments for a term of 6 or 10 years" T***he term of the aforesaid plan had attained maturity and they are entitled to the assured return which the corporate debtor had defaulted.

3.1. The financial creditors/investors have been made to execute the alleged 'Application Form' and 'Contract Forming agreement with the corporate debtor under the brochure of ' investment scheme' illegally floated by the corporate debtor. On receiving the contribution from the Financial Creditors/investors, and after filing the customer application form, the corporate debtor issued a certificate/consent letter as well as the receipts to the customer/investor under their alleged investment scheme. Financial creditors are small investors most of whom are poor farmers and uneducated or retired personnel or those who belong to lower-middle income groups and have invested their hard-earned retirement benefits or savings in such schemes for a period of time to increase the value of money. The financial creditors/applicants submitted that several reminders and visits were made to the corporate debtor and its officials but no response has ever been received by the applicants/financial creditors to the said requests. In fact, there is a deafening silence.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 1,20,04,050.00/- (Rupees One Crore Twenty Lakhs Four Thousand Fifty Only including interest) and the date of default is 21.03.2017, i.e., maturity date as mentioned in Tabular Chart. Copy of A tabular chart showing the name of financial creditors, investment plans name, date of commencement, investment amount, maturity date, maturity amount, etc. (Annexure A-5), and copy of the brochure of investment plans, (Annexure A-7) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavits of Service were filed vide Diary No. 00033/5 dated 24.05.2022. However, none appeared on behalf of the respondent-corporate debtor from the very beginning of the filing of

this case nor any reply was filed, therefore, the respondent-corporate debtor proceeded against ex parte vide order dated 27.07.2022 of this Adjudicating Authority. The short written submissions were filed by the petitioner-financial creditor vide Diary No.00033/6 dated 29.11.2022. Vide order dated 24.01.2023, learned counsel for the petitioner-financial creditor was directed to file a detailed note on maintainability which is filed vide Diary No.00033/8 dated 17.03.2023 relying upon the judgment of **"*Hon'ble NCLAT, Chennai Bench in Company Appeal No.(AT)(Ins) No.07/2017 titled as Nikhil Mehta & Sons (HUF) & Ors. Vs. M/s AMR Infrastructure Ltd. decided on 21.07.2017"*** *wherein it has been held that those who have the commitment to pay 'assured return', interest, etc. are covered under the expression of 'financial creditor under Section 5(7) of the Code and accordingly the said amount due and payable by the CD to the applicants after the maturity of the investment schemes falls under the definition of 'financial debt' under Section 5(8) of the Code.* Further reliance is placed upon the authority titled ***Mr. Bhanu Ram & Ors. Versus M/s HBN Diaries & Allied Ltd. CP (IB) No.547/Pb/2018 passed by Hon'ble NCLT, Principal Bench, New Delhi***:- *wherein the Coordinate Bench of Hon'ble NCLT has duly observed and categorically stated that the investment schemes as floated by the CD in the present matter fall under the category of 'Assured Returns' since the investors in the said scheme are guaranteed a higher amount after the term of the said scheme. Therefore, the purpose of the scheme introduced in such cases amounts to profit to the investor as the amount invested of such nature automatically incurs interest which the investors receive at the time of maturity of the said schemes. Therefore, the amount accrued and receivable by the applicants from the* *investment schemes floated by the CD amounts to 'Assured Returns' and hence falls under the category of 'Financial Debt' under Section 5(8) of the Code.*

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

> *"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."*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 21.03.2017, i.e., the maturity date of the scheme as mentioned in the Tabular Chart. The present petition is filed vide diary No.6881 dated 05.12.2019. It can be said that the present petition is well within the period of limitation of three years.

9. The other issue in the present petition is whether the applicants fall within the definition of financial creditors under Section 5(7) of the Code. It is pertinent to note that this is a case of a collective investment scheme. *Sh. S. Raman, Whole Time Member, SEBI, has passed an order on December 30, 2014, in the matter of GCA Marketing P Ltd. and observed prima facie that the corporate debtor was engaged in fund mobilizing activity from the public by floating/sponsoring/launching collective investment scheme (CIS) as defined in Section 11AA of the SEBI Act, 1992.*

10. And the SEBI had directed the corporate debtor and its Directors Sh. Amardeep Singh Cheema & Sh. Gurdeep Singh not to collect any fresh money from investors under its existing schemes; not to launch new schemes or plans or float any new companies to raise fresh moneys; to immediately submit the full

inventory of the assets obtained through money raised by the corporate debtor; not to dispose of or alienate or sell off any of the properties/assets obtained directly or indirectly through money raised by GCA; not to divert any fund raised from public at large which are kept in bank account(s) and/or in the custody of GCA. Thus, these collective investors in the said scheme of assured return after maturity of tenure are covered under the definition of Financial Creditors under Section 5(7) of the Code, which is so held in authority (supra) in Nikhil Mehta's case decided by Hon'ble NCLAT, Chennai Bench.

11. Last issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by the tabular chart showing the name of financial creditors, investment plans name, date of commencement, investment amount, maturity date, maturity amount, etc. (Annexure A-5), and copy of the brochure of investment plans, (Annexure A-7) are attached with the main petition. As per the financial records, it is evident that an amount of Rs. 1,20,04,050.00/- (Rupees One Crore Twenty Lakhs Four Thousand Fifty Only including interest) is still pending which amounts to default when the corporate debtor avoided the payment of the outstanding amount despite repeated requests by the financial creditors/applicants.

12. In Part-III of Form No. 1, Mr. Harish Taneja, Interim Resolution Professional (IRP) has been proposed by the petitioner. The form-2 along with certification of registration issued by the Insolvency and Bankruptcy Board of India is submitted with the main petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Harish Taneja, there is nothing adverse against him. In view of the above, we appoint Mr. Harish Taneja, Registration No.IBBI/IPA-002/IP-N00088/2017-18/10229, Email:harishtaneja78@gmail.com,

Mobile No. 9811565629, the Interim Resolution Professional with the following directions: -

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

ii.) 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 the inventory of assets of the Corporate Debtor;

iii.) 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 morals;

iv.) 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;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation 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;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

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

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

13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

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 Operational 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.

e) 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 the 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

f) 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 the corporate debtor under Section 33 as the case may be.

14. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense

to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

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

16. The petition is admitted accordingly.

-sd/

(Subrata Kumar Dash)
Member (Technical)

-sd/

(Harnam Singh Thakur)
Member (Judicial)

June 16 , 2023
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