IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ

CP (IB) NO.133/ALD/2019

In the matter of
An application under Section 7 of Insolvency & Bankruptcy Code, 2016

And

In the matter of:
Amour Infrastructure Pvt. Ltd.
Having Registered office at:
336, Ground Floor,
Jagriti Enclave, Delhi ... **Financial Creditor**

Versus

Digital Integrated Technologies Pvt Ltd.
Having Registered Office at :
92C, Block D4, Udyog Vihar,
Sector-82, Noida,
Uttar Pradesh-201301 ...**Corporate Debtor**

Order reserved on 12.04.2022

Order pronounced on 23.05.2022

Coram:

Sh. Rajasekhar V.K.	:	Member (Judicial)
Sh. Virendra Kumar Gupta	:	Member (Technical)

Appearances (via video conference):

For Financial Creditor	:	Sh. Varad Nath, Advocate
For Corporate Debtor	:	Sh. S.D. Singh, Advocate Sh. Amarjeet Singh, Advocate Sh. Jitin Singhal , Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

Brief facts of the case

1. The present application has been filed by Financial Creditor, namely ***Amour Infrastructure Pvt. Ltd.*** under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016" or "the Code") for initiation of

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Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor, namely ***Digital Integrated Technologies Pvt. Ltd.***

2. The facts, in brief, are that the financial creditor agreed to give a loan of Rs.1,00,00,000/- carrying an interest of 24 % p.a. in pursuance of a Loan-cum-Share Pledge Agreement dated 20.11.2017 (hereinafter called 'the agreement') to the corporate debtor. The loan was a tripartite agreement and the parties to the agreement were:

a. Amour Infrastructure Pvt. Ltd. (Financial Creditor),

b. Digital Integrated Technologies Pvt Ltd. (Corporate Debtor), &

c. Shailesh Anandani (in the capacity of director of Corporate Debtor and personal guarantor)

3. The loan was disbursed in 5 tranches-

i) 6 November,2017- Rs.20,00,000/-

ii) 4 December, 2017- Rs.20,00,000/-

iii) 16 December, 2017- Rs.20,00,000/-

iv) 10 January, 2018- Rs.20,00,000/-

v) 28 February, 2018- Rs.20,00,000/-

4. The loan was stipulated to be repaid in 7 months. The said loan was secured by way of a demand promissory note dated 20.11.2017 undertaken by Mr. Shailesh Anandani, the director of the corporate debtor guaranteeing the repayment of Rs.1,12,00,000/- (as personal guarantor) to the financial creditor in the event of default in repayment of the loan provided by the agreement. Mr. Shailesh Anandani has also pledged 30 % of the total share capital of the Debtor, i.e. 12,00,000 shares of Rs.10 each. He also issued 6 post-dated cheques (hereinafter called PDCs) which could be encashed by financial creditor. The PDCs were dated:

i) 31st March,2018

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ii) 30th April,2018

iii) 31st May, 2018 (2 cheques)

iv) 30th June, 2018

v) 31st July, 2018

5. It is noted that the corporate debtor repaid an amount of Rs.36,00,000/-. Thereafter, an additional loan of ₹20,00,000/- was also given on 16.11.2018 carrying an interest of 24% p.a.

Arguments on Behalf of the Financial Creditor

6. The learned counsel for the financial creditor/applicant submits that except for the part repayment of ₹36,00,000/- by the corporate debtor, it failed to repay the remaining portion of loan amount, *i.e.*, ₹1,09,29,138/- till date of filing of petition (i.e., 22.04.2019).

7. It is further submitted that the balance sheet for the financial year 2017-18 of the corporate debtor and copy of legal notice dated 25.03.2019 by financial creditor demanding repayment of loan by corporate debtor and reply by corporate debtor to the notice also acknowledges the indebtedness of the Corporate Debtor.

8. Hence, this application under Section 7 of the Insolvency and Bankruptcy Code,2016 (hereinafter called IBC, 2016). The financial creditor has also proposed the name of the IRP to conduct CIRP.

Reply on behalf of the Corporate Debtor

9. The learned counsel for the Corporate Debtor/respondent submits that the reply is being filed by the director of corporate debtor, Mr. Shailesh Anandani who is duly authorised by way of Board Resolution dated 20.08.2019 to sign and depose on behalf of corporate debtor.

10. It is further submitted that the Director of the Financial Creditor (Mr. Satish Jain) expressed an interest to invest some amount in the fruitful projects of Corporate debtor as he had been informed that Corporate debtor's business

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relating to Telecom Industry was running successfully. Accordingly, the Financial creditor, through Mr. Satish Jain, agreed to invest an amount of Rs.1,00,00,000/- in the business venture of the Corporate debtor. Mr. Jain also expressed that his son Mr. Sahil Jain wanted to have some experience in the field of providing services to Telecom Companies so he wanted his son Mr. Sahil Jain to gain experience by being associated with the Corporate debtor. It was stated by Mr. Jain that he would fund projects of corporate debtor only if corporate debtor's director Mr. Shailesh Anandani would guide Mr. Sahil Jain in learning about corporate debtor's business.

11. Directors of both applicant and respondent agreed that Mr. Sahil Jain would first gain experience from working in corporate debtor's Company and later Mr. Sahil Jain would form a company of his own wherein its directors would be Mr. Sahil Jain and Mr. Shailesh Anandani (corporate debtor's director). It was further agreed that the new company would become the vendor of corporate debtor since Mr. Sahil Jain's company would not have much experience and exposure in the market. The corporate debtor's director agreed to the same.

12. Accordingly, the aforesaid Loan-cum-Share Pledge Agreement was executed between Financial creditor and Corporate debtor. The Corporate Debtor's Director agreed to pledge his shares to Applicant as security. He also gave post-dated cheques (hereinafter called PDCs) for repayment of principal as well as interest amount, in case of any default. But the Financial creditor never encashed these cheques.

13. The corporate debtor also submitted that as per clause (h) of the agreement the loan amount could be dealt with by 'mutual consultation' and hence both parties decided that the corporate debtor instead of repaying loan to financial creditor would repay it to M/s DIT Televentures Pvt. Ltd. which was the company of financial creditor's son, Sh. Sahil Jain and in lieu of interest, the Corporate Debtor would pay salary to financial creditor's son, Sh. Sahil Jain**.** An amount of Rs.7,70,396/- was paid to Sh. Sahil Jain as salary**.** Corporate debtor also paid an amount of Rs.1,02,26,283/- to Sahil Jain's (Son of Shri Satish Jain) company

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M/s DIT Televentures Pvt. Ltd.

14. As discussed between both parties, M/s DIT Televentures Pvt. Ltd was incorporated on 13th December, 2017 with Mr. Sahil Jain and Mr. Shailesh Anandani as its directors. Later financial creditor's Director (Mr. Satish Jain) instructed Corporate Debtor's Director (Mr. Shailesh Anandani) to resign and he resigned accordingly. The corporate debtor gave sub-contracts to Mr. Sahil Jain's company as no contractor would give contracts to a new company. Later, the corporate debtor received several complaints about the quality of work done by Mr. Jain's company. A subsequent company was opened in Myanmar in February, 2018 with Mr. Sahil Jain and Mr. Shailesh Anandani as its directors. Mr. Sahil Jain handled the business and refused to share the actual position of accounts with Mr. Anandani.

15. It is further submitted that Financial creditor wouldn't advance another loan of Rs.20,00,000/- in November,2018 to Corporate debtor if Corporate debtor was making default in repayment.

16. It is also submitted that on 27.08.2019, the Financial creditor had also got an FIR registered under Section 420 of Indian Penal Code alleging that Rs.1,00,00,000/- was obtained by corporate debtor from financial creditor by committing fraud. Earlier also an FIR was registered by Financial creditor against corporate debtor. It is thus contended that the Financial creditor has approached this Hon'ble Tribunal with malafide intention.

Rejoinder On Behalf of the Financial Creditor

17. It is submitted by the counsel for Financial Creditor that the said agreement is to be treated independently from any other transaction that took place between the parties unless the same was specifically transcribed in the agreement. Payments made to DIT Televentures Pvt. Ltd. have no connection with the present case and there is no evidence to support the corporate debtor's claims that both parties mutually decided that corporate debtor would pay loan to DIT Televentures Pvt. Ltd. instead of paying the loan back to the Financial creditor.

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It is further submitted that non-encashment of PDCs by Financial creditor doesn't absolve the Corporate Debtor from repayment of his debt.

18. It is also submitted that the Financial creditor advanced another loan of Rs.20,00,00/- just after Corporate debtor had repaid Rs.36,00,000/- so the financial creditor had an earnest belief that Corporate debtor would repay the money.

<u>Written Statement On Behalf of Corporate Debtor</u>

19. It is submitted by the counsel for the Corporate debtor that apart from repaying loan to DIT Televentures Pvt. Ltd.**,** the corporate debtor also paid Sh. Sahil Jain a salary in lieu of Interest of the loan**.** As the corporate debtor had been paying off interest on loan via salary to Sh. Sahil Jain, the financial creditor didn't get the PDCs encashed.

20. It is further submitted that the Financial creditor had also got an FIR registered against corporate debtor alleging fraud and thus, allowing this petition would seriously prejudice the Corporate debtor.

<u>Findings and Conclusions</u>

21. We have considered the submissions made by both sides and perused material on record.

22. The financial creditor has given a loan to the corporate debtor in pursuance of lease cum share pledge agreement. The Director of corporate debtor Mr. Shailesh Anandani had pledged his shares in the corporate debtor and has also given a demand promissory note. Although, basic conditions of application under Section 7 i.e. there being a debt which is due and payable and a default has occurred, have been satisfied but having regard to the provisions of Section 65 of IBC, 2016 we have to see that the application filed under Section 7 for the resolution of insolvency of the corporate debtor is neither malicious nor collusive.

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23. We are further required to see that application under Section 7 is not filed for purposes other than the resolution of the insolvency of Corporate Debtor.

24. To examine these aspects, we need to consider the overall facts of the case. In the present case, it is not in dispute that along with the loan transaction, one more company has been formed wherein son of the Director of the Financial Creditor and said Mr. Shailesh Anandani were appointed as Directors. This Company namely, **M/s DIT Televentures Pvt. Ltd**. has been providing Telecom related services. The Company of the corporate debtor has also given work to this Company. However, as contended by the corporate debtor, subsequently serious differences have arisen between the financial creditor and the corporate debtor relating to the conduct of affairs of such company.

25. It is also noted that Mr. Shailesh Anandani has finally resigned from this Company. Various allegations have been made by the corporate debtor and said Mr. Shailesh Anandani in this regard and these allegations have remained uncontroverted.

26. From these facts, we have got reasonable basis to reach to a conclusion that application filed under Section 7 is a mechanism whereby financial creditor is trying to settle personal scores and put undue pressure on the corporate debtor, hence, we have no hesitation in holding that this application has been filed with malicious intent and for purposes other than the Resolution of Insolvency of the Corporate Debtor. We further find that corporate debtor is a solvent company.

27. In view of the above discussion, we hold that this application is not liable to be admitted as provisions of Section 65 of IBC, 2016 are clearly attracted. Accordingly, the same is dismissed.

28. In the result, the present company petition bearing CP (IB) No.133/ALD/2019 shall be rejected and is dismissed.

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29. Urgent certified copies of this order, if applied for, are supplied to the parties upon compliance of all requisite formalities.

30. File be consigned to the records.

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Virendra Kumar Gupta
Member (Technical)

Rajasekhar V K Digitally signed by Rajasekhar V K Date: 2022.05.23 18:42:46 +05'30'

Rajasekhar V.K.
Member (Judicial)