IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-IV)

Company Petition No. (IB)-544 (ND) 2022

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

IN THE MATTER OF:

M/S. PAS ENTERPRISE

... APPLICANT/FINANCIAL CREDITOR

VERSUS

M/S. CBS HOLDINGS PRIVATE LIMITED

...RESPONDENT/CORPORATE DEBTOR

Order Delivered on:16.01.2024

CORAM:
SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
DR.SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the applicant: Nilotpal Shyam, adv.

ORDER

PER: SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

1. The instant petition is filed by M/s. PAS Enterprises (hereinafter referred as 'Applicant') having registered office at Anupam House, B-265, Mangolpuri Industrial Area, Phase-II, Delhi-110083 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s CBS Holdings Private Limited (Respondent Company), referred to as the Corporate Debtor.

2. The Respondent Company M/s. CBS Holdings Private Limited (CIN No. U67120DL2008PTC177120) is a company incorporated on 20.04.2008 having its registered office situated at Hose No. 73, First Floor, Prashant Vihar, Delhi – 110085. Since the registered office of the respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent/Corporate Debtor under sub-section (1) of Section 60 of the Code.

3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,69,40,000/- as on 01.04.2019.

Submissions of learned Counsel appearing for the Applicant/Financial Creditor

4. The case of the applicant precisely is that the Financial Creditor had vide letter dated 11.03.2015 had disbursed the loan to the Corporate Debtor i.e., M/s. CBS Holdings Private Limited, repayable on 31.03.2019 or on an extended date as mutually agreed or demanded by the Financial Creditor along with the interest rate of 18% per annum. Subsequently, vide letter dated 03.04.2019, the Corporate Debtor requested the financial creditor to convert the aforesaid outstanding dues of Rs.93,84,5361- along with interest amount of Rs.16,15,4641/- be settled at lump sum amount of Rs.1,10,00,000/- to be payable by Corporate Debtor to the Financial Creditor

within six months i.e., on or before Sep September 2019. However the Corporate Debtor failed to repay the loan amount on the said date.

5. The Applicant further submitted that the applicant had vide recall notice dated 21.12.2019, had demanded the corporate Debtor to repay the amount of loan advanced which was due and payable by the Corporate Debtor to the Financial Creditor. The applicant submits that the debt owed by the corporate Debtor to the Financial creditors is a 'Financial Debt' under Section 5(8) of the code which has been disbursed against the consideration for the time value of money in terms of the provisions of the Insolvency & Bankruptcy Code, 2016 and therefore, the applicant humbly prays that the Corporate Insolvency Resolution Process be initiated in respect of the Corporate Debtor.

6. To prove the existence of debt and default therein, the Applicant has placed reliance on the following documents:-
   a) Copy of Letter dated 11.03.2015 sent by the Corporate Debtor to Financial Creditor.
   b) Copy of Letter dated 03.04.2019 sent by the Corporate Debtor to Financial Creditor.
   c) Copy of the recall notice dated 21.12.2019.
   d) Copy of the Balance sheet for the Year 2019-2020.
   e) Reconciliation statement of money paid to the Corporate Debtor along with the relevant bank statement.
   f) True copy of relevant books of account for financial year 2015-2016

7. This Adjudicating Authority vide its order dated 12.08.2022, had directed the Applicant to issue notice to the Corporate Debtor as to why the application for initiating the CIRP should not be admitted against the Corporate Debtor. The

Ld. Counsel on behalf of the Corporate Debtor appeared on 26.09.2022, and sought time for filing reply. However, thereafter the Corporate Debtor did not appear. This Adjudicating Authority vide order dated 03.01.2023, had directed the Applicant to serve notice to the Corporate Debtor for appearance. Considering, the above said facts as the Corporate Debtor has not responded despite notices. The Corporate Debtor was set ex parte by this Adjudicating Authority's order dated 06.02.2023, SINCE THE Corporate Debtor failed to appear despite service of notice.

8. With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that, the applicant clearly falls within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a Financial Debt and there is a default committed by the Corporate Debtor.

9. The Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407,** held as follows :-

> "29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. 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."

"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."

10. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant /financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition ***I.B./544/ND/2022 stands admitted*** and CIRP of M/s. **CBS Holdings Private Limited** shall be initiated.

11. The petitioner in Part-III of the petition has proposed the name of Mr. Nikhil Sachdeva as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P02743/2022-2023/14184. Mr. Nikhil Sachdeva, having registration number IBBI/IPA-001/IP-P02743/2022-2023/14184 and email – id nikhilsachdeva.ca@gmail.com is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.

12. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> "(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 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."
> (e)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period."*

13. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

14. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

15. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Nikhil Sachdeva to meet out the expenses 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules

16. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

17. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

18. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the

Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

20. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./544(ND)/2022 stands admitted.**

Sd/-	**Sd/-**
(DR. SANJEEV RANJAN)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (T)	**MEMBER (J)**