



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-501(ND)/2022

IN THE MATTER OF:

Rup Tradecom Private Limited

Registered Office at:

90/N, New Alipore, 3rd Floor

Flat no.4, Block E, Kolkata-700053

...Applicant/Financial Creditor

VERSUS

T R S Technology Private Limited

Registered Office at:

Property No.2289, Plot No.141/9

Ground Floor, Street no.61, Block B,

Sant Nagar Village, Burari

New Delhi-110030

...Respondent /Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on : 16.12.2022

CORAM:

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

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Aadil Khan, Advocates

For the Respondent : Mr. Harish Malik Advocates



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s Rup Tradecom Pvt. Ltd. (for brevity the '**Applicant/Financial Creditor**') has filed the present application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. TRS Technology Private Limited (for brevity the '**Respondent**').

2. The Respondent namely, M/s. TRS Technology Private Limited is a Company incorporated on 01.04.2003 under the provisions of erstwhile Companies Act, 1956 with CIN U74899DL2003PTC119643, having its registered office at Property No.2289, Plot No.141/9, Ground Floor, Street No.61, Block B, Sant Nagar Village, Burari, New Delhi -110084, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 1,00,00,000/- and Paid-up Share Capital is Rs. 98,50,000/- as per the master data annexed with the Petition.

3. It is stated by the Applicant that the Respondent approached the Applicant for a loan up to Rs.1,75,00,000/- and accordingly, the parties entered into a loan agreement dated 01.11.2019. On the request of be Respondent, the Applicant paid a total sum of Rs.1,60,00,000/- to M/s Industrial Finance Corporation of India ("IFCI Limited"). As per the Loan



Agreement, the moratorium was to end by December 11, 2020 whereafter the Respondent was liable to pay the interest on monthly basis on the Loan Amount disbursed. It is further submitted that upon the request of the Respondent vide letter dated November 26, 2020, considering the hardships caused by COVID-19 pandemic, the moratorium under clause 3.3 of the Loan Agreement was extended by another period of one year vide Applicant's letter of acceptance dated November 30, 2020. Further, vide the same letter of acceptance dated November 30, 2020, the interest rate of the Loan was revised from 15% per annum to 18% per annum. It is further stated by the Applicant that the loan agreement and the acceptance dated 30.11.2020 were consented by both the parties and accordingly, the moratorium of the loan stood extended to and expired on 11.12.2021.

4. The Applicants sent reminders on 14.01.2022, 14.02.2022 and 14.03.2022 for making payment of interest, however, the respondent did not pay any interest on the loan. Thereafter, on 25.04.2022, the Applicant sent a Demand Notice thereby recalling the entire outstanding amount of Rs 2,16,52,822/- (Rupees Two Crores Sixteen Lakhs Fifty-Two Thousand Eight Hundred and Twenty-Two) on account of default committed in terms of the Loan Agreement. However, even the said Demand Notice remained unanswered. The Applicant issued another Demand Notice dated May 21, 2022, through its lawyers, thereby calling upon the Respondent to pay the entire sum of Rs.2,18,64,548/- (Rupees Two Crores Eighteen Lakhs Sixty-Four Thousand Five Hundred and Forty-Eight) only. Hence, the present application.



5. The particulars of the amount of default and the date of default are mentioned in the Part IV of the application, the relevant extracts of which are reproduced below, for the sake of convenience:

PART - IV

PARTICULAR OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED AND DATE (S) OF DISBURSEMENT	A total sum of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakhs only) was disbursed to

For Rup Tradecom Pvt. Ltd

		and/or on behalf of the Corporate Debtor on the following dates:										
		<table border="1"> <thead> <tr> <th>Date</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>December 12, 2019</td> <td>Rs.40,00,000/-</td> </tr> <tr> <td>January 21, 2020</td> <td>Rs.1,10,00,000/-</td> </tr> <tr> <td>March 17, 2020</td> <td>Rs.10,00,000/-</td> </tr> <tr> <td>Total</td> <td>Rs.1,60,00,000/-</td> </tr> </tbody> </table>	Date	Amount	December 12, 2019	Rs.40,00,000/-	January 21, 2020	Rs.1,10,00,000/-	March 17, 2020	Rs.10,00,000/-	Total	Rs.1,60,00,000/-
Date	Amount											
December 12, 2019	Rs.40,00,000/-											
January 21, 2020	Rs.1,10,00,000/-											
March 17, 2020	Rs.10,00,000/-											
Total	Rs.1,60,00,000/-											
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>The total amount claimed to be in default is Rs.2,19,36,877/- (Rupees Two Crores Nineteen Lakhs Thirty Six Thousand Eight Hundred and Seventy Seven only).</p> <p>The said amount comprises of a principal sum of Rs.1,60,00,000/- (Rupees One Crores and Sixty Lakhs only) and a sum of Rs.59,36,877/- (Rupees Fifty Nine Lakhs and Thirty Six Thousand and Eight Hundred and Seventy Seven only) towards interest.</p> <p>DATE OF DEFAULT: January 11, 2022</p> <p><u>Brief facts leading to the present Application:</u></p> <ol style="list-style-type: none"> 1. The Corporate Debtor had approached the Applicant/Financial Creditor for a loan upto Rs.1,75,00,000/- (Rupees One Crores and Seventy Five Lakhs). 2. For this purpose, the parties had entered into a Loan Agreement dated November 01, 2019 ("Loan Agreement"). A copy of the 										

For Rup Tradecom Pvt. Ltd



6. Thus, under Part IV of the Application, the Applicant has claimed an amount of Rs. 2,19,36,877/- as an unpaid financial debt and relied on 11.01.2022 as the date of default. Further, the Financial Creditor has annexed the following documents in support of its financial debt:

- a) Copy of Loan Agreement dated 01.11.2019.
- b) Copy of the request letter dated 26.11.2020.
- c) Copy of acceptance letter dated 30.11.2020 issued by the Applicant to the Respondent.
- d) Copy of reminder letters issued by the Applicant to the Respondent.
- e) Copy of demand notice dated 25.04.2022 and 21.05.2022.

7. Basing on the aforesaid facts and documents, the Financial Creditor has prayed for initiation of CIRP against the Respondent.

8. The Respondent has filed its reply affidavit dated 01.10.2022 and submitted that the present application has been filed for the purpose of recovery of money, which is against the objectives of IBC, 2016. Furthermore, the applicant has failed to show its intent towards resolution of the Respondent. It has further stated that the Respondent was under financial distress during the period of Covid, however, post Covid, the financial condition of the Respondent has improved and it is taking steps towards payment of its debts. Further, it has contended that the Applicant has not complied with Section 186 of the Companies Act, 2013, therefore, the Application is not maintainable.



9. The Applicant has also filed rejoinder dated 09.11.2022 and submitted that the Respondent has not denied the existence of financial debt, rather it has admitted the debt. It is further submitted that the present application has been filed for initiation of CIR process of the Respondent and not for recovery of money. The Applicant has further averred that it has complied with Section 186 of the Companies Act and the transaction under reference is authorized by way of special resolution passed in the General Meeting dated 29.04.2019. Hence, the Applicant has prayed that the Application may be admitted.

10. We have heard the submissions made by the Ld. Counsels appeared on behalf of the parties and perused the documents placed on record. It is undisputed that the Applicant has disbursed the loan amount to the Respondent in terms of the Loan Agreement dated 01.11.2019, which was required to be repaid in terms of the said Loan Agreement read with acceptance letter dated 30.11.2020. However, the Respondent failed to pay the financial debt despite reminders and recall notice. Furthermore, the Respondent, in its reply as well as during the course of hearing, has admitted the default in repayment of the debt due to losses. During the course of hearing, Ld. Counsels for the parties also confirmed that the parties are not related to each other.

11. In order to admit an application u/s 7 of IBC, 2016, what this Adjudicating Authority has to satisfy is that there is a default in payment of the financial debt and there is no disciplinary proceeding pending against the proposed IRP. The Applicant has been able to establish both the debt and



default on the part of the Respondent in the present case. Further, it is evident from the Form 2 dated 08.06.2022, that there is no disciplinary proceeding pending against the proposed IRP.

12. In the given facts and circumstances, the present Application being complete and the Financial Creditor/Applicant having established the default on the part of the Respondent in payment of the Financial Debt for the amount being above the minimum threshold, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.”




13. As proposed by the Financial Creditor, this Bench appoints Mr. Sanjay Aggarwal (Email ID: ska9001@gmail.com) as IRP having Registration No. IBBI/IPA-001/IP-P00494/2017-2018/10882, subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority further orders that:

“Mr. Sanjay Aggarwal (E-mail: ska9001@gmail.com@gmail.com) having Registration No. IBBI/IPA-001/IP-P00494/2017-2018/10882, IRP is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

14. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

15. A copy of this Order shall immediately be communicated to the Financial Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their record.



**(L. N. GUPTA)
MEMBER (T)**



**(BACHU VENKAT BALARAM DAS)
MEMBER (J)**