

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

(IB)-1781(ND)2018

IN THE MATTER OF:

Indu Kumar & Ors.
205, IInd Floor, DDA Complex
Ashok Vihar, Phase III
Pocket B, Ashok Vihar, Delhi-110052

Shraddha Kalhan
2C/25, New Rohtak Road
Karol Bagh, New Delhi

Sandeep Kalhan
2C/25, New Rohtak Road
Karol Bagh, New Delhi

...Financial Creditors

VERSUS

Saha Infratech Private Limited
N-101/B, Munshi Lal Building
Connaught Circus, New Delhi-110001

...Corporate Debtor

Section: 7 of IBC, 2016

Judgment Delivered on: 28.02.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)



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PRESENT:

For the Petitioner : Mr. Sachin Jain, Advocate
For the Respondent : Mr. Rajesh P and Ms. Ananya Kuthiala,
Advocates

JUDGMENT

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

The present Petition is filed under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by the Corporation Bank (for brevity 'Financial Creditor'), with a prayer to initiate the Corporate Insolvency Process against M/s Saha Infratech Private Limited (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s Saha Infratech Private Limited is a Company incorporated on 26.06.2012 under the provisions of Companies Act, 1956 with CIN No.U45200DL2012PTC238062, having its registered office at N-101/B, New Delhi-110001.



3. The Authorized Share Capital of the Respondent Company is Rs.5,00,00,000 and Paid-up Share Capital of the Company is Rs.4,90,00,000 as per the averments made by the Petitioner.

4. The brief background of the cases is that the matter was settled between the Parties on 21.05.2019. Pursuant to the settlement, post-dated Cheques were handed over to the Financial Creditors and the Petition was withdrawn by the Financial Creditors subject to liberty to revive the same in the event of any Cheque being dishonored.

5. That on 07.08.2019, the Financial Creditors filed an application to seek restoration of the Petition on the ground of dishonoring of Cheques issued by the Corporate Debtor in terms of the settlement. The Application was allowed and the Notice was issued to the Corporate Debtor vide Order dated 13.09.2019 passed by this Tribunal.

6. The Corporate Debtor, thereafter, on multiple occasions had sought time to settle the matter with the Financial Creditors. However, no settlement has been arrived at.

7. As per the Averments, the Financial Creditor No. 1 and 2 executed a Memorandum of Understanding on 29.04.2015, in terms of which they had made payment of Rs.75,00,000 to the Corporate Debtor. On the basis of the assured rent and buy back clause, the



Corporate Debtor issued post-dated cheques to the Financial Creditor No. 1 and 2.

8. It is further averred that the Financial Creditor No. 3 executed a Memorandum of Understanding on 29.04.2015 in terms of which, he had made payment of Rs.50,00,000 to the Corporate Debtor. On the basis of assured rent and buy back clause, the Corporate Debtor issued post-dated Cheques to the Financial Creditor No. 3.

9. It is stated by the Financial Creditors that the Corporate Debtor had made few initial payments. However, the later Cheques got dishonored due to which the Financial Creditors were constrained to file various complaints against the Corporate Debtor under Section 138 of Negotiable Instruments Act. The complaints were referred to mediation and parties arrived at a settlement, as per which the Corporate Debtor issued post-dated Cheques to the Financial Creditors.

10. It is stated by the Financial Creditors that the following Cheques issued by the Corporate Debtor got dishonored :

Cheque No.	Amount (in Rs.)	Issued to
021502	7,95,000	Financial Creditor No. 1
021497	7,50,000	Financial Creditor No. 2
021503	4,50,000	Financial Creditor No. 1
021498	6,00,000	Financial Creditor No. 2
021504	3,50,000	Financial Creditor No. 1
021499	5,00,000	Financial Creditor No. 2
021508	12,00,000	Financial Creditor No. 3
021509	10,00,000	Financial Creditor No. 3
021494	10,25,000	Financial Creditor No. 3

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11. It is stated by the Financial Creditors that on 05.12.2018, they had sent e-mail to the Corporate Debtor to repay the Financial Debt. However, the Corporate Debtor neither replied the email nor made any payment.

12. That the Financial Creditors have placed on record a copy of the dishonored Cheque No. 206899 dated 07.08.2019 for an amount of Rs.55,00,000 drawn on the Axis Bank and issued in favour of the Financial Creditor No. 3 i.e. Mr. Sandeep Kalhan, which was issued by the Corporate Debtor during the pendency of the present Petition.

13. Despite opportunities, the Parties failed to reach a settlement.

14. In the light of the above maintained facts and circumstances, the Financial Creditors have been successful in establishing the 'default' of above Rs.1,00,000. This Bench is, therefore, inclined to initiate CIR Process against the Corporate Debtor.

15. 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 Rs.1,00,000, the Petition 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 :

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- “(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.”

16. As proposed by the Financial Creditor, this Bench appoints Mr. Arun Jain as an IRP having IBBI Registration No. IBBI-/IPA-01/IP-00590/2017-18/11029 (Email: arjain1966@gmail.com), subject to the condition that no disciplinary proceedings are 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. 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.

17. 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.

18. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)