

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.421/ALD/2019

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

IN THE MATTER OF

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED

.....Applicant/Financial Creditor

VERSUS

HIPAD TECHNOLOGY INDIA PRIVATE LIMITED.

.....Respondent/Corporate Debtor

ORDER DELIVERED ON :09.12.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

**For the Applicant: Sh. Ayush Khanna ,Advocate alongwith
Sh. Nikhil Mishra, Advocate
Sh. Chandrashekhar, Advocate**

For the Corporate Debtor: None s

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition is filed under Section 7 of Insolvency and Bankruptcy Code,2016 by the Applicant/ financial creditor, i.e. **"Industrial and Commercial Bank of China Limited"** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"Hipad Technology India Private Limited"**.
2. As per averments made in the petition, the Corporate Debtor had approached the Industrial and Commercial of China Ltd. herein referred as "Financial Creditor" for availing certain credit facilities for the business purpose. Pursuant to which the Financial Creditor vide its letter dated 30.08.2018 sanctioned the credit facility of Rs. 40 Crores, which was granted for one year with effect from the date of

disbursal of the facility stating that any default in the facility agreement by the Corporate Debtor will entitle the Financial Creditor to enforce the security in favour of Financial Creditor and failure in repaying shall constitute default by the Corporate Debtor under the facility agreement.

3. It is further contended that the corporate debtor on 14.09.2018 sent a request to the Financial Creditor for disbursal of the credit facility to which the Financial Creditor disbursed the entire 40 crores to the current account of the Corporate Debtor on 14.09.2018, which was due and repayable by the Corporate Debtor on 13.09.2019.
4. The Corporate Debtor apart from paying monthly interest, has failed to repay any amount towards the principal amount disbursed by the Financial Creditor except from the payment of Rs. 4,00,22,691.45/- on 13.09.2019.
5. Further, as per the terms of facility agreement, the default has occurred on 13.09.2019, pursuant to which, the Financial Creditor issued the demand notice to the Corporate Debtor on 16.09.2019 demanding to liquidate the entire outstanding amount, to which the Corporate Debtor has neither replied nor paid any amount of admitted financial debt. The total amount claimed to be in default is Rs. 36,41,05,434.74/- , the respondent has therefore filed this petition as an financial creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.
6. The corporate Debtor has been duly served by speed post and the tracking report in on record. Pursuant to the court order, notice issued to the

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Corporate Debtor has been delivered and tracking report is also on record which shows that the respondent has been served the notice. However no one appeared on behalf of the respondent.

7. It has been stated by the learned counsel for the financial creditor that the corporate debtor is wholly owned subsidiary of M/s Hipad Intelligent Technology Limited “, which is a foreign company registered in Shenzhen, Guangdong, The People’s Republic of China and it itself facing insolvency proceedings in The People’s Republic of China. Further, Sh. Shahid Kazmi, who has put in appearance on behalf of third party(Nimmi Build Tech Pvt. Ltd) stated that the directors of the company has resigned.
8. It is a matter of record that although various opportunities were granted but the Corporate Debtor has chosen not to contest the case and hence vide order dated 06.11.2020, the case is fixed for exparte hearing on 23.11.2020 and on the date of hearing also the respondent opted not to appear.
9. I have heard the arguments raised by the Ld. Counsel for the Financial Creditor and perused the application and the documents annexed there in.
10. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:
 - i.)Whether there is duly established financial debt.
 - ii.)Whether there is default in payment by the corporate debtor.
 - iii.)Whether the documents attached with the application shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

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11. Further referring to the decisions of The Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank ,(2017)205 Comp Cas 57(SC) it was held that**

“..... The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.....”

In the matter of **Karan Goel v. M/s Pashupati Jewellers & Anr. Company Appeal (AT) (Insolvency) No. 1021 of 2019 dated 01.10.2019** stated:

“..... it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application.”

12. In the light of the aforesaid decisions and the provisions of the Code, this Adjudicating Authority finds that as the corporate debtor was under obligation to pay the interest and principal amount in terms of Facility Agreement dated 12.09.2018 in one year alongwith monthly interest and the corporate debtor has failed of fulfil its payment obligation thus default has occurred on part of corporate debtor. Further the applicant has also attached several documents to prove the existence of debt and default. Thus, this Adjudicating Authority is of the view that as per the facility agreement there is existence of debt and default as the corporate debtor has failed repay the amount due to the financial creditor.

13. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed on 27.09.2019 is well within limitation, being within three years from the date of default i.e 14.09.2019. It is seen that the amount in default is Rs.36,41,05,434.74/- which is more than the minimum

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threshold limit fixed under IBC to trigger off providing under Section 7 of the IBC.

14. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there

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is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

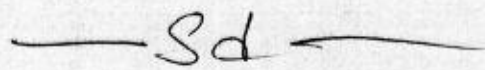
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

15. The Financial Creditor has proposed the name of **Mr. Sandeep Chandna, Registration Number IBBI/IPA-002/IP-N00447/2017-18/11237** for appointment as Interim Resolution Professional

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(IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

16. The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.
17. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
18. Progress Report to be filed before the Registry of this Bench.



JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date:09.12.2020

Swati Gupta
(LRA)