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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/391/2020

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***Karvin Cuisines Private Limited***

Canara Bank
(Erstwhile Syndicate Bank)
No. 16, Police Commissioner Office Road,
Egmore,
Chennai- 600 008

... Applicant/Financial Creditor

-Vs-

Karvin Cuisines Private Limited
1/2, Jawaharlal Nehru Salai,
Ambal Nagar, Ekkathuthangal,
Chennai- 600 014.

...Respondent/Corporate Debtor

Order Pronounced on ***21st April 2022***

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor	*: K. V. Subramanian,Advocate*
For Corporate Debtor	*: None present*

ORDER

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by **Canara Bank (Erstwhile Syndicate Bank)** (hereinafter referred to as 'Financial Creditor') on 13.01.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **Karvin Cuisines Private Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that this application was originally filed by Syndicate Bank, Egmore Branch, Chennai. Pursuant to order dated 11.03.2021 upon merger of the said Syndicate Bank with Canara Bank, the cause title was modified as Canara Bank. The Financial Creditor is a Bank. The Affidavit verifying the Application is placed at page No 9-10 of the Application typeset and the same authorizes Mr. S. Santanu Kundu, Chief Manager as the Authorized signatory of the Financial Creditor.

3. Part II of the Application lays down the details of the Corporate Debtor from which it can be seen that the Corporate Debtor is a Private Limited company incorporated under the Companies Act, 2013 on 06.03.2017 with CIN:U15549TN2017PTC115303. The registered office of the Corporate Debtor as per the Application is stated to be at 1/2, Jawaharlal Nehru Salai, Ambal Nagar, Ekkathuthangal, Chennai- 600 014.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of one Mr. Madurai Sundaram Sankar with Registration No: IBBI/IPA-001/IP-P00770/2017-18/11315 (AFA valid till 13.12.2022) as the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs. 86,49,518.92/- (Rupees Eighty Six Lakh Forty Nine Thousand Five Hundred Eighteen and paisa Ninety Two only) as total Financial Debt due and payable by the Corporate Debtor as on 31.12.2019. Further, it can be seen from Part IV, that the date of default is stated to be 30.04.2019.

6. Part V of the Application describes the particulars of Financial Debt, documents, records and evidence of default and the list of documents in order to prove the existence of the Financial Debt is enumerated hereunder:-

i. Application submitted by Corporate Debtor for availing SOD and Term Loan. **Annexure I(2)**
ii. Letter of sanction dated 20.4.2017. **Annexure I(3).**
iii. Composite Hypothecation Agreement dated 20.4.2017. **Annexure I (4).**
iv. Guarantee Agreement dated 20.4.2017 executed by Mr. R. Adhavan, Mr. Joseph Antony Pereira, Mr. Algappan. **Annexure I (5 to 7).**
v. Receipt executed by the Corporate Debtor on various dates. **Annexure I (8 to 15).**
vi. Letter of sanction dated 12.06.2017 for Overdraft. **Annexure I (16).**
vii. Demand Promissory Note dated 12.06.2017. **Annexure I (17).**

viii. Composite Hypothecation Agreement dated 12.06.2017. **Annexure I (18).**
ix. Guarantee Agreement dated 12.06.2017 executed by Mr. R. Adhavan, Mr. Joseph Antony Pereira, Mr. Algappan. **Annexure I (19 to 21).**
x. Legal Notice/s issued to the Corporate Debtor **Annexure I (22).**
xi. Certificate of Incorporation. **Annexure I (25).**
xii. Certificate as required under the Bankers Books of Evidence Act. **Annexure I (23 and 24).**

7. It was submitted by the Learned Counsel for the Financial Creditor that had granted Term Loan and SOD (SYNDMSE) loan to the Corporate Debtor for Rs. 80,00,000/ through loan agreements dated 20.04.2017 and 12.06.2017. It is submitted that the said loans were disbursed to the Corporate Debtors account on various dates and the last disbursement was on 03.06.2017 and on 14.07.2017. The Ld. Counsel further submits that, the said term loan of Rs. 60 Lakh was to be repaid over a period of 7 years i.e. upto 30/06/2024.

8. Further the Ld. Counsel for the Financial Creditor submitted that the Loan agreements mentioned *supra* carries an interest of 10.75% per annum for Term Loan and 10.50% per annum SOD (SYNDMSE).

9. Ld. Counsel for the Financial Creditor submitted that pursuant to the said sanction letters mentioned above Composite Hypothecation Agreement dated 20.4.2017 and 12.06.2017 were

entered into by the Financial Creditor and the Corporate Debtor for securing a total value of Rs. 80,00,000/-.

10. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor had completely stopped making payments towards the interest and principal repayment and the account of the Corporate Debtor was declared as NPA on 31.07.2019 in terms of the extant guidelines of Reserve Bank of India. Ld. Counsel for the Financial Creditor submitted that the Financial Creditor is left with no other remedy, hence present Application under Section 7 of the IBC, has been filed before this Tribunal.

11. The Respondent in this said matter did not appear before this Tribunal. Registry sent a notice to the Respondent which as per the tracking report available on file was delivered at the Registered Office of the Corporate Debtor on 06/11/2020. This Tribunal vide order dated 07.01.2022 ordered Paper Publication to be effected in Makkal Kural in Tamil and Indian Express in English. In compliance thereof Affidavit dated 24.01.2022 was filed on 27.01.2022 stating that Paper Publication was made on 18.01.2022. The matter was taken up on 24.02.2022 where none of the parties were present. When the matter was taken up on 31.03.2022, the Respondent failed to appear.

12. Heard the submissions made by the Learned Counsel for Financial Creditor and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the existence of a 'debt' and 'default' had been proven beyond reasonable doubt by the Financial Creditor based upon the documents presented before us.

13. It is seen from the record that the application was filed on 13.01.2020 and at that point of time the pecuniary jurisdiction of this Tribunal was Rs. 1 Lakh. The present application satisfies the criteria. Further the present default is prior to advent of Covid-19 and introduction of Section 10A of the IBC.

14. Further, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited,** where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

> 28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the

financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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.

15. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

16. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

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 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;

17. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(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.

18. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

> (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.

19. The Financial Creditor has proposed the name of **Mr. Madurai Sundaram Sankar** (m.s.sankar@outlook.com) with Registration No: IBBI/IPA-001/IP-P00770/2017-18/11315 (AFA valid till 13.12.2022) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2.

20. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016

within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

22. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

23. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. Based on the above terms, 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 the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records and to the Interim Resolution Professional above named forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

25. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

26. Post this **IBA/391/2020** for hearing on **06/06/2022.**

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

MEMBER (TECHNICAL)
MEMBER (JUDICIAL)