

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-150/(ND)/2022

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

In the matter of:

M/s. Union Bank of India

Registered Office At:

Union Bank Bhavan, 239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai- 400021

...Applicant/Financial Creditor

Versus

M/s. Orbitol Intelligence Pvt. Ltd.

(Previously known as M/s. J.S. Medimax Pvt. Ltd.)

Registered Office At:

Garage No. 73, Gulabi Bagh,
New Delhi-110007

...Respondent/ Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

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Counsel for Petitioner/Financial Creditor: Ms. Nishi
Chaudhary

ORDER

Per P.S.N Prasad, Member (Judicial) &

Rahul Bhatnagar, Member (Technical)

Date: 09.11.2022

1. This is an application filed by M/s. Union Bank of India to initiate corporate insolvency resolution process ("CIRP") against M/s. Orbitol Intelligence Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 45,69,43,528.20/- (Rupees Forty-Five Crores Sixty-Nine Lakhs Forty-Three Thousand Five Hundred and Twenty-Eight Only) as on 31.12.2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- That on 11.07.2015, the Financial Creditor on request of the Corporate Debtor granted Term Loan of Rs. 21.59 Crores and Working Capital of Rs. 3 Crores to the Corporate Debtor. On 15.07.2015, Loaning and

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Facility documents were executed by the Corporate Debtor.

- That Mr. Jitender Nalwa, Tushar Tomar, Suman Nalwa, DPS Tomar and Mahipal Singh Yadav stood as personal guarantors to the loan sanctioned to the Corporate Debtor and executed General Form of Guarantee on 15.07.2015.
- That on 08.12.2015, the Corporate Debtor requested for substitution/modification in the securities as sanctioned. Vide sanction letter dated 11.07.2015 and the Financial Creditor approved the same.
- That on 09.12.2015, Jitender Nalwa, Tushar Tomar, Suman Nalwa, DPS Tomar, and Mahipal Singh Yadav; Rishabh Heights Ltd., Sanjeev Mittal, Seema Mittal and Rishabh Mittal executed their guarantees
- That on 15.06.2017, the Corporate Debtor approached the Financial Creditor for enhancement of the limit of working capital from Rs.3.00 Crore to Rs.5.50 Crore and for review of the previous Term Loan.

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- The Financial Creditor after considering the request of the Corporate Debtor enhanced the limit of working capital from Rs.3.00 Crore to Rs.5.50 Crore and reviewed the previous Term Loan on 15.06.2017.
- The Corporate Debtor on 29.06.2017 executed loaning and security documents and accordingly the mortgage of the properties was executed.
- That on 29.06.2017, Mr. Jitender Nalwa, Tushar Tomar, Suman Nalwa, DPS Tomar, and Mahipal Singh Yadav; Rishabh Heights Ltd., Sanjeev Mittal, Seema Mittal and Rishabh Mittal executed their guarantees.
- That the account of the Corporate Debtor was declared as Non-Performing asset (NPA) on 30.12.2017 by the Financial Creditor as the same became irregular.
- That the Corporate Debtor admitted its liability towards the Financial Creditor by executing Balance and Security Confirmation Letters.
- That thereafter on 08.10.2021, the Corporate Debtor Company sent a One Time Settlement proposal to the

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Financial Creditor and admitted its liability and proposed to pay a sum of Rs.14.00 Crores.

➤ That as on 31.12.2021, a sum of Rs. 45,69,43,528.20 along with interest is due and recoverable from the Corporate Debtor in respect of credit facilities granted by Financial Creditor.

2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 09.06.2022.

3. We have gone through the documents filed the Applicant and heard the arguments made by the counsel for the Applicant. The Applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 45,69,43,528.20/-(Rupees Forty-Five Crores Sixty-Nine Lakhs Forty-Three Thousand Five Hundred and Twenty-Eight Only) as on 31.12.2021.

4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that



there is a financial debt and that a default has been committed in respect of that financial debt.

5. The Corporate Debtor and the Applicant executed loaning and security documents on 29.06.2017 and the loan amount was accordingly disbursed to the Corporate Debtor. The Corporate Debtor has acknowledged the debt due to the Applicant in its Financial Statements for the period 01.04.2019-31.03.2020. Further, the Corporate Debtor has accepted default by offering the Applicant a sum of Rs. 14 Crores as one-time settlement for all pending dues of the Applicant vide One Time Settlement proposal dated 08.10.2021.
6. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
7. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of

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the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicant has proposed the name of Mr. Madan Mohan Dhupar for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N-00860/2019-2020/12768. Mr. Madan Mohan Dhupar has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 20.01.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.
9. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the IB Code, 2016* stands satisfied as debt and its default have been established by the Financial



Creditor, the present application filed under Section 7 is therefore complete. The IRP has confirmed that no disciplinary proceeding against the proposed IRP is pending.

10. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Madan Mohan Dhupar has submitted the declaration in Form 2 dated 20.01.2022.

11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record

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satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly shows that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

12. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Mr. Madan Mohan Dhupar having registration number IBBI/IPA-002/IP-N-00860/2019-2020/12768 proposed by the FC is appointed as an Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations,

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2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

16. 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;

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(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.

17. 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.

18. The Interim Resolution Professional shall perform all his functions 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. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other

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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 preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. 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 its 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. The Registrar of Companies shall

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update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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MEMBER (JUDICIAL)