

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-142/ND/2021

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

IN THE MATTER OF:

M/S INTEC CAPITAL LIMITED

...Applicant/Financial Creditor

VERSUS

M/S EXCEL COMPUTERISED EMBROIDERY PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on:30.11.2021

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (Technical)**

MEMO OF PARTIES

M/s INTEC CAPITAL LIMITED

Registered Office at708, Manjusha Building

57, Nehru Place, New Delhi-110019

...Applicant/Financial Creditor

VERSUS

M/S EXCEL COMPUTERIZED EMBROIDERY PRIVATE LIMITED

Registered office at:A-254, Okhla Industrial Area

Phase-1, New Delhi-110020

...Respondent/ Corporate Debtor

For the Applicant: Mr.SagarBansal,Adv. Mr.Aabhas Singh, Adv. Mr.DhruvParwal, Adv.

For the Respondent: ----

ORDER

Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 by, M/s Intec Capital Limited (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/S Excel Computerized Embroidery Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a non-banking financial company engaged inter alia in the business of providing the financial facility and having its CIN L74899DL1994PLC057410 registered office at 708, Manjusha Building, 57, Nehru Place, New Delhi-110019.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 23.03.1999 bearing CIN U17291DL1999PTC098968 and having its registered office at A-254, Okhla Industrial Area, Phase-1, New Delhi-110020.
4. The applicant submits that M/S Eastern Overseas (herein referred to as Borrower), had approached the applicant for loan facilities originally along with the corporate debtor who furnished corporate guarantee in the financial facility. Pursuant to this, applicant sanctioned and disbursed loan/financial facility of Rs. 82,20,000/- to Corporate Debtor for a period of 60 months at an interest rate of 14% per annum on reducing basis. A Loan cum hypothecation Agreement dated 28.11.2013 was executed for availing above said loan/financial facilities between applicant and original borrower. The corporate debtor executed a Guarantee agreement along with Guarantor's Form thereby undertaking to guarantee the repayment of all the amounts payable by the borrower and the due performance of the terms and conditions of the Loan Agreement as Guarantor. The corporate debtor has also provided security cheque/s for encashment for repayment. The

applicant submits that the corporate debtor failed to maintain adequate amount in the bank account, as a result of which the cheques were dishonoured by the banker and the payments were not made to the applicant as per the repayment schedule. The applicant initiated the proceedings under Section 138 of Negotiable Instrument Act, 1881 against the corporate debtor. The Applicant made repeated requests to the corporate debtor, however, despite repeated requests, the corporate debtor failed to regularize the loan account. The applicant further submits that the last payment received from borrower was on 16.10.2018 of an amount of Rs. 3,50,000/- through RTGS.

5. The applicant submits that the aforesaid acts of the borrower constituted events of default as mentioned under Clause 11 and Clause 12 of the Loan Agreements that is Consequence of Default and Rights available to Applicant which inter-alia provided for demand of immediate repayment of loan dues. Therefore, the Applicant was compelled to terminate the Loan Agreement vide Loan Recall cum Arbitration Notice dated 01.04.2015 and recalled the entire monies due from the Borrower and Corporate Debtor, the guarantor. Whereas, neither the Borrower nor its guarantor has cleared the outstanding dues. The applicant initiated arbitration proceeding against the corporate debtor, which has resulted in arbitral award in the applicant's favour.
6. The Applicant filed present Application on 19.02.2021 under section 7 of IBC, 2016 and served the copy of this application through email at the registered email address as reflected on the MCA website, which was duly delivered to the corporate debtor as it didn't bounce back. The copy of the application was also duly served through speed post at its registered address as reflected on the MCA website, which returned with a remark 'Item Returned No such person in the address'. Considering that the notice was sent at

the registered address of the company as reflected in the MCA website and the remark 'Item Returned No such person in the address' shall not be considered as not served to defeat the very purpose of service because the same can be manipulated by the corporate debtor, as observed by the Hon'ble Apex Court in case of "*Madan And Co. V. Wazir Jaivir Chand*" 1989 SCC 264. The extracts from the said order is reproduced herein:

"We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of [section 11\(1\)](#) and the proviso to [section 12\(3\)](#) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under [s. 27](#) of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee.

"He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him

which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

Hence, it can be inferred that the service of section 7 is complete. Moreover, the email service is complete.

7. The Corporate Debtor has neither filed any reply nor appeared before the bench. The corporate debtor was proceeded ex-parte on 24.03.2021.
8. As per Form I, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. 1,55,78,592/-. The date of default as per part IV has occurred from 16.10.2018. The present application was filed on 19.02.2021, hence the debt is not time barred and the application is filed within the period of limitation.
9. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

10. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the financial debt beyond doubt. The present application is admitted, in terms of section 7 (5) of IBC, 2016.
11. The Applicant has proposed the name of Mr.Piyush Moonaas Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P00990/2017-18/11630 (email = Piyushmoona@gmail.com) as IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
12. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namelyMr.Piyush Moonato meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however 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.
13. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in

relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

14. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

SD/-

(DR. DEEPTI MUKESH)
MEMBER (J)