

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-1665 (PB)/2018

**Under Section 7 of the Insolvency and Bankruptcy
Code, 2016**

In the matter of:

M/s Mahindra & Mahindra Financial Services Limited

.... Applicant/ Financial Creditor

Vs.

M/s Delhi Baroda Road Carrier Private Limited

.... Respondents/ Corporate Debtor

Judgment delivered on: 24.09.2019

CORAM:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the Petitioner: Mr. Naresh Kaushik,
Mr. Vardhman Kaushik, Dhruv Joshi,
Mr. Archit Gupta, Advocates

For the Respondent(s): Mr. Virag Gupta, Mr. Gaurav Pathak,
Ms. Vanya Gupta, Advocates

Company Petition No. (IB)-1665(PB)/2018



ORDER

S. K. Mohapatra, Member

1. M/s Mahindra & Mahindra Financial Services Limited claiming to be the financial creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent company, M/s Delhi Baroda Road Carrier Private Limited, referred to as the corporate debtor.
2. The Respondent company M/s Delhi Baroda Road Carrier Private Limited (CIN U74899 DL1995 PTC 067016) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 31.03.1995 under the provisions of the Companies Act, 1956. The registered office of the respondent corporate debtor is situated at 23, Transport Centre, New Sabzi Mandi, Azadpur, Delhi – 110033. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal having territorial jurisdiction over the place is the Adjudicating



Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Mr. Puneet Singh, Deputy Manager and authorized representative of the applicant, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
4. It is submitted in the application that the applicant financial creditor had sanctioned 134 loans on various dates in the year 2014 for the purpose of purchasing of vehicles, Mahindra Truxo to the Corporate Debtor, with a total amount of debt for Rs. 45, 58, 37, 4901/-. A table evidencing the total amount of debts in respect of 134 loan agreements granted along with disbursement dates has been placed on record.
5. It is alleged that the corporate debtor made continuous defaults in repayment of the aforesaid loans, and consequently applicant issued recall notices dated



25.07.2017 in respect of all 134 cases whereby the entire loan amount was recalled. When the amount was not repaid despite recall notices, the dispute was referred to the Sole Arbitrator for adjudication. The Learned Arbitrator passed awards in favour of the applicant Financial Creditor dated 27.06.2018 in all the 134 matters totaling to an amount of Rs 24, 50, 00, 000/-, with an additional interest of 1.5% per month until the date of payment along with a sum of Rs. 10,000/- towards the cost of the reference.

6. As per part IV of the application it is claimed that a sum of Rs. 29,89,11,205/- (Twenty-Nine Crores Eighty-Nine Lakhs Eleven Thousand Two Hundred Five Only) is due from the respondent company which includes interest as on 07.10.2018 as per the awards passed in the matter.
7. In support of its claim, applicant has placed on record a specimen of loan agreement, details of vehicles, estimated value of security and all the awards, along with table evidencing date and amount of disbursement and compilation of all the Statement of accounts maintained by the financial creditor.



- 8.** It is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application as the respondent corporate debtor has failed and defaulted to pay the amount as awarded under Arbitration and Conciliation Act, 1996.
- 9.** The respondent corporate debtor has filed its reply on 22.04.2019. We have heard the learned counsels for the parties and have perused the case records.
- 10.** It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,
- a) Financial creditor
 - b) Operational creditor, and
 - c) Corporate debtor itself.
- 11.** The procedure in relation to the initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code, an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.



- 12.** One of the objections raised by the respondent is that the applicant is not a *'financial creditor'*, nor the debts claimed in the application come within the purview of *"financial debt"* as defined under the Code.
- 13.** The expressions "Financial Creditor" and "Financial debt" have been defined in Section 5 (7) and 5 (8) of the Code and precisely "Financial debt" is a debt along with interest, if any, which is disbursed against the consideration for time value of money.
- 14.** In the present case applicant had sanctioned and disbursed the loan which are recoverable with applicable interest by entering in to loan agreements with the respondent borrower. The corporate debtor had undertaken the liability to repay the loan along with the agreed interest. The loan/financial facility was clearly disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application based on the arbitral awards includes both the component of outstanding principal and interest.



15. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant can clearly be termed as '*Financial Creditor*' of the respondent corporate debtor so as to prefer the present application under Section 7 of the Code.

16. The application filed by the applicant financial creditor has to be admitted under sub-section 5 (a) of Section 7 of the code, on satisfaction that:

I. Default has occurred.

II. Application is complete, and

III. No disciplinary proceeding is pending against the proposed IRP.

17. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least Rs. 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. In the present case the claimed financial debt in the light of the awards exceeds Rupees 29 Crores and the respondent has



failed to place on record any evidence to prove that it has paid the awarded amount to the applicant. There has been default in payment of the financial debt.

18. In connection with the 2nd requirement of sub-section 5 (a) of Section 7 of the code, it is seen that the present application is complete and has been filed by the petitioner financial creditor in Form-1 in terms of Rule 4 of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 accompanied with the required information, documents and records as prescribed under the Rules.

19. The applicant *inert-alia* has annexed to the application detail particulars of 'financial debt' including documents, records and relevant arbitral awards as evidence of default as required under subsection 3 (a) of Section 7 of the Code. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

20. Sub-section (3) (b) of Section 7 of the Code further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the



applicant has proposed the name of Mr. Rocky Ravinder Gupta, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00666/ 2018-19 / 12022 resident of 4582/52, Arya Samaj Road, Karol Bagh, New Delhi - 110005 with email - [id irrgupta.irp@gmail.com](mailto:irrgupta.irp@gmail.com). Mr. Rocky Ravinder Gupta has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 07.12.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Rocky Ravinder Gupta as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has also been satisfied.

- 21.** It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred; the present application filed under Section 7 is



complete and as no disciplinary proceeding against the proposed IRP is pending.

22. Respondent has raised another objection that all the 134 awards being *ex-parte* is not enforceable. Respondent has also questioned the correctness of inclusion of additional 1.5 % of monthly interest on awarded amount is incorrect and bad in law.

23. In this regard it is seen that respondent had challenged the said arbitral awards before the Hon'ble High Court of Bombay under Section 34 of the Arbitration and Conciliation Act, 1996. Hon'ble High Court however declined to interfere with the impugned awards and rejected the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 on 05.12.2018.

24. It is thus seen that not only awards in all the 134 loan agreements have been passed in favour of the applicant, but also appeal against the same has been rejected. There is, therefore, no dispute that the awards in question have attained finality. The present claim of the financial debt based on these awards is clearly due and payable in law. Once there is a debt and default and the application under



the Code is complete the Adjudicating Authority is bound to admit the application.

25. Section 7 application filed under the Code cannot be rejected on the ground that the claim has been disputed. Adjudicating Authority is only to ascertain the existence of a default. The Adjudicating Authority is not required to decide as to what is the actual amount of claim and other details. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.

26. Respondent has disputed on the quantum of financial debt with the allegation that most of the trucks have been returned to the applicant against the dues of the corporate debtor. It is further alleged that the applicant has failed and neglected to sell the trucks transparently at the best possible prices.

27. In this connection applicant has filed affidavit on 25.04.2019 giving details of sale of the trucks of corporate debtor and the updated amounts pending. It has been affirmed that the cost of trucks is not sufficient to meet its



pending liability. The statement shows that applicant has been unable to recover its entire dues from the sale of such trucks.

28. In the facts, the objection cannot sustain as Section 7 application filed under the Code cannot be rejected on the ground that the claim has been disputed. It is no matter that the debt is disputed so long as the debt is due and payable. Adjudicating Authority is only to ascertain the existence of a default. The Adjudicating Authority is not required to decide as to what is the actual amount of claim and who is at fault. Adjudicating Authority do not decide a money claim or suit, which can only be decided by the court of competent jurisdiction.

29. It is reiterated that the Adjudicating Authority is only to ascertain the existence of a default, which has to be more than the threshold limit of one lac.

30. The corporate debtor is entitled to point out to the Adjudicating Authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim is not due i.e. it is not payable in law or in fact. Respondent Corporate Debtor has miserably failed to raise



any good defence against the petition and also has failed to place its updated financial statement to show that no financial debt is due. There is no proof to show the repayment of the entire awarded amount to the financial creditor. Needless to say, that the claim is based on enforceable awards, which have since attained finality.

31. In the aforesaid background it is seen that the applicant clearly comes within the definition of Financial Creditor. Respondent has neither denied the availment of various loans granted by the financial creditor, nor denied the execution of Loan Agreements. Besides there are enforceable awards passed in favour of the applicant, which has since attained finality and are clearly enforceable in law. The material placed on record confirms that the respondent corporate debtor committed default in repayment of the financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. All the requirements of Section 7 (5) (a) of the Code stand fulfilled.



- 32.** As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
- 33.** Mr. Rocky Ravinder Gupta, having registration number IBBI / IPA-002 / IP-N00666/ 2018-19 / 12022 resident of 4582/52, Arya Samaj Road, Karol Bagh, New Delhi - 110005 with email - id rrgupta.irp@gmail.com. is appointed as an Interim Resolution Professional.
- 34.** We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lac with the Interim Resolution Professional namely Mr. Rocky Ravinder Gupta to 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 three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.
- 35.** 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, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

36. 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;

(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.”

37. 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.

38. 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 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 tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this 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.

- 39.** 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 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.



(M.M. KUMAR)
PRESIDENT



(S. K. MOHAPATRA)
MEMBER (T)