THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No.122/Chd/HP/2020

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

In the matter of:
Mr. Ravi Kumar Verma,
having its residence at
839, Sector 12,
Panchkula, 134112, Haryana

…Petitioner-Financial Creditor

Versus

Megaa Bakers Private Limited
having its registered office at
Village Tahliwal, District UNA (HP)

…Respondent-Corporate Debtor

Judgment delivered on:04.02.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Petitioner/Financial Creditor : Ms. Niharika Sohal, Advocate

For the Respondent/Corporate Debtor : Mr. Mukesh Singh Tomar, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **'IBC'/'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 **('Rules')** by Mr. Ravi Kumar Verma **(**hereinafter referred to as **'Petitioner/Financial Creditor'**) to initiate the Corporate Insolvency Resolution Process (**'CIRP'**) against Megaa Bakers Private Limited (hereinafter referred to as **'Respondent/Corporate Debtor'**). The petition is signed by Mr. Ravi Kumar Verma and the affidavit verifying the contents of the application is on pages 16 & 17 of the petition.

2. The master data of the Corporate Debtor is stated to be filed as Annexure A-1 of the petition. The Corporate Debtor is stated to be incorporated on 06.10.2005 and is a manufacturer of food stuffs company having its registered address at Village Tahliwal District UNA (HP). Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. The facts of the case as briefly stated in the petition are that the financial creditor on the request of the Directors of the corporate debtor provided a loan and the corporate debtor agreed to secured the repayment of loan by executing corporate guarantee and also provided their personal guarantees. It is also submitted that Directors could not execute corporate guarantee, but executed the personal guarantee by way of an agreement dated 01.11.2018. The Guarantee Agreement dated 01.11.2018 is attached with the main petition and marked as Annexure A-5.

4. It is submitted by the petitioner that petitioner demanded the repayment of the loan from the corporate debtor on various occasion, but it ignored to repay the same. It is further submitted that corporate debtor has only paid Rs. 14,500/- out of entire dues of Rs. 4,75,500/-.

5. In Part-III of Form No.1, Mr. Jaramu Ram Thakur, Registration No. IBBI/IPA-001/IP-P01869/2019-2020/12933 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 04.02.2020 along with the

Certificate of Registration issued by the Indian Institute of Insolvency Professionals of ICAI and the certificate of IBBI issued in favour of Mr. Jaramu Ram Thakur are attached at Annexure A-3.

6. It is stated in Part-IV of Form No.1 that the petitioner has provided loan of ₹ 4,00,000/- (Four Lakhs Only). The total amount claimed to be in default is ₹ 4,75,000/- as on 04.02.2020 (including interest @18% per annum). A table setting out the computation of amount in default, including interest is attached as Annexure A-2 of the petition.

7. It is averred that, particulars of security held is Loan Agreement dated 31.10.2018 and Personal Guarantee Agreement dated 01.11.2018. The same is attached with the main petition and marked as Annexure A-4 and A-5 respectively of the petition. The bank statement attached as Annexure A-6 and payment reminder e-mail dated 22.01.2020 and reply to the same as Annexure A-7. The second reminder letter sent to the corporate debtor on 29.01.2020 is attached with the petition and marked as Annexure A-8 of the petition.

8. The notice of this petition was issued to respondent-corporate debtor for 17.04.2020 to show cause as to why this petition be not admitted. A short reply on behalf of respondent-corporate debtor is submitted vide Diary No. 00207/02 dated 07.12.2020 by Mr. Tribhuvan Nath Dwivedi, Director who is duly authorized by the Board to act on behalf of the respondent-corporate debtor and the Board Resolution, authorizing him is attached with the reply and marked as Annexure R-1.

9. The corporate debtor through its reply submitted that respondent has faced huge amount of losses in the past due to which the operations of the plant have been stopped. It is further submitted that this Tribunal may consider the difficulty of the answering respondent and its incapacity to pay the liability

to the petitioner as per the agreement dated 31.10.2018 and personal guarantee agreement dated 01.11.2018 in the present petition and other liabilities as well.

10. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

11. Section 7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that—*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

12. The issue for consideration is whether present application is filed within limitation. It can be seen from the records that in the present case, the occurrence of default is evidenced by the copy of Loan Agreement dated 31.10.2018 executed between the corporate debtor and the petitioner along with copy of Personal Guarantee Agreement dated 01.11.2018 and the same are attached as Annexure A-4 and Annexure A-5 respectively of the petition. It is further submitted that corporate debtor has paid only Rs. 14,500/- on 24.12.2019 and this petition was filed on 06.02.2020. Therefore, the present petition is filed within limitation.

13. The another issue for consideration is whether the present petition is maintainable. As per Section 7 of IBC which is reproduced below :-

> *"Section 7 Initiation of corporate insolvency resolution process by financial creditor.*
>
> *(1) A financial creditor either by itself or jointly with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process*

against a corporate debtor before the Adjudicating Authority when a default has occurred.

[2][Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. "

14. The other issue for consideration is whether there is default in payment. It is observed from the record that the petitioners have made various communications vide an email dated 22.01.2020 and second reminder letter dated 29.01.2020 wherein Corporate Debtor in its reply informed that corporate debtor is suffering from financial crisis and it is trying to arrange the funds for the repayment of outstanding amount. The respondent-corporate debtor has also filed a reply wherein it has been stated that the default mentioned in the petition is due towards the petitioner due to its incapacity to pay the liability. The application filed in the prescribed Form No.1 is found to be complete.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

> "(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.

(e) It is further directed that 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.

(f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be."

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Jaramu Ram Thakur and there is nothing adverse against him. In view of the above, we appoint Mr. Jaramu Ram Thakur, Registration No. IBBI/IPA-001/IP-P01869/2019-2020/12933, R/o Mannat 2037, Near Ajit Karam Singh International Public Smart School (AKSIPSS), Sector 123, New Sunny Enclave, Greater /Mohali Punjab, Sahbizada Ajit Singh Nagar, Punjab - 140301, Email: jrthakurvms@gmail.com, Mobile No. 9888344644 the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial

position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

18. We direct the Financial Creditor to deposit a sum of ₹40,000/- (Rupees Forty Thousand Only) with the Interim Resolution Professional, to meet out the expense 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 amount however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional on conclusion of CIRP.

19. A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

February 04 , 2022
HM/ASH

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(*through web-based video conferencing platform*)

Item 37

IA No. 122/22
In
CP(IB) No. 122/Chd/HP/2020
(Admitted)

Under Section 7, & 60(5) IBC 2016
(replacement of IRP)

<u>In the matter of:-</u>

Mr. Ravi Kumar Verma ….Petitioner

Vs.

Mega Bakers Private Limited …Respondent

<u>Present through Video Conferencing:</u>
Ms. Niharika Sohal, Advocate for Applicant in IA No. 122/2022

<u>IA No. 122/2022</u>

Report regarding antecedents of the RP has been received from the Registry and no adverse remarks have found against Mr. Parminder Singh Bhullar. In the circumstances, earlier RP Mr. Jaramu Ram Thakur is replaced with Mr. Parminder Singh Bhullar, who is the new Resolution Professional. Therefore, IA No. 122/2022 is allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 30, 2022
PB

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(*through web-based video conferencing platform*)

Item 30

IA No. 752/22
In
CP(IB) No. 122/Chd/HP/2020
(Admitted)

Under Section 7, IBC 2016
R 11 NCLT

In the matter of:-

Mr. Ravi Kumar Verma. …. Petitioner/Financial Creditor

Vs.

Mega Bakers Private Limited …Respondent/Corporate Debtor

Present through Video Conferencing:
Mr. Nahush Jain, Advocate for applicant in IA No. 752/2022

IA No. 752/2022

The present application has been filed on behalf of Interim Resolution Professional under Rule 11 of the NCLT Rules 2016 seeking exclusion of time from 05.04.2022 to 30.06.2022, which was consumed in legal proceedings relating to change of Interim Resolution Professional appointed, vide order dated 30.06.2022 passed by this Bench. Further, prayer has been made for exclusion of subsequent period from 01.07.2022 till the disposal of the present application.

It is stated by learned counsel for the applicant that CIRP against the corporate debtor was intiated vide order dated 04.02.2022 passed by this Tribunal and Mr. Jaramu Ram Thakur was appointed as Interim Resolution Professional. Further, it is stated that when the financial creditor informed Mr. Jaramu Ram Thakur about the initiation of CIRP against the corporate debtor and his appointment as IRP in the matter, it was informed by Mr. Jaramu Ram Thakur that his Authorisation of Assignment (AFA) issued by the Insolvency Professional Agency has expired which is a pre-requisite for accepting any assignment and in such situation he will not be able to act as the Interim Resolution Professional for the corporate debtor. Accordingly, the financial creditor sought consent from Mr. Parminder Singh Bhullar, Insolvency Professional, the applicant herein, to act as Interim Resolution Professional.

Subsequently, an application bearing IA No. 122/2022 for replacement of Mr. Jaramu Ram Thakur, IRP with applicant herein, was allowed by this Tribunal vide which order dated 30.06.2022 (Annexure A-2) pursuant to which the applicant was appointed as Interim Resolution Professional.

It is submitted by learned counsel for the applicant that 180 days of CIRP commencement date i.e. 04.02.2022 are about to expire on 03.08.2022, whereas the applicant has been appointed as IRP only on 30.06.2022.

In the backdrop of the aforesaid facts and circumstances, it is pleaded by learned counsel for the applicant that if the relief of exclusion of period, as sought for, in present application is not granted, then the present IRP/Applicant will not be able to carry out the prescribed process and activities in furtherance of the CIRP.

Keeping in the view the facts and circumstances mentioned in the application and in the interest of justice, the present application is allowed and the period from 05.04.2022 till 30.06.2022 is excluded from the CIRP proceedings. Further, the period from 01.07.2022 till today is also excluded from the CIRP proceedings. Therefore, IA No. 752/2022 is allowed and disposed of.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

July 15, 2022
PB