

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

Company Petition No. (IB) - 229 (PB) / 2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Shriram Transport Finance Company Limited

Applicant/Financial Creditor

Vs.

Trans Gulf Frozen Food Containers Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 17.09.2019

CORAM

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

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

For Applicant/Petitioner: Mr. Jeevesh Nagrath, Ms. Divya Lal, Advocates.
For the Respondent(s): Mr. Abhinav Prakash, Advocate.



ORDER

S. K. Mohapatra, Member

1. M/s Shriram Transport Finance Company Limited has filed the instant 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 to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s Trans Gulf Frozen Food Containers Private Limited, referred to as the corporate debtor.
2. The Respondent Company M/s Trans Gulf Frozen Food Containers Private Limited (CIN No. U15139 DL2004 PTC 124342) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 28.01.2004 having its registered office situated at A-5, Jhilmil Industrial Area, Shahdara, Delhi - 110095. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi 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. It is appropriate to mention that the applicant Shriram Transport Finance Company Limited is a Non-Banking Financial Company registered with the Reserve Bank of India and is engaged in the business of financing and leasing of vehicles.
4. Mr. Anwar Sadat, Regional Business Head 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.
5. The Corporate Debtor approached the Financial Creditor for availing loan / credit facility for purchasing commercial vehicles for its business of transportation. Thereafter, the parties entered into 29 Loan cum Hypothecation Agreements. As per the aforesaid agreements, a total sum of Rs. 2,62,00,000/- (Rupees Two Crores Sixty-Two Lakhs only) was granted as loan to



the Corporate Debtor by the Financial Creditor, which was to be repaid by the Corporate Debtor as per the agreements. The Corporate Debtor after availing of the loan/ financial debt failed and defaulted in making the payments of the due EMI's to the Financial Creditor and committed default in the payment of the Financial Debt to the Corporate Debtor.

6. Consequently, the Financial Creditor invoked arbitration proceedings against the Corporate Debtor by invoking the arbitration agreements contained in 27 Loan cum Hypothecation Agreements.
7. Initially Sh. Rajesh Kumar, ADJ (Retd.) was appointed as the sole arbitrator to adjudicate the dispute between the parties. It is submitted that respondent contested the claims by filing reply as well as counter claims. Upon the unfortunate demise of the sole arbitrator, Mr. B.L.Gupta, Additional District and Sessions Judge (Retd.) was appointed on 05.04.2017 as the sole arbitrator to adjudicate the dispute between the parties with respect to 27 of the 29 Loan cum Hypothecation Agreements. After loan recall notice in respect of remaining two of the 29



Loan cum Hypothecation Agreements, Mr. B.L.Gupta, Additional District and Sessions Judge (Retd.) was appointed on 10.04.2017 as the sole arbitrator to adjudicate the dispute between the parties with respect to remaining 2 out of the 29 Loan cum Hypothecation Agreements. It is submitted that after due notice even through publication as respondent did not appear, they were proceeded *ex-parte*.

8. The Ld. Sole Arbitrator passed 27 *ex-parte* Awards dated 08.06.2017 w.r.t. 27 Loan cum Hypothecation Agreements and Arbitral Awards dated 21.05.2018 w.r.t. 2 Loan cum Hypothecation Agreements; in favour of the Financial Creditor and against the Corporate Debtor thereby directing the Corporate Debtor to pay the outstanding amount along with interest. The Ld. Sole Arbitrator also awarded the cost of proceedings in favour of the Financial Creditor and against the Corporate Debtor.
9. The Corporate Debtor challenged the 27 arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996, which is currently pending before



the Ld. ADJ, Tis Hazari District Courts, Delhi. The Ld. ADJ, vide order dated 31.03.2018, granted a conditional stay in the petitions under Section 34 of the Arbitration and Conciliation Act, 1996. The condition for stay was deposit of Rs. 4,00,000/- (Rupees Four Lakhs only) by the Corporate Debtor for each of the Arbitral awards within a period of ten days from the date of the order. The said period expired on 10.04.2018. However, as the said deposits were not made in fulfilment of the preconditions, there is no stay of the Arbitral awards. The financial creditor had also filed execution petitions before the District Court at Tis Hazari, New Delhi to seek enforcement / execution of the arbitral awards. The said execution petitions are pending adjudication.

- 10.** As per part IV of the application it is claimed that a sum of Rs. 5,64,46,192/- (Rupees Five Crores Sixty-Four Lakhs Forty Six Thousand One Hundred and Ninety Two Only) is due from the respondent company which includes interest and expenses as on 31.12.2018 as per the award passed in the matter.



11. 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.

12. The respondent corporate debtor has filed its reply on 20.03.2019. Rejoinder to the reply was filed by the applicant on 04.04.2019.

13. We have heard the learned counsels for the parties and have perused the case records.

14. 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.

15. 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.

16. 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. It is further stated that no notice under Section 8 was served before filing of the present application and therefore the present application is not maintainable.

17. 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.

18. In the present case applicant had sanctioned and disbursed the loan which are recoverable with applicable interest by entering in to loan cum Hypothecation 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 includes both the component of outstanding principal and interest.

19. 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. As per the provisions of Section 7 of the Code, no prior notice under Section 8 of the Code is required in respect of a financial debt.

20. 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 against the proposed IRP is pending.*



21. 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 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 award exceeds Rupees 564 Lacs and the respondent has defaulted in making payment of the debt.

22. In connection with the 2nd requirement of subsection 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.

23. 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.

24. 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. Navjit Singh, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P00314/ 2017-18 / 10578 resident of 218-a, 1st Floor, Shop No. 4, Rama Market, Pitampura, Delhi - 110034 with email - id navjit92ca@gmail.com. Mr. Navjit Singh has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 22.10.2018 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. Navjit Singh 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.

25. 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.

26. Respondent has raised another objection that the award being *ex-parte* is not enforceable. It is also the case of the respondent that the award has been challenged under Section 34 of the Arbitration and Conciliation Act, 1996 which is still *subjudice*. Accordingly, it is argued that the award has not attained its finality and therefore cannot be enforced.

27. In this regard there is no dispute that the *ex parte* awards in question have not been stayed. The present claim of financial debt is thus 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. 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.

28. Respondent has also raised an objection that execution proceeding for enforcement of the award is pending and is still *sub judice*. In this regard it is well settled that pendency of execution proceedings cannot be an impediment or bar to initiate the Corporate Insolvency Process against the corporate debtor under the provisions of Section 7 of the Code. Simply pendency of proceedings



cannot be a ground to deny admission of an application under Section 7 of the Code, once the application is complete and there has been commission of default.

29. Hon'ble NCLAT in the matter of M/s. Ksheeraabd Constructions Pvt. Ltd. V. M/s. Vijay Nirman Company Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 167 of 2017 has observed that:

"The "I & B Code" being a complete code will prevail over other Acts.-----No person can take advantage of pendency of a case to stall "Corporate Insolvency Resolution Process" under the I & B Code".

30. Similarly, in the case of M/s Innoventive Industries Ltd. V. ICICI Bank and Ors reported in AIR 2017 SC 4084, Hon'ble Supreme Court has also held at para 56 that:

"The non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code".



31. In view of the above discussion, the objection in this regard will not sustain as initiation and pendency of proceedings in different forums is no bar for initiation of Corporate Insolvency Resolution Process under Section 7 of the Code in view of the overriding effect given to the provisions of Section 238 of the Code.

32. Respondent has disputed about the quantum of financial debt with the allegation that the claim is highly inflated. This objection also 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, which is more than the threshold limit of one lac.

33. 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 re-payment of the entire loan amount along with applicable interest. That apart the claim is based on an enforceable award, which has not yet been stayed, varied or set-aside.

34. 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 cum Hypothecation Agreements. Besides there is an enforceable award in favour of the applicant. 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. We are satisfied that the present application is complete in all respect 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.

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

36. Mr. Navjit Singh having registration number IBBI / IPA-001 / IP-P00314/ 2017-18 / 10578 resident of 218-a, 1st Floor, Shop No. 4, Rama Market, Pitampura, Delhi - 110034 with email - id navjit92ca@gmail.com is appointed as an Interim Resolution Professional.

37. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lac with the Interim Resolution Professional namely Mr. Navjit Singh 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.

38. 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.

39. 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.”

- 40.** 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.

41. 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.

42. 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.

Sdl-
17.09.2019
(M.M. KUMAR)
PRESIDENT

Sdl-
(S. K. MOHAPATRA)
MEMBER (T)