# IN THE NATIONAL COMPANY LAW TRIBUNAL

## DIVISION BENCH, DELHI

## BENCH III

**IB/876 (ND)/2020** filed Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

*In the matter of* ***Piyush IT Solutions Private Limited***

**M/s. Dhankalash Distributors Private Limited**

*....Financial Creditor*

Versus

**M/s. Piyush IT Solutions Private Limited**

*....Corporate Debtor*

*Order delivered on 28th October, 2020*

CORAM:

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**
**Shri, NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)**

*For Financial Creditor*: Mr. Rajnish Sinha, Mr. Nikhil Jain, Ms. Sakshee Sharma, Ms. Shreya Kohli, Mr. Rakshit Goyal, (Advocates)

*For Corporate Debtor:* Mr. Saket Gogia (Advocate)

## ORDER
## (Through Video Conferencing)

*Per.* CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is an Application IB -876/(ND)/2020 filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, filed by the Financial Creditor viz., *M/s. Dhankalash Distributors Private Limited*. The Financial Creditor is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor

viz., 'M/s. *Piyush IT Solutions Private Limited', declare* moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. Heard the Counsels for the Financial Creditor, Corporate Debtor, and perused the pleadings including the documents placed on file. The Financial Creditor has claimed an amount of Rs. 1,20,14,931/- (Rupees One Crore Twenty Lakh Fourteen Thousand Nine Hundred and Thirty One Only) inclusive of principal amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh) and interest amount of Rs. 10,14,931/- (Rupees Ten Lakh Fourteen Thousand Nine Hundred and Thirty One Only) in terms of Clause 3 of the Agreement, calculated till 24.03.2020 as outstanding against the Corporate Debtor, which the Corporate Debtor has failed to repay. It is noted that the Financial Creditor in its Application has stated that it reserves the right to claim the interest amount aggregating to Rs. 13,83,946/-(Rupees Thirteen Lakh Eighty Three Thousand Nine Hundred and Forty Six Only) for the period of default from 25.03.2020 till 06.07.2020 and thereafter till the date of payment as per the terms of the Agreement.

3. The brief facts of the case are that an Inter Corporate Loan Agreement (hereinafter referred in "Agreement") dated 03.12.2019 was executed between the Financial Creditor and the Corporate Debtor pursuance to which an amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh Only) was disbursed by the Financial Creditor to the Corporate Debtor in three tranches i.e., Rs. 50,00,000/- (Rupees Fifty Lakh Only) on 10.12.2019 & 11.12.2019 and Rs. 10,00,000/- (Rupees Ten Lakh Only) on 20.12.2019, respectively. The Corporate Debtor was obliged to repay the loan in terms of Clause 2 & 3 as stipulated in the Agreement, the gist of the clause 2 and 3 of the Agreement are as under:

- <u>Clause 2 of the Agreement: Tenure of the Loan</u>

  The loan was required to be repaid in the following manner:

| **Sl. No.** | **Due Date** | **Amount** |
|---|---|---|
| 1. | On or before January 31, 2020 | 1,10,00,000/- plus interest |

- <u>Clause 3 of the Agreement: Interest</u>

The Corporate Debtor was inter alia liable to pay interest @ 18% per annum and an additional interest @ 2% per month for the period of default.

4. The Corporate Debtor has defaulted in paying the said loan amount on 31.01.2020 as per the terms of Clause 2 of the Agreement; therefore, the Financial Creditor has issued notice(s) of demand to the Corporate Debtor on 06.02.2020 and 07.03.2020, demanding the payment of outstanding dues. The Corporate Debtor has duly acknowledged its outstanding liability by issuing a confirmation of accounts for the period of 01.04.2019 to 31.03.2020 and 01.04.2020 to 06.07.2020 to the Financial Creditor on 01.04.2020 and on 07.07.2020 respectively.

5. The Corporate Debtor in its defence has at the outset denied each and every allegations, averment and contents of the Application filed by the Financial Creditor, unless specifically admitted and has stated that the Application is not maintainable under Section 7 of IBC, 2016 as there is no debt due and payable within the meaning of Section 3 (11) of IBC, 2016 and the amount purportedly claimed to be in default by the Financial Creditor has not yet become due and payable in terms of the Agreement between the parties and therefore the Application is premature.

6. The Corporate Debtor has admitted that it has availed Inter Corporate Loan for an amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) from the Financial Creditor in accordance with the terms and conditions of Inter Corporate Loan dated 03.12.2019 (Agreement). The Corporate Debtor further submits that the business of the Company has been grossly affected owing to various circumstances including without limitation the COVID-19 pandemic due to which the financial condition of the company has become very unstable since February 2020. Further, the Corporate Debtor states that the promoters/directors of the Financial Creditor and the Corporate Debtor have entered into an oral agreement on 04.04.2020 and it was not reduced in writing due to the ongoing COVID-19 pandemic and the restrictions imposed by the Central & State Governments. As per the oral Agreement it was agreed that the Inter Corporate Loan shall be repaid by the Corporate Debtor on or before 31.12.2021 and the Financial Creditor has categorically agreed not to initiate any proceedings. Therefore, the Financial Creditor is abusing the process of law for recovering the amount which is not due and payable.

7. The documentary evidence which is placed on the case file is sufficient to ascertain the existence of a default on the part of the Corporate Debtor. The Financial Creditor has fulfilled all the requirements of law including the name of the Resolution Professional for appointment as the IRP. Hence, the Application stands ***admitted*** and the commencement of the Corporate Insolvency Resolution Process is ***Ordered***.

8. Mr. Pawan Kumar Singal, is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as reflects from Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

9. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of

Sub-section (1) of Section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

12. The Financial Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. The e-mail and other details of the IRP are as follows:

**Name:** Mr. Pawan Kumar Singal

**Registration No:** IBBI/IPA-001/IP-P01172/2018-19/12229

**Address:** MP-114, Pitampura, New Delhi-110034

**Phone No.:** 9560508482

**Email ID:** pawansingal50@gmail.com

13. The Financial Creditor is directed to communicate this Order to the Corporate Debtor with immediate effect.

14. The Order is pronounced.

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| **NARENDER KUMAR BHOLA** | **CH. MOHD SHARIEF TARIQ** |
| Member (Technical) | Member (Judicial) |