

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302
C.P.(IB)/159(AHM)2023

Order under Section 7 IBC

IN THE MATTER OF:

Mekaster Finlease Ltd
V/s
Tiaan Consumer Ltd

.....Applicant

.....Respondent

Order delivered on: 11/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP(IB)/159/AHM/2023

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

In the matter of M/s. TIAAN Consumer Limited

Mekaster Finlease Ltd.
16/121-122, Jain Bhawan,
WEA, Karol Bagh,
New Delhi-110005

...Applicant / Financial Creditor

VERSUS

TIAAN Consumer Limited
405, Patel Ashwamegh Complex,
Jetalpur Road, Near Dairy Den Circle,
Sayajigunj, Vadodara, Gujarat-390005

...Respondent/ Corporate Debtor

Order Pronounced On: 11/10/2023

CORAM:

Sh. Shammi Khan, Hon'ble Member (Judicial)
Sh. Sameer Kakar, Hon'ble Member (Technical)

Appearance:

For the Applicant/Financial Creditor: Adv. Ms. Aditi Sharma.

For the Respondent/Corporate Debtor: Adv. Ms. Swastika Kumari.

ORDER

Per: BENCH

1. The Present Application is filed on 19.06.2023 by the Applicant - **Mekaster Finlease Ltd.** (hereinafter referred to as “**the Financial Creditor**”) against the Respondent - **M/s Tiaan Consumer Limited** (hereinafter referred to as “**the Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for making defaulted in payment of its outstanding dues **Rs.1,55,31,200/-**. including interest.

2. From Part-I of the Application, it is seen that the Financial Creditor is a Company incorporated on 15.11.1994. From Part-II of the Application, it is seen that the Corporate Debtor is a Limited Company incorporated on 27.03.1992 bearing CIN: L85100GJ1992PLC017397. The registered office address of the Corporate Debtor as per the

Application is stated to be situated at 405, Patel Ashwamegh Complex, Jetalpur Road, Near Dairy Den Circle, Sayajigunj, Vadodara - 390005.

2. Part-III of the Form-1 reveals that the, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Devendra Umrao, Reg. No. IBBI/IPA-003/IPA-N00223/2019-2020/12640; to act as the IRP. He has filed his written communication annexed with the Application as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.

3. Part-IV of the Form-1 reveals that the Financial Creditor has claimed a sum of Rs.1,55,31,200/- which is due and payable by the Corporate Debtor as on 16.05.2023. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:-

Document	Page No.
Agreement dated 2/1/2023	33-A,B,C
Bank Statement of Applicant	34-37
Loan recall notice dt. 18/3/2023	38-40
Letter of Respondent dt. 1.4.2023 seeking waiver of interest	41-42
Letter of Financial Creditor dt. 5.4.2023	43-44
Letter of Financial Creditor dt. 8.4.2023	45

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has availed business loan from the Applicant for expanding their business of selling consumer and herbal products in India and based on such representations given by the Corporate Debtor, the Financial Creditor granted business loan vide Business Loan Agreement dated 2/1/2023 to the Corporate Debtor to the tune of Rs. 1.50 Crore.

5. Subsequent to the sanction the Financial Creditor disbursed a sum of Rs. 1.46 Crores to the Respondent on different dates between

2.1.2023 and 2.2.2023. In support of the same the applicant has attached its bank statements which are at Page No. 34 to 37 of the application.

6. It is stated that the rate of interest agreed between the parties was 12% p.a. at monthly rests and a penal interest of 12% over and above the interest rate for defaulted amount for the defaulted period.

7. It is stated that the said loan was to be repaid by 15/03/2023 as per the loan agreement attached with the application. The said agreement is signed by one Mr. Munesh Kumar, director of the Corporate Debtor.

8. It is stated that the Corporate Debtor defaulted in repayment of the loan and a loan recall notice was issued on 18/3/2023 by the Financial Creditor. The recall notice is annexed at Annexure A-8 of the application.

9. It is stated that the Corporate Debtor replied to the said recall notice on 1.4.2023 requesting waiver of penal interest and sought 30 days time to repay. The said letter was replied by the Financial Creditor on 5.4.2023 whereby the Financial Creditor agreed to waive 2% penal interest if whole amount is paid within 10 days. Subsequently as the

Corporate Debtor has not paid the loan amount, this application was filed.

10. The affidavit affirming the present application is signed by one Mr. Virendra Jain who has been duly authorized by Board Resolution dated 15.5.2023 which is attached at Page 26.

11. It is seen that on receipt of notice the Corporate Debtor has filed reply on 20.09.2023 which was affirmed by one Mr. Sanchit Malhotra who has been authorized by board resolution dated 19/08/2023.

13. In reply the Corporate Debtor admits having received the loan amount of Rs. 1.46 crores and execution of the loan agreement dated 2.1.2023 and further that the Corporate Debtor was legally bound to fulfil the obligation of repaying the principal sum alongside the accrued interest by 15/3/2023.

14. In reply the Corporate Debtor states that they were unable to repay the loan due to cancellation of orders due to which there was financial crunch. Further, certain bulk quantity of saffron was damaged due to water leakage in the godown of the company. The Corporate Debtor pleaded more time and waiver of additional/penal interest.

15. Heard the submissions made by the Learned Counsel for the parties and perused the documents placed on record.

16. The Respondent / Corporate Debtor in his reply has admitted the debt and default. Further, it is also seen that the ‘default’ which is arising in the present Application has happened much after the advent of Covid – 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. The amount claimed in default is more than Rs. 1.00 Crores which is under Limitation as the date of default is mentioned as 16.3.2023, the NESL record of default is attached which confirms the same and is stated to be “deemed to be authenticated”.

17. In view of the facts as stated *supra* and also in view of the ‘financial debt’ is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor of an amount of more than Rs. 1 Crore, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

18. The Financial Creditor has proposed the name Devendra Umrao, Reg. No. IBBI/IPA-003/IPA-N00223/2019-2020/12640 as the Interim

Resolution Professional (IRP) who has also filed his consent in Form – 2 and AFA, it is seen that the Authorization for Assignment is granted to the said IRP till 10.11.2023. The proposed IRP who is to be appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **TIAAN Consumer Limited** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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;*
 - 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. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this

Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As proposed by the Financial Creditor, we appoint **Mr. Devendra Umrao**, Reg. No. IBBI/IPA-003/IPA-N00223/2019-2020/12640 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is

further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

20. Accordingly, this Application **CP(IB)/159/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)