

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.218/ALD/2019

In the matter of

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

And

In the matter of:

American Express Banking Corp

Having its Registered office at:

Metropolitan-Saket, 7th Floor office block District Centre, Saket.

New Delhi-110017

...

Applicant

Versus

J.M.L Marketing Pvt Ltd.

Having Registered Office at

C-13, UPSIDC, Naini, Prayagraj

..... Respondent

Order reserved on 04.04.2022

Order pronounced on 18.04.2022

Coram:

Sh. Rajasekhar V.K.

: Member (Judicial)

Sh. Virendra Kumar Gupta

: Member (Technical)

Appearances (via video conference):

For Financial Creditor

: Ms. Gunjan Jadwani, Advocate

For Corporate Debtor

: Mr. Sandeep Arora Advocate

ORDER

Per: Virendra Kumar Gupta., Member (Technical)

1. This application has been filed under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **American Express Banking Corp**, (*hereinafter referred as the Financial Creditor*) through its counsel seeking initiation of Corporate Insolvency Resolution Process in respect of

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the **J.M.L Marketing Pvt. Ltd.** (*hereinafter referred as the Corporate Debtor*).

Facts of the case:

2. The facts, in brief, are that the Financial Creditor in pursuance of Buyer Initiated Payments (“BIP) agreement and Set up Form dated 04.10.2017 issued 8 corporate cards to the Corporate Debtor as financial assistance and Clause 8.2 of the BIP Agreement provided that the Corporate Debtor was required to make the payment of the amounts spent on the corporate cards within twenty one (21) days from the date of the statement to be issued and the regular statements were issued by the financial creditor and as per the last statements of accounts, the corporate debtor owes an amount of Rs. 5,02,61,800/-but Corporate Debtor failed, hence, as per the Financial Creditor, the default occurred on 12.01.2017 as per the agreement.
3. Our attention was drawn to various emails annexed at page no.379 to 456 requesting for payments of the outstanding amount with the corporate debtor, however no payments were made as per the agreed schedule. It is further stated that on 15.10.2018, the corporate debtor shared another repayment plan for clearing outstanding dues which was not agreeable by the financial creditor thereby acknowledging the debt and default of payment on part of Corporate debtor. Thereafter *Vide* email 09.01.2019 ,29.01.2019 and 22.02.2019, financial creditor intimated the corporate debtor about the latest overdue payment demanding immediate payment thereof.
4. It was further submitted that in discharge its part liability, the corporate debtor had issued two cheques in favour of the Financial Creditor which were also dishonored and the financial creditor has even sent a notice to Mr. Anil Arora, director of the corporate debtor who had executed deed of Guarantee and indemnity in favour of the financial creditor demanding the outstanding amount but no payments were received.

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5. Accordingly, it was prayed that since there was a debt which was outstanding and payable, and a default had occurred, hence, the application was liable to be admitted. It was further submitted that the Financial Creditor has also proposed the name of the IRP to conduct CIRP

Reply On Behalf Of The Corporate Debtor

6. The learned counsel Mr. Sandeep Arora appeared on behalf of the Corporate Debtor and submits that the application is time barred and not within limitation, thus the application is not maintainable, with these other technical defences pleas were also taken in the reply.

Rejoinder On Behalf Of Financial Creditor

7. It was submitted by the counsel for Financial Creditor that the application is not barred by the limitation as the Financial Creditor and Corporate Debtor entered into Buyer Initiated Payments agreement on 04.10.2017 pursuant to which disbursement of debt took place and the first default took place on 12.01.2017 and the present petition is filed on 07.06.2019 which is well within limitation.

Findings & Conclusion

8. During the course of hearings of this application, the Ld. Counsel appearing on behalf of the corporate debtor submitted that he has withdrawn his brief in the matter. Thus, the Bench on 02.03.2022 has again issued court notice to the Corporate Debtor for appearance in matter and the matter was fixed for hearing on 04.04.2022 but the court notice was returned with remarks "***Item Return refused***", which indicates that it was duly delivered but on the date of hearing none has put in appearance on behalf of the corporate debtor.
9. We have considered the submissions made on behalf of the Financial Creditor and material on record. Having discussed this aspect and considering the agreement entered into between the parties, the statements annexed for payment due and the email dated 15.10.2018 exchanged

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between the parties wherein the corporate debtor has placed the repayment plan of the outstanding dues, thus admitting the debt, we hold there is a debt which is due and payable both in law and in fact and default has occurred within the meaning of provisions of section 7 of IBC, 2016.

10. Further, it is found that the last payment has been made on 22.11.2018 and this application has been filed on 07.06.2019, thus the application is found well within the limitation in terms of provisions of Section 238 of IBC, 2016.
11. Further, the name of IRP has been proposed by the Financial Creditor whose consent has been placed on record. There exists no material to show that any disciplinary proceedings are pending against such proposed IRP or such IRP is otherwise not ineligible to be appointed. The application filed under section 7 of the Code, is otherwise complete and meet all other procedural requirements of the Code and Regulations made thereunder. Hence, we admit the same and pass the following order.

ORDER

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor JML Marketings Private Limited is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following :-

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- 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 (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.
 - v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
 - vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
 - viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
 - ix) **Mr. Shailesh Verma** having **Registration No. IBBI/IPA-002/IP-N00070/2017-2018/10148** be appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan

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subject to production of written consent within one week from the date of receipt of this order.

- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit Rs.2,00,000/- (Rupees Two Lakh only) with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
12. Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
13. List the main CP on 15.06.2022 for the filing of the progress report.
14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Virendra Kumar Gupta
Member (Technical)

Rajasekhar
V K

Digitally signed by
Rajasekhar V K
Date: 2022.04.18
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Rajasekhar V.K.
Member (Judicial)