

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

IBA/709/2019

Under Section 7 r/w rule 4 of the IBC, 2016

In the matter of M/s. SIP Industries Limited

M/s. Sipping Spirits Private Limited

---Financial Creditor

V/s

M/s. SIP Industries Limited

---Corporate Debtor

Order delivered on: 30.08.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. Pawan Jhabakh Advocate*
Shri. Chandra Prakash Surana, Advocate
Shri. Ashwin Raman, Advocate

For the Corporate Debtor : *Shri. Ramaswamy Mayyappan, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 26.08.2019

It is an Insolvency & Bankruptcy Application (IBA) filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("the Code") by the Applicant/Financial Creditor for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, based on

the default committed by the Corporate Debtor in repaying ₹32,00,000 along with interest of ₹2,23,298 at the rate of 9% per annum as reflected in the letter dated 01.04.2018 by the Corporate Debtor.

2. On perusal of this application, it appears that the Corporate Debtor requested the Applicant for loan, to which, the applicant, basing on the request made by the Corporate Debtor to tide over its financial constraints, advanced a sum of ₹32,00,000 as loan repayable at the rate of interest 9% per annum from 01.09.2018, *on demand being made, at any point after the expiry of four months from the date on which the last of the instalments of the Principal borrowing was remitted to the Corporate Debtor.* To show the request made by the Corporate Debtor and the Applicant conceding its request, the Applicant has filed the letter dated 01.04.2018 written by the Applicant.

3. In furtherance of the letter dated 01.04.2018 conceding the request of the Corporate Debtor, this Applicant, in order to prove disbursement of the loan amount aforesaid, has filed Statement of Account of the Applicant from 02.04.2018 to 30.04.2018 disclosing remittance of this loan amount from the account of the Applicant to

the Corporate Debtor from 13.04.2018 to 16.08.2018, which is as follows:

| Instalment No. | Date | Amount |
|-----------------------|-------------|---------------|
| 1 | 13/4/2018 | ₹10,00,000 |
| 2 | 5/5/2018 | ₹5,00,000 |
| 3 | 9/5/2018 | ₹5,00,000 |
| 4 | 21/5/2018 | ₹5,00,000 |
| 5 | 24/5/2018 | ₹5,00,000 |
| 6 | 16/8/2018 | ₹2,00,000 |

4. Thereafter, when repayment has not come to the Applicant from the Corporate Debtor, as per the letter dated 01.04.2018, this Applicant issued demand notices to the Corporate Debtor on 10.01.2019, 02.02.2019, 12.04.2019 and 28.04.2019. To which, the Corporate Debtor on 28.04.2019 wrote back to the Applicant stating that the Corporate Debtor's financial position having come down, it was not in a position to repay the same. Since it had become clear that repayment would not happen from the Corporate Debtor, the Applicant has filed this case u/s 7 of the Code for initiation of CIRP against the Corporate Debtor.

5. As to the contentions of the Corporate Debtor, the Corporate Debtor counsel has admitted the debt and default, whereby looking

at the request of the Corporate Debtor for grant of loan, entries of the payments to the Corporate Debtor made by the Applicant through Bank Account on various dates as reflected in the above said table and the Corporate Debtor failing to repay the same, we are of the considered view that this Applicant has proved existence of debt and default with regard to the loan of ₹32,00,000 given by the Applicant.

6. In view of the reasons aforementioned, we hereby admit this application by appointing Mr. Porselvam Govindasamy as Interim Resolution Professional looking at the consent given by him with directions as follows:

- I. That Moratorium is hereby declared prohibiting all of the following actions, 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 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.
- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- IV. That the order of moratorium shall have effect from **26.08.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints **Mr. Porselvam Govindasamy, having Registration Number [IBBI/IPA-002/IP-N00427/2017-18/11229], LPF Building, II Floor, 25(10), Thiyagaraja Street, North Usman Road, T. Nagar, Chennai-600017, Email: gporselvam@gmail.com**, as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

7. Accordingly, this Petition is **admitted**.
8. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

VS/TJS