

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-IV**

**Company Petition No. (IB)60/(PB)/2021**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

In the matter of:

Essbert Fashion Private Limited  
(formerly known as KVM Fashion Private Limited) & Ors

... APPLICANTS/FINANCIAL CREDITORS

**Vs.**

Pytex Jewellers Private Limited

... RESPONDENT/CORPORATE DEBTOR

**Order delivered on: 12.07.2022**

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**ORDER**

**Per: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

1. M/s Essbert Fashion Private 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. Pytex Jewellers Private Limited, referred to as the corporate debtor.

sd -



2. It is appropriate to mention that the applicants namely, 1. M/s Essbert Fashion Private Limited, 2. M/s Sobhagya Enterprises Private Limited, 3. M/s Ekambar Enterprises Private Limited and 4. Albatross Homes Private Limited are companies incorporated under the provisions of The Companies Act, 1956. Mr. Gopal Malhotra, duly authorized on behalf of all the four applicants vide Minutes of Meeting of Members of Joint Lenders dated 04.08.2020, has preferred the present application on behalf of the applicants for initiation of insolvency resolution process against the respondent corporate debtor.
3. The Respondent Company M/s. Pytex Jewellers Private Limited (CIN No. U27205DL2006PTC154403) against whom initiation of Corporate Insolvency Resolution Process has been prayed for having it is company incorporated under the provisions of the Companies Act, 1956 having its registered office situated at Unit No-200 A-9 GDITL Northex Tower Ring Road, Netaji Subhash Place PitamPura Delhi North West Delhi-110034. Since the registered office of the respondent corporate debtor is in New 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.
4. The case of the applicants precisely is that the corporate debtor had availed financial facility of Rs.3,66,61,212/- from the financial creditors. Further, out of which Rs.15,00,000/- has been repaid by the Corporate Debtor, leading to Principal Amount due and in default from the Corporate Debtor at Rs. 2,95,00,000/. Therefore, as per part IV of the application it is claimed that as on 11.02.2019 a sum of Rs.3,66,61,212/- is due and payable by the respondent company.
5. The Corporate Debtor has filed its reply and has raised objection against the petition stating averments, which are listed here: -
  - a. That the debt claimed by the applicant is not the Financial Debt as defined in the code.



- b. That the alleged money paid by the applicant does not have any commercial effect of borrowing.
  - c. The applicant is not bank or financial institution, accordingly is barred under Punjab Registration of Money Lenders Act, to lend or give money on interest.
  - d. There is no written agreement between the parties to give loan with interest.
  - e. There is no document to certain schedule and time when debt become due.
6. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Pankaj Khetan, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-NOOO10/2016- 2017/10014 resident of K-37/A, Basement Kailash Colony, Near Kailash Colony Metro Station, Delhi-110048 with email - id. [Pankaj.khetan@yahoo.com](mailto:Pankaj.khetan@yahoo.com) Mr. Pankaj Khetan has agreed to accept the appointment as the interim resolution professional and has signed a communication 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. Pankaj Khetan as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.
7. The applicant has placed following documents on record to prove its claim:
- a) Copies of the first legal notices dated 11/02/2019 sent to the Corporate Debtor by the Financial Creditor(s).
  - b) Reply by the corporate debtor dated 21/02/2019 in response to the legal notice dated 11/02/2019..

sd-



- c) Copies of the second legal notices dated 06/06/2019 sent to the Corporate Debtor by the Financial Creditor(s).
- d) Copies of the Follow up legal notices dated 15/02/2020 sent to the Corporate Debtor by the Financial Creditor(s).
- e) Copy of Minutes of the Joint Lender's Meeting of the Financial Creditor(s) authorizing Mr. Gopal Kumar.
- f) Copies of the Form 16A for the FY ended 31 March 2018.
- g) Copies of the Bank Statements of the Financial Creditors.
- h) Copies of the Financial Statements of the Financial Creditors for the FY ended 31 March 2019.
- i) Copy of Financial Statements of the Corporate Debtor for the FY ended 31 March 2019.
- j) Copies of the Ledger Account of the Corporate Debtor in the books of the Financial Creditors for the period 01/04/2017 to 31/12/2019.

8. We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties. We observe that Section 7 (1) of the Code enables a financial creditor to file an application for initiating corporate insolvency resolution process against a corporate debtor before the adjudicating authority when a default has occurred and the date on which the default has occurred shall be provided by the financial creditor as required in Part IV. In Part V of Form 1, the financial creditor is required to furnish documents as listed therein as well as other documents that may be relevant to prove the existence of financial debt, the amount and the date of default. After completion of all other requirements, for admitting such an application of the financial creditor, we have to be satisfied that "default" has occurred and, that is to say, that the right to apply under the Code accrues on the date when default occurs. The default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable.

Sd -



9. As regards the contention of the corporate debtor that the debt claimed by the applicant is not a financial debt, we are of the view that as per sub-section (7) of Section 5 of the Code, only such creditor could be the 'financial creditor' of the corporate debtor to whom a 'financial debt' is owed by the corporate debtor; and, as per sub-section (8) of Section 5 of the Code, the key requirement of a financial debt is 'disbursal against the consideration for the time value of money', which includes the events or modes of disbursement as enumerated in sub-clauses (a) to (i) of Section 5(8) of the code. As per the facts of the case before us, we are of the view that the loan was disbursed against the payment of interest and therefore has the commercial effect of borrowing and element of time value of money. Accordingly, we find no force in the contention of corporate debtor that the debt claimed is not a financial debt.
10. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is of Rupees one hundred lakhs or more, an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
11. The applicant clearly comes within the definition of Financial Creditor. The material placed on record as stated in the paras above further confirms that respondent has debt due and has committed default in repayment of the outstanding financial debt. On a 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 Interim Resolution Professional.
12. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor.

Sd-



13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.
14. Mr. Pankaj Khetan, having registration number IBBI/IPA-002/IP-NOOO 10/2016- 2017/10014 is appointed as an Interim Resolution Professional for corporate debtor.
15. 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.
16. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Pankaj Khetan 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 is subject to adjustment towards Resolution Process cost as per applicable rules.
17. 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;*

sd-



- (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 IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

18. 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.

19. 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



a appropriate orders. 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.

20. 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 the pronouncement of this order.

Sd-

**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

Sd-

**(DHARMINDER SINGH)**  
**MEMBER (J)**