



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Division Bench)

Item No.-205
IB-229/ND/2022

IN THE MATTER OF:

Raja Som Sehrawat

Vs.

Optiemus Infracom Ltd.

....Applicant

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 10.11.2023

CORAM:

SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-229/ND/2022
is **dismissed**.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

COMPANY PETITION NO. (IB)-229(ND)/2022

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

MR. RAJA SOM SEHRAWAT

S/o Hanmat Singh Sehrawat
H. No. 42, DDA House Kothi,
Opposite Vandana International
Sector-10, Dwarka, New Delhi-110075

.... APPLICANT/FINANCIAL CREDITOR

Versus

OPTIEMUS INFRACOM LIMITED

CIN: L64200DL1993PLCO54086
Registered Office: K-20, 2nd Floor,
Lajpat Nagar-II, New Delhi-110024
Email: info@optiemus.com

Also at:
D-348, Sector-63,
Noida, UP-201307

...RESPONDENT/CORPORATE DEBTOR

Order Pronounced on: 10.11.2023



CORAM

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Nikita Anand, Adv

For the Respondent : Mudit Sharma, Adv

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is an application filed by Mr. Raja Som Sehrawat (for brevity "Financial Creditor/Applicant") under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code/IBC") for initiating CIRP against Optiemus Infracom Limited for brevity "Corporate Debtor/Respondent") for the alleged default of Rs. 3,30,00,000/- (Rupees Three Crores thirty lacs only).
2. The Corporate Debtor is a Company having its registered office at K-20, 2nd Floor, Lajpat Nagar-II, New Delhi- 110024 and having CIN no. L64200DL1993PLC054086. 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 subsection (1) of Section 60 of the Code.



Averments of the Applicants:

- 3.** Applicant submitted that in the month of July 2020, the Managing Director of the Corporate Debtor namely Mr. Ashok Gupta on behalf of the corporate debtor owing to past friendship, had approached the financial creditor seeking professional help for a short-term financial interest free loan to ease the financial crunch of the corporate debtor with a promise that the said loan would be repaid in full immediately after a period of 03 months i.e October, 2020.
- 4.** Applicant further submitted that financial creditor, believing the assurances of the Managing Director of the Corporate Debtor extended interest-free loan of Rs. 3,30,00,000/- from his personal bank account, to the Corporate Debtor on 21.07.2020 vide cheque no 000029 drawn on Bank of Baroda, Dwarka, New Delhi, which was credited to the account of the Corporate Debtor an 22.07.2020.
- 5.** Applicant submitted that the Financial Creditor demanded the said loan amount from the Corporate Debtor after 3 months and Corporate Debtor sought 15 days time to repay the loan amount, which time was granted by the financial creditor.
- 6.** It is further submitted that after 15 days, the Corporate Debtor sought more time on the pretext that the corporate debtor possessed an immovable property at Sector-126, Noida Uttar Pradesh, and to ease out the financial crunch had decided to sell the same and requested for around three and half months more time i.e. upto 20.02.2021 to repay the amount borrowed. Believing the Managing Director of the



Corporate Debtor, and owing to past relationship, the financial creditor agreed to wait till 20.02.2021. Further the Applicant submitted that again, when on 20.02.2021 the Financial Creditor contacted the Managing Director of the Corporate Debtor, he stated that he was interacting with few interested parties and was waiting for a firm commitment. Applicant submitted that the Respondent also stated that since the stakes in the immovable property were high i.e. in hundreds of crores, and even if he enters into an agreement to sell with a party in one month, they may take at least six months to complete the transaction.

- 7.** Applicant submitted that on being asked by the Financial Creditor to give a firm commitment date to repay the amount, the Managing Director of the Corporate Debtor assured that he shall repay the borrowed amount by 22.09.2021. Believing his statement, the Financial Creditor agreed to give the corporate debtor time upto 22.09.2021 to repay the borrowed amount. Further, Applicant submitted that on 22.09.2021, and thereafter also on various dates, when Financial Creditor tried getting in touch with the Managing Director of the corporate debtor, telephonically, the calls of the financial creditor were ignored and no reply has been received from the corporate debtor nor the borrowed amount has been repaid to the financial creditor.
- 8.** It is further submitted that the Financial Creditor made enquiries and learnt that the corporate debtor sold the aforesaid immovable asset in the first week of March, 2021 itself and had received Rs.285 crores towards the said transaction. The



applicant after learning about the said transaction, the Financial Creditor realized, that the corporate debtor has no intention to repay the borrowed amount.

9. Applicant submitted that the Financial Creditor sent a demand notice dated 30.09.2021 to the Corporate Debtor asking it to repay the said loan amount within a period of 10 days wherein the Corporate Debtor replied vide letter dated 11.10.2021 and denied its liability to pay the said amount.

Reply of the Respondent/Corporate Debtor:

10. Consequent to the notice issued by this Tribunal, the Respondent filed its reply and submitted that all the averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety.
11. Respondent further submitted that the applicant in its Application mentioned that in July 2020 a loan to be repaid in full immediately after period of 03 months was advanced. Thus, according to the Applicant the loan was repayable on or before October 2020 and according to the Section 10A of the IBC, 2016 no application for initiation of CIRP is permitted to be filed for any default arising from 25 March 2020 to 25 March 2021. Therefore, as per the Applicant contention in the Application the date of default is October 2020 which falls within the period barred by Section 10A of the IBC.



- 12.** The Respondent submitted that the *sine qua non* for filing of the Petition under section 7 of the Code is that the person instituting the Petition ought to be a Petitioner and the Petitioner as defined in Section 5 (7) of the IBC means “*any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.*” Thus, Petitioner is a person to whom a financial debt is owed. The Petitioner is not a Financial Creditor and has no locus standi to file the present Petition under Section 7 of the IBC.
- 13.** Further the Respondent submitted that there is no Financial Debt or any Debt which the Respondent owes to the Petitioner as per the Financial Debt defined in Section 5 (8) of the IBC and on the contrary, it was the Respondent who had granted loan to the Petitioner.
- 14.** Respondent further submitted that the Petitioner has not come with clean hands and has concealed material facts and documents. Further, the Respondent submitted that the Applicant has not filed any single document wherein the purported transaction was recorded and mere drawing of cheque does not constitute a Financial Debt and is usually a re-payment of a debt and in the present case the said purported cheque pertain to re-payment of interest paid by the Company namely, M/s Sehrawat Associates Pvt. Ltd. and M/s Sparkle Breweries Pvt. Ltd. which is an entitiei controlled and managed by the Applicant.

Rejoinder of the Applicant



- 15.** That the Financial Creditor through his rejoinder denied to the extent that the Applicant is not a Financial Creditor and has no locus standi to file a Application under Section 7 of the IBC, 2016. Further submitted that the two essential qualifications, i.e., existence of 'debt' and 'default', for admission of a petition under Section 7 of the IBC, have been met in this case and the scope of Section 5(8) of the Code defining Financial Debt is very wide and includes under clause (f) i.e *any amount raised having the commercial effect of a borrowing.*
- 16.** Applicant submitted that the amount given by the Financial Creditor from his personal bank account does not in any manner alter or dilute the debt from being termed as financial debt as defined under section 5(8) of the IBC.
- 17.** Applicant further submitted that Applicant is a promoter/shareholder of the two corporate entities, namely, M/s Sehrawat Associates Pvt. Ltd. and M/s Sparkle Breweries Pvt Ltd and the said corporate entities are legally distinct and separate from the Petitioner, who is an individual. Applicant further submitted that the rights and liabilities of the said corporate entities cannot be termed as the rights and liabilities of the Applicant and vice versa.

Analysis and Findings

- 18.** We have heard the submissions of both the parties and have perused the documents placed on record. The Respondent has objected to the Application



mainly on the grounds that no default has been committed by the Respondent and the Application is barred by Section 10A of IBC, 2016.

- 19.** Before examining the other aspects we would like to examine whether the present Application is barred by Section 10A of IBC, 2016?
- 20.** From perusal of Part IV of the Application it is observed that the applicant has mentioned date of default as 22.09.2021. However, we have to examine the issue in the light of other material available on record that when the debt became due and payable.
- 21.** The Applicant has stated in the Application that loan was disbursed in the month of July, 2020 and was payable within 3 months. The said fact is also confirmed from the legal notice dated 30.9.2021 in which the Applicant had demanded Rs. 3,30,00,000 from the Respondent within 03 months of disbursement i.e, from 22.07.2020. It is further noticed that the Applicant had mentioned in the legal notice (anexed at Page 33) that the debt had become due and payable from 22.10.2020.
- 22.** As naratted by the Applicant that the loan was re-payable within 03 months from the date of disbursement i.e., 22.07.2020 and even the demand notice in respect for the same was made by the Applicant from the Respondent.
- 23.** We further observe that in view of the provisions under Section 10A, in case of a default, which occurred during the period (i.e, Covid period) excluded under Section



10A, no application under Section 7, 9 or 10 could ever be filed. Section 10A of the Code reads as:

“Suspension of initiations of corporate insolvency resolution process.

10A. Notwithstanding anything contained in Sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

24. On 24th September, 2020 in exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) [as inserted by section 2 of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 (17 of 2020)], the Central Government hereby notifies further period of three months from the 25th September, 2020 for the purposes of the said section i.e Section 10A of IBC.

25. Again on 22nd December, 2020 in exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government



hereby notifies further period of three months from the 25th December, 2020, for the purposes of the said section.

- 26.** The claim of the Applicant that the date of default is 22.09.2021 does not appear to be correct. As explained above, the date of default is 21.10.2020 which is the date relied on by the Applicant in his Legal Notice dated 30.09.2021 annexed at Page 32-33 of the Application, and as stated by the Applicant in the petition that the amount was to be paid by the Corporate Debtor on expiring of 03 months i.e on 21.10.2020. There is no document to show that the repayment plan was rescheduled.
- 27.** The default has been committed on 21.10.2020 and the said date falls within the Section 10A period (i.e. starting from 25th March 2020 to 24th March 2021), for which no application can ever be filed for initiating CIR Process. Therefore, the present application is not maintainable in terms of bar under Section 10A of IBC, 2016. It is made clear that we have not examined and commented upon the other issues raised by the parties.
- 28.** The Application is accordingly, dismissed.

Sd/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)