

26

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

IBA/299/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016*

In the matter of ***M/s. P.S.T.S Logistics Private Limited***

- 1. M/S V.S Enterprises**
- 2. M/s. Hemant and Co.**
- 3. M/s.Vipul Investment**

Reg. Off:

No. 12, Wallace Garden, 2nd Street,
1000 Light, Chennai – 600 006

... Financial Creditors

-Vs-

M/s. P.S.T.S Logistics Private Limited

Reg. Off:-

No. 48, II Floor, Wavoo Mansion,
RajajiSalai, Chennai – 600 001

...Corporate Debtor

Order Pronounced on 1st November 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : Pawan Jhabakh, Advocate

*For Corporate Debtor : S. Ruby Winston, Vice President of
the Corporate Debtor Company*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an application which has been filed
under Section 7 of the Insolvency & Bankruptcy Code 2016

("hereinafter referred to as IBC, 2016") r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **1) M/s. V.S Enterprises, 2) M/s. Hemant and Co. & 3) M/s. Vipul Investment** (hereinafter referred to as '**Financial Creditors**') against **M/s. P.S.T.S Logistics Private Limited** (U63090TN1991PTC020186) (*hereinafter referred to as '**Corporate Debtor**'*). This Application, seeks order for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Part I of the application, sets out the details of the Financial Creditors from which, it is evident that the 1st Financial Creditor is a partnership firm with PAN No. AAKFB8019N while the 2nd and 3rd Financial Creditors are Proprietorship firm with PAN: AADPM7767P and AFMPV9067P respectively. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U63090TN1991PTC020186 and with registered office at No. 48, II Floor, Wavoo Mansion, Rajaji Salai, Chennai – 600 001. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Solomon Rajesh Jeyasingh, Registration Number: IBBI/IPA-002/IP-N00802/2019-2020/12509 as the Interim Resolution Professional, whose written consent is attached along with the application.



3. Part IV of the application signifies the amount of debt to the tune of Rs.17,21,030/- including interest as on 31.12.2019. It further sets out the fact that the Financial Creditors had disbursed various loan amounts to the corporate debtor to the tune of Rs. 90,00,000/- collectively on various dates during 2016 and the amount which is due and payable are detailed as follows;

| S. No. | NAME OF THE FINANCIAL CREDITOR | PRINCIPAL DUE (₹) | INTEREST (₹) |
|--------|--------------------------------|------------------------|----------------|
| 1 | V S Enterprises | Rs. 6,50,791/- | Rs. 1,03,654/- |
| 2 | Vipul Investment | Rs. 4,23,191/- | Rs. 53,115/- |
| 3 | Hemant & Co. | Rs. 4,35,607 | Rs. 54,672/- |
| | | Rs.15,09,589 | + Rs.2,11,441 |
| | | Rs. 17,21,030/- | |

It is submitted that the Corporate Debtor has sent schedule of repayment via email dated 12.05.2018 to the 1st Financial Creditor. It is accordingly submitted that apart from the loan agreement, disbursement proof, the email dated 12.05.2018 has been relied in order to show that the present application is not time barred. It is further submitted that the date of default for V.S Enterprises is August 2019, Vipul Investment is October 2019 and Hemant & Co. September 2019.

4. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:



- a) Loan Agreement dated, 30.09.2016
- b) Account Statements of Financial Creditors
- c) Interest Computation Statement
- d) Email sent by Corporate Debtor confirming the amount due and payable.

5. On perusal of the records it is found that there exists a Loan Agreement dated, 30.09.2016 between the 1st Financial Creditor M/s. V.S. Enterprises and the Corporate Debtor to the tune of Rs. 40,00,000/- pursuant to which Rs. 32,00,000/- was lent to the corporate debtor upon deduction of interest along with interest clause to the tune 2% P.M and repayment schedule. The applicants have also attached the bank statements highlighting disbursement and repayment of the amount due and payable.

6. The Learned Counsel for the Financial Creditors by way of an email dated 12.05.2018 has stated the fact that the amount is due and payable to the financial creditors. However, no such documentary proof has been submitted along with respect to the amount due and payable to the 2nd and 3rd financial creditor.

7. In relation to the Corporate Debtor, it is seen that based on the Resolution passed by the Board of Directors of the corporate debtor on 18.06.2021 the Vice President-Finance has been



authorised to represent the company; accordingly a reply has also been filed.

8. The representative for the Corporate Debtor denies all the averments made by the financial creditors, except those that are specifically admitted. The representative for the Corporate Debtor submits that no amount as mentioned in the application is due and payable by the Corporate Debtor. Further, alleging that the 2nd & 3rd applicant does not qualify to be a Financial Creditor under the provisions of IBC, 2016. It is further averred that the corporate debtor has availed loan only from the 1st applicant based on the loan agreement dated, 30.09.2016 accordingly admits the fact that Rs. 7,54,445/- is due and payable to the 1st applicant as on 31.12.2019.

9. The representative for the Corporate Debtor further submits that 2nd and 3rd applicants herein has approached the Corporate Debtor for purchase of certain assets of the debtor company, however, it has been orally agreed that such purchase shall be carried forward only upon approval by the secured creditors. It is further submitted that on account of certain temporary financial crises faced by the corporate debtor the 2nd and 3rd applicants have utilised the opportunity to purchase the assets at very low cost

despite the hesitance of the Corporate Debtor. And advanced amount to the debtor. It is further submitted that it was orally agreed between the parties that if the purchase deal does not prosper the amount shall be returned with minimal interest. Accordingly, it is further submitted that as the purchase deal did not materialise and the amount advanced has to be returned. However, the representative for the Corporate Debtor submits that such dues which are in nature of purchase advance do not qualify a 'Financial Debt', highlighting that those claims do not have sufficient evidence as to substantiate that the amount due and payable is a loan. It is also submitted that upon failure of the purchase deal a schedule of repayment was also sent. It is further submitted that the evidences adduced does not prove the existence of a 'financial debt' and accordingly has prayed for dismissal of the same with exemplary cost.

10. The Financial Creditors have filed a rejoinder to the reply filed by the Corporate Debtor, it is submitted that the admission of liability by the corporate debtor confirms the existence of financial debt. The Learned Counsel for the Financial Creditors has relied upon the email dated 08.01.2021 sent to all the three financial creditors on account of settlement talks between the parties pending disposal of the present application in which the corporate

debtor has sent schedule of payment to all the three financial creditors for their respective dues. It is further averred that no dispute was raised with respect to the quantum of amount involved and therefore acknowledgment of debt was made and attempts for repayment have also been carried out by the corporate debtor. It is also averred that no evidence has been adduced to bring on record the alleged purchase of assets thus the claim of the Corporate with respect to the alleged purchase is false.

11. Upon hearing the submissions made by the Learned Counsel for the Financial Creditor and the representative of the Corporate Debtor and also from the documents filed by the Financial Creditor, it is seen that there exists a proven debt and default upon the shoulders of the Corporate Debtor. The plea of the Corporate Debtor that the undocumented sale advances by the 2nd and 3rd applicant cannot be made a ground for dismissal. We are also satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the 1st applicant.

12. Thus, it proves that there exist a 'debt' between the 1st applicant and the Corporate Debtor and the said debt qualifies to be a 'financial debt' as defined under 5(8)(a) of IBC, 2016 and also



the Corporate Debtor has defaulted in repayment of the said 'financial debt' which is due and payable to the Financial Creditor. Under the said circumstances, 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. At the time of filing this application the pecuniary jurisdiction of this Adjudicating Authority was Rs. 1 lakh and above, only by notification dated 24.03.2020 it was raised to Rs. 1 crore. Hence, this application is maintainable. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, The application is admitted.

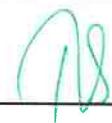
13. The Financial Creditor has proposed the name of one **Mr. Solomon Rajesh Jeyasingh**, having Registration Number **IBBI/IPA-002/IP-N00802/2019-2020/12509** as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. Hence, Mr. Solomon Rajesh Jeyasingh is appointed as IRP.



14. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

15. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

16. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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 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.

17. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

MohanaPriya R