

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 2

ITEM No.301
CP(IB) 195 of 2019

Order under Section 7 IBC

IN THE MATTER OF:

Kurlon Ltd

.....Applicant

V/s

India Green Reality Ltd

.....Respondent

Order delivered on 22/12/2023

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

Sd/-

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT NO.2**

CP(IB) No.195/NCLT/AHM/2019

[Application under Section 7 of the IB Code, 2016 & Rule 4 of the Insolvency and Bankruptcy Rules, 2016]

In the matter between

Kurlon Limited ... Financial Creditor

Vs.

India Green Reality Limited ... Corporate Debtor

Order pronounced on: 22.12.2023

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**DR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Memo of Parties

Kurlon Limited
Having registered office at
301, North Block,
Manipal Center, 47, Dickenson Road
Bangalore,
Karnataka

... Financial Creditor

Versus

India Green Reality Limited
Having registered office at
12, Satyam Mall, Kameshwar School,
Jodhpur Char Rasta,
Satellite, Ahmedabad -380015

... Corporate Debtor

Appearance:

For the Applicant : Mr. Rashesh Sanjanwala, Sr. Adv. a.w
Ms. Garima Malhotra, Adv.

For the Corporate Debtor : Mr. Percy Kavina, Sr. Adv. a.w
Mr. Nipun Singhvi, Adv. & Ms. Pragati
Tiwari, Adv.

JUDGMENT

1. The applicant company filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 [“the Code” for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the respondent/corporate debtor.

Facts of the case as per applicant

2. The applicant is a company registered under the Companies Act, 1956 and engaged in the business of manufacturing of mattress and finance lending. The applicant granted a loan of Rs.52,50,000/- with interest to the respondent and its director as per their letter dated 11.04.2017. Loan agreement was executed on 25.04.2017 between the parties. The applicant disbursed loan amount on 21.04.2017. The director stood as guarantor to the loan. Towards security Simple Mortgage Deed without possession was executed between the

parties with respect to properties owned by the director/guarantor of the loan. The corporate debtor paid EMI for the months from April to August 2017 only. Thereafter, it failed to repay the debt, the applicant issued Demand Notice dated 18.01.2019 to the respondent but it failed to reply it. As on the date of filing of application, an amount of Rs.71,61,091/- were due from the respondent. The applicant also filed rebuttal affidavit.

Reply by the respondent

3. The respondent objected to the application contending that the application is not filed in the prescribed format and the alleged loan agreement is illegal, never fructified as well as incomplete. It is submitted that the applicant has not advanced any amount of loan as well as it had no transaction with the applicant. It is further submitted that the applicant has not given any proof of disbursement of loan amount so there is no question of any default on its part. It is also submitted that as per proposal of applicant they have entered into real estate project at Sonarpur in West Bengal but subsequently the applicant retracted from the same. On the basis of misrepresentation of applicant, the respondent has kept its land valued more than Rs.13.50 crores as a security by way of deed of conveyance. The applicant coarsed respondent to entered into a Master Lending Agreement. Initially a sum of Rs.3.75 crores was paid by the applicant which was returned by the respondent. Thereafter, respondent had not borrowed any sum from the applicant. It has paid interest in excess of Rs.41.50 lakhs. It has narrated various fraudulent acts committed by the applicant. The

respondent also filed a Civil Suit to redeem its right before appropriate court in West Bengal. Hence, prayed for dismissal of the application.

4. Relevant documents filed by applicant are
 - a) Loan Agreement dated 25.04.2017
 - b) Simple Mortgage Deed
 - c) Demand Notice
 - d) Copy of Challan
 - e) Copy of Bank Statements
 - f) Copy of Promissory Note

Relevant documents filed by applicant are

- (a) Copy of plaint in Suit No. 574/2019
- (b) Mail copies

Arguments

5. Heard Ld. Sr. Counsel for the applicant and Ld. Sr. Counsel for the respondent also perused their written submissions.

Findings

6. From the loan agreement executed between the parties, it appears that the applicant has given a loan of Rs.52,50,000/- to the respondent with interest. The applicant also issued Demand Notice to the respondent for repayment of balance amount. The respondent has not replied to the Demand Notice. Thus, no defence taken by the respondent. The respondent has vehemently contended in the reply that the loan was not disbursed any time by the applicant. However, during the course of proceedings, he has made partial

payment to the applicant. According to the applicant, the corporate debtor filed IA bearing No. 893 of 2022 acknowledging the debt and seeking relief of keeping the main matter in abeyance giving time to make payment. However, copy of said IA is not produced on record.

7. The respondent at one instance mentioned in written submission that the applicant did not transfer single penny to the respondent company. At another instance, it has mentioned that the respondent company already paid principal amount in full to the applicant. It has clearly mentioned in the written submission that after filing of the petition, the respondent company paid an amount of Rs.65 lakhs and same is conveyed to the applicant vide mail dated 13.10.2023. According to it, it has already paid the amount more than the principal amount and therefore nothing survives in the application. Copy of email produced by the respondent states as under:-

“We are writing to clarify under Section 59 of the Indian Contract Act, 1872 that payment made by Indian Green Reality Limited of Rs.65 lakhs to Kurlon Limited after filing of petitions under Section 7 of the IBC by Kurlon Limited was made exclusively in connection with the transaction referenced in CP(IB)195 of 20189. It should not be associated with or attributed to CP (IB) 196 of 2019”.

8. From this Annexure-A, it is clear that the respondent has repaid some amount towards loan as mentioned in this application. The admission of respondent is sufficient to show

that it has received amount of loan from the applicant and therefore further proof of disbursal amount is not required.

9. Now it is to be seen that if payment is made by the respondent how it is defaulter. During the course of argument, Ld. Sr. Counsel for the applicant submitted that when amount was paid by the respondent it has not given any directions against which loan the amount is to be adjusted. Therefore, they have adjusted it in some other loan. It is pertinent to note that the lender has discretion to adjust the amount paid to any loan if particular direction is not given by the borrower. Now only by sending an email the respondent cannot take stand that he has repaid the loan of Rs.52,50,000/- and not against the loan of Rs. 3.75 cores as mentioned in another application bearing No.CP (IB) 196 of 2019. As per discretion, the applicant has adjusted it in the loan of Rs.3.75 cores for which another application bearing No. CP (IB) 196 of 2019 is filed.
10. Thus, existence of debt and default is proved by the applicant. This application was filed in the year 2019 where the limitation of debt due for initiation of CIRP was Rs.1 lakh. Therefore, this petition is maintainable. The applicant relied upon judgment of ***Hon'ble Apex Court in Suresh Kumar Reddy vs. Canara Bank*** in which it was held that *the adjudicating authority is empowered to only verify whether a default has occurred or the default has not occurred. Once NCLT is satisfied that the default has occurred, there is hardly a discretion left with the adjudicating authority to refuse admission of the Application under Section 7 of the IBC and*

that in such case an order of admission under Section 7 of IB Code must follow.

11. The Hon' ble NCLAT in its orders in Rajesh Kedia V Phoenix ARC P Ltd, 2022 SCC online Hon' ble NCLAT 147, stated that “Once the ‘threshold’ is crossed, it is not for the Adjudicating Authority to decide the exact “Quantum of Debt”, but what is required is whether there is a “Debt and Default”. Also it relied on Judgment of Hon'ble Supreme Court on Innoventive Industries V ICICI Bank (2018) wherein the role of Adjudicating Authority in ascertaining the existence of default is specified in the orders.
12. As the requirements of Section 7 are satisfied, the application is to be allowed. Hence, we pass the following order:-

ORDER

- (i) Application CP (IB) No. 195 of 2019 is allowed.
- (ii) Corporate Insolvency Resolution Process is initiated against the Corporate Debtor, namely, India Green Reality Limited
- (iii) As a consequence of admission of CIRP Moratorium under Section 14 of the IBC is declared with effect from the date of this order till the completion of the CIRP
- (iv) We hereby appoint Mr.Rajeshkumar Malani as an Interim Resolution Professional, having Registration No.IBBI/IPA-001/IP-P-02098/2021-2022/13550, to carry out the functions as mentioned in the IBC.
- (v) The IRP is directed to make public announcement of

the CIRP within three days as specified under Section 13 of the IBC.

- (vi) The IRP is directed to take charge of the Corporate Debtor's assets.
- (vii) The applicant /Financial Creditor shall deposit sum of Rs. 5 lakhs to the IRP to meet the expenses to start CIRP.
- (viii) During the CIRP period the management of the Corporate Debtor will vest in the IRP. The Suspended Directors and employees of the Corporate Debtor shall provide all documents and furnish necessary information to the IRP.
- (ix) The IRP shall conduct CIRP process in respect of respondent – Corporate Debtor as per provisions of IBC and Chapter VIII of IBBI Regulations, 2016.
- (x) The RP shall submit periodical report to this Tribunal with respect to progress of CIRP.
- (xi) The Registry shall send copy of this order to the Register of Companies, IRP, Financial Creditor, Corporate Debtor and IBBI.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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