THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No.522/Chd/Hry/2019

Under Section 7, IBC 2016

In the matter of:
Sentinel Consultants Pvt. Ltd.
with its registered office at
504, Ashok Bhawan,
93, Nehru Place, New Delhi ….Petitioner-Financial Creditor

Vs.

Hyper Nucleus Solutions Pvt. Ltd.
(Formerly known as Hyper Network)
with its Regd. Office at
SCO-18, 2nd Floor, Sector-16,
Faridabad, Haryana - 121003 ….Respondent-Corporate Debtor

Judgment delivered on: 10.08.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Petitioner/Financial Creditor : Mr. Vaibhav Sahni, Advocate

For the Respondent/Corporate Debtor : Mr. Kartar Singh, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by

Sentinel Consultants Pvt. Ltd. (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against Hyper Nucleus Solutions Pvt. Ltd. (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Subhash Chander Bhatia and the affidavit verifying the contents of the application is on page 16-18 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure P-8 (pages 104-104A) of the petition. The Corporate Debtor is stated to be incorporated on 11.01.2005. The company having its registered address at SCO-18, 2nd Floor, Sector-16, Faridabad, Haryana - 121003. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for disposal of the same are narrated hereunder:

3.1 The present petition is filed by the Financial Creditor (for short "FC") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short "Code") for the initiation of the Insolvency Resolution Process against the Corporate Debtor (for short "CD').

3.2 The CD approached the FC requesting a friendly loan. The FC, keeping in mind the long-term relation with the CD rendered the loan to the tune of Rs. 1,36,30,000/- (Rupees One Crore Thirty Six Lakhs Thirty Thousand Only). The CD paid the loan amount of Rs. 30,50,000/- (Rupees Thirty Lakhs Fifty Thousand Only) to the FC.

3.3 The FC approached the CD to repay the remaining loan amount vide letters dated 10.06.2019 and 08.07.2019 but the CD did not show any intention to pay the said amount. The letter dated

10.06.2019 and 08.07.2019 are mentioned at Page 12-13 of the Petition. Thereafter, the FC also sent an E-mail dated 19.07.2019 referring to pay the remaining loan amount within 20 days but the CD did not pay any heed to the said E-mail by the FC. The copy of the E-mail dated 19.07.2019 is at Page 49 of the Petition.

3.4 After running from pillar to post, the FC was left with no other option but to proceed against the CD accordingly. The FC then issued a recalling notice dated 10.08.2019 to the CD at its registered address which was also received CD on 14.08.2019. The copy of the recalling notice is at Page 50- 94 of the Petition.

3.5 The FC had claimed an amount of Rs. 1.19,65,013/- (Rupees One Crore Nineteen Lakhs Sixty Five Lakhs Thirteen Only) which included the principal amount of Rs. 1,05,80,000/- (Rupees One Crore Five Lakhs Eighty Thousand Only) and due interest of Rs. 13,85,013.70/- (Rupees Thirteen Lakhs Eighty Five Thousand Thirteen Only) which was calculated @ 18% p.a.

3.6 The CD did not reply to the said recalling notice.

4. In Part-III of Form No.1, earlier Mr. Alok Kaushik, Registration No.IBBI/IPA-002/IP-N00253/2017-18/10767 was proposed as Interim Resolution Professional (IRP). Later, Gyaneshwar Sahai, has been proposed as Interim Resolution Professional vide Diary no.00489 dated 05.05.2022 in Form No.2 dated 22.03.2022 along with the Certificate of Registration issued by the Indian Institute of Insolvency Professional of ICAI and the certificate of IBBI has been filed.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.1,05,80,000/- (principal). The total amount claimed to be in default is Rs.1,19,65,013.70/- as per the computation of the amount along with interest @18% as on 08.09.2019. Copy of Board Resolution (Annexure P-1), table setting out the computation of amount in default (Annexure P-4), bank statement (Annexure P-5), and statutory recalling notice dated 10.08.2019 (Annexure P-7) are submitted with the main petition.

6. Notice of this petition was issued to the corporate debtor vide order dated 22.01.2020 to show cause as to why this petition be not admitted. A reply on behalf of the respondent-corporate debtor is submitted vide Diary No.00131/2 dated 10.03.2022 by Mr. Rajesh Kumar Sharma, Authorised person/Signatory of the corporate debtor,

7. The corporate debtor through its reply has submitted that the respondent-corporate debtor has been facing certain financial distress due to Covid crises in the country. The business of the corporate debtor was not operating to its 100% potential. Also, the corporate debtor has no intentions to shy away evade from paying the remaining debt of Rs.1,05,80,000/- to the financial creditor and had all the intentions to settle the matter as an amount of Rs.30,50,000/- has already been paid to the financial creditor. The corporate debtor only craves the indulgence of this Bench for the grant of time to the corporate debtor in order to settle the debt amount to the tune of rs.1,05,80,000/- with the financial creditor.

8. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

"5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."

10. The issue for consideration is whether the present application is filed within limitation. The present petition is filed vide Diary No.4710 dated 11.09.2019, wherein, it can be seen from the records that the date of default is 08.07.2019 and 20 days notice period is served on 19.07.2019. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is default in payment or not. As per Section 7 of IBC which is reproduced below :-

"Section 7 Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[2][Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

> *Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.* "

12. It is observed from the record that in the present case, the occurrence of default is evidenced by the copy of the ledger account, bank statement, statutory recalling notice and the same are attached as Annexure P-2, P-5 and Annexure P-7 respectively of the petition. The respondent-corporate debtor has also filed a reply wherein it has been admitted that there is default in respect of financial debt and the amount mentioned in the petition is due towards the petitioner and shown its incapacity to pay the liability. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Alok Kaushik has been proposed as Interim Resolution Professional. Thereafter, Mr. Gyaneshwar Sahai has been proposed as Interim Resolution Professional.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Gyaneshwar Sahai, and there is nothing adverse against him. In view of the above, we appoint Gyaneshwar Sahai, Registration No.IBBI/IPA-002/IP-N00130/2017-2018/10546, OS-2, 2nd Floor, The Next Door, Faridabad, Haryana - 121004 Email: gyaneshwar.sahai@gmail.com, Mobile No.9953541408, the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default

amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC. Moreso, the respondent has admitted the claim and expressed its inability to pay back the debt. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

"(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.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

16. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. Accordingly, the petition is admitted and allowed.

18. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim

Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

August 10, 2022

AV/TMB