

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) No. 2596/NCLT/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

Shruti Vinimay Private Limited

...Financial Creditor / Applicant

V/s

Nair Coal Services Private Limited

...Corporate Debtor / Respondent

Order Dated: 10th October 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Advocate Disha Ponda, Advocate Sayali Phansikar and Advocate Krusha Maheshwari

For the Respondent: Advocate Prashant Kothari and Advocate Harsh Kesharia

Per: V. P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 2596(IB)/MB/2019 filed by **Shruti Vinimay Private Limited**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Nair Coal Services Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of ₹1,03,95,000/- (Rupees One Crore Three Lakh Ninety Five Thousand Only) including interest at 15% p.a. as on 31.05.2019. The Application is filed by Mr Vijay Mani Manghat Mani Menon, Director of

Financial Creditor duly authorised to file this Application vide Board Resolution dated 02.05.2019.

3. The Applicant submitted that it had granted financial assistance to the Corporate Debtor to the tune of ₹99,00,000/- (Rupees Ninety Nine Lakh Only) vide three cheques in the financial year 2016-17. It is further submitted that the Applicant, through Shri. Vijay Mani Menghat Mani Menon and the Corporate Debtor entered into Settlement Agreement dated 17.12.2018, whereby the Corporate Debtor agreed to repay the financial assistance along with interest @15% p.a., within 1 (one) year from the date of Settlement Agreement. As per the Settlement Agreement the Corporate Debtor agreed to pay interest @15% p.a. on or before 10th day of each subsequent calendar month. The said financial assistance was secured by a Post-Dated Cheque (PDC) of ₹99,00,000/- (Rupees Ninety Nine Lakh Only) issued by the Corporate Debtor to the Applicant. The copy of Statement of Account of Applicant for the financial year 2016-17 and copy of Settlement Agreement dated 17.12.2018 are annexed to the Application.
4. The Applicant submitted that Corporate Debtor paid the agreed interest of ₹1,11,375/- (Rupees One Lakh Eleven Thousand Three Hundred and Seventy-Five Only) for December 2018 and January 2019 however, the Corporate Debtor failed to pay the interest from February 2019. Therefore, the Applicant issued a Demand Letter dated 08.05.2019 calling upon the Corporate Debtor to make the payment of ₹99,00,000/- (Rupees Ninety Nine Lakh Only) which became due upon breach of Settlement Agreement. The Corporate Debtor vide its letter dated 20.05.2019, replied to the Demand Letter and denied its liability to pay to the Applicant. The copy of demand letter and reply of Corporate Debtor are annexed to the Application.
5. The Applicant filed the present Application on 05.07.2019. The Corporate Debtor filed its Affidavit in Reply on 01.10.2019 and raised contentions that Application is premature, and no default is

committed by Corporate Debtor as no debt is due as on the date of filing of the Application because as per the Settlement Agreement the due date of loan is 14.01.2020. The Corporate Debtor further contended that Application deserves to be dismissed as arbitration proceedings are initiated by the Applicant against the Corporate Debtor which amounts to a dispute regarding the debt amount claimed by the Applicant. The Corporate Debtor also contended that it stopped the payment of interest, which was mutually agreed as per the Settlement Agreement, due to the existing disputes between the Corporate Debtor and Applicant.

6. We have heard the parties and perused the records.
7. In the facts and circumstances of the present case, it would be relevant to rely upon **"Innoventive Industries Ltd. Vs. ICICI Bank and Anr. – (2018) 1 SCC 407"**, wherein the Hon'ble Supreme Court observed that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is

owed, and financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor.

It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted."

8. On perusal of the documents submitted by the Parties, it is evident that Applicant had granted financial assistance of ₹99,00,000/- (Rupees Ninety Nine Lakh Only) to the Corporate Debtor against consideration for the time value of money, as interest was payable on the said amount. The Corporate Debtor also did not dispute the Settlement Agreement dated 17.12.2018 and nowhere raised a contention that it did not receive any amount as stated in the Application. Further, as per the Settlement Agreement the Corporate Debtor was liable to pay interest at 15% p.a., which it failed to pay from February 2019 onwards, which is also admitted by the Corporate Debtor in its reply. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount. Hence, the contentions of Corporate Debtor are not tenable and rejected.
9. The financial assistance of ₹99,00,000/- (Rupees Ninety Nine Lakh Only) is loan granted by the Applicant to the Corporate Debtor as the same is given for the time value of money, the said

financial assistance thus amounts to financial debt within the meaning of section 5(8) of the I&B, Code 2016. Copy of Settlement Agreement dated 17.12.2018, Statement of Account of Applicant and cheque issued by Corporate Debtor as security towards repayment are annexed to the Application. It is pertinent to mention that all the documents mentioned above establish financial debt.

10. The debt and default of the Corporate Debtor have been established, and the Application deserves to be admitted.
11. The Applicant has proposed the name of Mukul Chopra, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP/N00810/2019-20/12616] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
12. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh is due and payable against the corporate debtor and its default is also proved. Application is within the limitation. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **Shruti Vinimay Private Limited**, Financial Creditor / Applicant, against **Nair Coal Services Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process at this moment admitted.

We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench at this moment appoints **Mukul Chopra**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP/N00810/2019-20/12616]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

13. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)

10th October 2019