

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI SPECIAL BENCH, COURT III**

C.P. No.955/IBC/MB/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

JHP Finvest Private Limited

Having registered office at
201/B, Dev Neo Vikram, Sahakar
Nagar CHS, New Link Road,
Andheri (West),
Mumbai - 400053

.....Financial Creditor

Vs

**Smart Card IT Solutions Limited
(CIN:**

U22219MH2010PLC135861)

Having registered office at
Gut 837/2, Sanaswadi, Pune
Nagar Road, Pune - 412208 and
Having corporate office at
125, 12th floor, Maker Chamber VI,
Nariman Point, Mumbai - 400021

.....Corporate Debtor

Order delivered on: 20.01.2022

Coram:

Hon'ble Ms. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Rahul Sarda, Advocate

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For the Respondent: Mr. Ryan, Advocate

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company petition is filed by JHP Finvest Private Limited (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Smart Card IT Solutions Limited (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of Rs. 2,87,35,067.00/- under certain facilities granted to the Corporate Debtor.

2. **Submissions of the Financial Creditor**

- i. The present application is filed by the Financial Creditor in view of the default committed by the Corporate Debtor in honouring its repayment obligations towards facilities provided by the Financial Creditor under Loan Agreement.
- ii. The Director of the Corporate Debtor, Mr. Deven J. Mehta (hereinafter called “Director”), requested the Financial Creditor for a loan amount of Rs. 3,00,00,000/- for a period of six months. The Director of the Corporate Debtor entered into a Loan Agreement with the Financial Creditor.
- iii. Three post-dated cheques were issued by the Director of the Corporate Debtor dated 16.04.2019, 15.05.2019 and 10.06.2019 respectively, which were returned unpaid by

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- the Banker of the Financial Creditor on 26.04.2019, 18.05.2019 and 11.06.2019 respectively.
- iv. The Financial Creditor repeatedly tried to reach the Director of the Corporate Debtor but after receiving no response, the Financial Creditor issued a letter dated 07.08.2019 to the Corporate Debtor and invoked the said Corporate Guarantee.
 - v. The Financial Creditor had filed a Company Application No. 3426 of 2019 in September 2019 before this Hon'ble Tribunal. Thereafter on 25.11.2019 the Corporate Debtor entered into Consent terms with the Financial Creditor in the said matter and provided a cheque to ensure payment. The said Consent terms where, the Corporate Debtor had undertaken to repay the entire outstanding loan amount along with interest @ 21% p.a. thereon at monthly rest, within 4 months from 15.11.2019 i.e. on or before 15.03.2020.
 - vi. The Financial Creditor submits that despite the Consent terms as provided before this Hon'ble Tribunal, the Corporate Debtor failed and neglected to repay the outstanding loan amount as agreed. The cheques which were handed over by the Corporate Debtor were subsequently dishonoured.
 - vii. The Financial Creditor on 10.06.2020 issued a letter intimating about the dishonour of the said cheque to the Corporate Debtor and called upon it to effect repayment within 15 days. Thereafter a settlement meeting was scheduled on 08.07.2020 but no settlement could go through and no payment was received from the Corporate Debtor. Hence this petition.

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Submissions by the Respondent/ Corporate Debtor

3. On 01.12.2021, while allowing IA No.1928/2021 filed by the Petitioner, the Bench ordered restoration of the main Company Petition. The Corporate Debtor was directed to file its reply within two weeks in the main Company Petition by serving advance copy to the other side failing which the right of the Corporate Debtor to file reply would stand forfeited. In spite of this clear direction, the Corporate Debtor did not file any submissions to defend its case within the stipulated time.

FINDINGS:

4. CP 955/2020 has been filed by Financial Creditor M/s JHP Finvest Pvt Ltd against the Corporate Debtor Smart Card IT Solutions Ltd u/s 7 of the IBC 2016 for a total financial debt of Rs.2,87,35,067/-. The amount claimed at default has been adequately reflected in Part IV of the Petition.
5. The Bench notes that prior to filing this present Application No.955/2020, the Financial Creditor, against the same Corporate Debtor, had filed a Company Petition No.3426 of 2019 u/s 7 of the IBC with respect to a financial debt of Rs.2,06,03,059/-. The financial debt owed by the Corporate Debtor arose from a Corporate Guarantee dated 24.10.2018 issued by the Corporate Debtor in respect of loan advanced by the Financial Creditor to the Director of the Corporate Debtor viz. Mr. Deven Mehta.
6. The Bench notes that the earlier Petition No. CP 3426/2019 was disposed of by this Tribunal by Order dated 25.11.2019 on the basis of consent terms dated 25.11.2019 executed

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between the parties. The Bench here would like to bring on record certain terms of the consent terms which are as under:-

- a) Under the consent terms, the Corporate Debtor acknowledged and admitted an amount of Rs.2,18,46,155/- due and payable by the Corporate Debtor as on 15.11.2019.
- b) The Corporate Debtor undertook to repay this amount along with interest in accordance with the consent terms.
- c) The amount was to be paid in a span of four months from 15.11.2019 till 15.03.2020.

7. NCLT, in view of the consent terms arrived at, had “**dismissed**” the CP No.3426 of 2019 as “**withdrawn**” on the basis of the consent terms vide Order dated 25.11.2019.

8. The Bench further notes that pursuant to the consent terms the Corporate Debtor issued post-dated cheque for a total amount of Rs.2,18,46,155/- dated 15.03.2020 in favour of the Financial Creditor. However, this cheque was dishonoured on the grounds of “Funds Insufficient”. The Petitioner has enclosed the copy of the dishonoured cheque with the Petition.

9. Thereafter, the Bench notes that, there has been a repeated demands by the Financial Creditor on the Corporate Debtor. However, instead of paying the amount which was admittedly due and payable, the Corporate Debtor vide its letter dated 24.06.2020 raised a frivolous contention mentioned as under:-

“2. ... It was agreed that you will not deposit the cheque without specific instructions of my client. On 13th March 2020, the Government of Maharashtra declared the outbreak of the pandemic in the city. On or about 14th March 2020, the promoter/authorized representative of our Client Mr. Deven Mehta had discussions with

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your Director/authorized representative Mr. Vishal Patel, wherein it was agreed between you and my client, to modify the date of payment agreed upon in consent terms and it was agreed that you shall not deposit the cheque on its due date and you shall deposit the same after mutual discussions on the COVID situation getting over and getting sorted out.”

10. The Bench also notes that this contention of the Corporate Debtor was immediately denied by the Petitioner vide its letter 03.7.2020 addressed to the Corporate Debtor. An excerpt of the same is as under:-

“With further reference to paragraph no.2 we further deny that that there was any alleged agreement with your clients to defray and delay the repayment of the outstanding amounts from the agreed and recorded date of 15th March 2020.”

10.1. Therefore, it is very clear to this Bench that there is a ‘financial debt’ due from the Corporate Debtor to the Financial Creditor within the meaning of Section 5(8) of the IBC 2016. Also, the Bench notes that a “default” has been committed by the Corporate Debtor within the meaning of Section 3(12) of the IBC which is clear from the fact that :

- i. The financial debt has been admitted by the Corporate Debtor under the consent terms dated 25.11.2019.
- ii. The Corporate Debtor even issued a post-dated cheque to the Financial Creditor to purportedly discharge the financial debt.
- iii. The cheques stood dishonoured.
- iv. The date of default is 15.03.2020.
- v. The amount of default is in excess of Rs.1 crore.

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Therefore, the Bench is inclined to 'Admit' the Petition.

11. The Bench here would also like to mention that despite an opportunity provided by the Bench to the Corporate Debtor to file a reply vide its order of 01.12.2021, the Corporate Debtor has failed to do so. It was categorically directed in the Interim Order dated 01.12.2021 to the Corporate Debtor to file reply within two weeks in the main Company Petition by serving advance copy to the other side failing which the Corporate Debtor would forfeit its right to file the reply. This Bench also notes that the present Petition is second round of proceedings u/s 7 of the Code between the parties for the same transaction. In view of the above, the Bench is of the view that there is a clear existence of the 'financial debt' and 'default' has been committed by the Corporate Debtor and that the Petition should be 'Admitted'.

12. In Part-III of the Petition, the Petitioner has proposed Ms. Sudha Bhushan, Registration No. IBBI/IPA-001/IP-P01519/2018-19/12305, 725, D wing, Neelkanth Business Park, Vidya Vihar West, Mumbai as the Insolvency Resolution Professional. The Interim Resolution Professional has filed her written consent in Form No.2 and also certified that there are no disciplinary proceedings pending against her with the Board or Indian Institute of Insolvency Professionals of ICAI. Accordingly, this Bench appoints the said Ms. Sudha Bhushan to act as Interim Resolution Professional in this matter. Upon Admission of the Application and declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under Section 13 read

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with Section 15 of the Code. He shall perform the duties as an Interim Resolution professional as defined under Section 18 of the Code and inform the progress of the Resolution process and compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

13. Having admitted the Petition/ Application the provisions of “**Moratorium**” as prescribed u/s. 14 of the Code shall come into operation. As a result, institution of any suit or parallel proceedings before any Court of Law are prohibited. The assets of the Corporate Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during “**Moratorium**” period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.
14. Accordingly, CP 955/IBC/MB/2020 stands “**Admitted**”. The Corporate Insolvency Resolution Process shall commence from the date of this Order.
15. Registry is directed to communicate this order to both the parties and the IRP immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)