NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-3051(ND)2019

IN THE MATTER OF:

M/s. Shambhu Agencies Pvt. Ltd.
154, Lenin Sarani, 4th Floor
Kolkata West Bengal-700013 **...Financial Creditor**

VERSUS

Vipul Limited,
Unit No. 201, C-50,
Malviya Nagar, New Delhi-110017 **...Corporate Debtor**

Section: 7 of IBC, 2016

Order Delivered on: 15.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner	**:**	**Mr. Sandeep Bajaj and Mr. Devansh Jain, Advocates**
For the Respondent	**:**	**Mr. Ashutosh Sharma Senior Laisoning Officer of CD**

JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Shambhu Agencies Pvt. Ltd., which is a company incorporated under the Companies Act 1956, through its Authorized Representative, Mr. Samser Singh., who is duly authorized vide their Board Resolution dated 06.11.2019, with a prayer to initiate the Corporate Insolvency process against M/s Vipul Ltd. (for brevity 'Corporate Debtor').

2. The Financial Creditor namely, M/s. Shambhu Agencies Pvt. Ltd. is a Company incorporated under the provisions of the Companies Act, 1956 with CIN No. U51109WB2008PTC121300, having its registered office at 154, Lenin Sarani, 4th Floor, Kolkata-70001.

3. The Corporate Debtor, namely, M/s Vipul. Ltd. is a Company incorporated on 05.06.1991under the provisions of the Companies Act, 1956 with CIN No. L65923DL2002PLC167607, having its Registered office at Unit No. 201, C-50, Malviya Nagar, New Delhi-110017, as per the Master Data annexed by the Financial Creditor.

4. The Authorized Share Capital of the Corporate Debtor is Rs.51,55,00,000 only and Paid-up Share Capital is Rs.11,99,84,480 only as per the averments made by the Financial Creditor.

5. It is submitted by the Financial Creditor that the present Petition arises out of the Loan acknowledgement Letter dated 28.02.2019, executed between the parties, by way of which the Corporate Debtor has acknowledged receipt of the loan amounting to Rs 50,00,000 only for a period of 181 days bearing interest @ 16% per annum with effect from 28.02.2019.

6. It is further submitted by the Financial Creditor that it had advanced the entire sum of Rs 50,00,000 to the Corporate Debtor through RTGS on 28.02.2019. It is added by the Financial Creditor that the Corporate Debtor was required to pay interest @ 16% per annum on the loan.

7. That the Financial Creditor has further annexed the Demand Promissory note dated 28.02.2019, the Loan Acknowledgement letter dated 28.02.2019 and Receipt dated 28.02.2019 duly signed by Shri. Punit Beriwala Managing Director of Vipul Ltd. as proofs of existence of the Financial Debt.

8. It is submitted by the Financial Creditor that in order to secure the amounts under the Loan Transaction, the Corporate Debtor had

issued three post- dated cheques dated 28.08.2019 towards repayment of Principal and interest (net of TDS @ 10%) :

Cheque No.	**Cheque date**	**Cheque amount(Rs)**	**Cheque drawn on**	**Remarks**
334751	28.08.2019	50,00,000	Axis Bank Limited	Principal Refund
334749	28.08.2019	1,75,561	Axis Bank Limited	Interest (28.02.2019 to 27.05.2019)
334750	28.08.2019	1,81,480	Axis Bank Limited	Interest (28.05.2019 to 27.08.2019)

9. It is further submitted by the Financial Creditor that since no repayment was received, the Financial Creditor duly presented the cheque No.334751 dated 28.08.2019 for encashment, which was dishonored with the remarks "Drawers signature not as per mandate" by the Canara Bank (Branch code 700015002).

10. It is submitted by the Financial Creditor that in view of the above it had issued a Legal Demand Notice under Section 138 of the Negotiable Instrument (NI) Act 1881 and thereafter, filed Compliant under Section 138 NI Act before Ld. Addl CMM-II at Kolkata, which is pending for adjudication.

11. It is submitted by the Financial Creditor that the Corporate Debtor has committed default in terms of Section 3(12) of IBC Code 2016.

12. That the Corporate Debtor has not filed its reply despite several opportunities. That during the Course of the arguments, the Corporate Debtor has failed to give satisfactory reasons as to why the CIR process shall not be triggered against it.

13. In the light of above facts and circumstances, the Financial Creditor has been successful in establishing the 'default' of above Rs 1 Lakh. This bench is, therefore, inclined to initiate CIR process against the Corporate Debtor.

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 Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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."

15. As proposed by the Financial Creditor, this Bench appoints Mr. Shashi Agarwal as IRP having Registration No. IBBI-/IPA-001/IP-P00470/2017-18/10813 (Email: shashiagg@rediffmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.

-Sd-

(L.N. Gupta)
Member (T)

-Sd-

(Ina Malhotra)
Member (J)