

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**

[Through Physical hearing/VC Mode (Hybrid)]

**ITEM No.02
C.P. (IB)No.78/BB/2024**

IN THE MATTER OF:

M/s. Aditya Birla Finance Ltd. ... Petitioner
Vs.
M/s. Shapos Services Pvt. Ltd. & Anr. ... Respondents

Order under Section 7 of Insolvency and Bankruptcy Code, 2016

Order delivered on: 17.09.2024

CORAM:

**SH. K. BISWAL
HON'BLE MEMBER (JUDICIAL)**

**SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner : Shri Rawley Muddappa
For the Respondent : Shri Sukrit Kapoor with Shri Abhishek Bagga

ORDER

1. The present Petition has been filed on 20.02.2024 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/Code**'), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **M/s. Aditya Birla Finance Ltd.** (for brevity 'Financial Creditor/Petitioner') *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Shapos Services Pvt. Ltd. & Anr.**, (hereinafter referred as 'Corporate Debtors/Respondents') on the ground that the Corporate Debtor has committed a default for a total outstanding amount of **Rs.1,55,48,218/- (Rupees One Crore Fifty Five Lakhs Forty Eight Thousand Two Hundred and Eighteen only) as on 06.02.2024.** Further, in Item No.2 of Part-IV of Form No.1 filed with the Petition, it is stated that the total amount of default is Rs.1,55,48,218/- (Rupees One Crore Fifty Five Lakh Forty Eight Thousand Two Hundred and Eighteen only) and the date of default is mentioned as 28.05.2023.

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2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner in the Company Petition as follows:

- i. **M/s. Aditya Birla Finance Ltd/Financial Creditor** is a Non-Banking Finance Company (NBFC) registered under the Reserve Bank of India and it is incorporated under the Companies Act. M/s. Shapos Services Pvt. Ltd. & Anr., (Corporate Debtors) are engaged in the business of legal, accounting, book keeping and auditing activities; tax consultancy; market research and public opinion polling; and business and management consultancy. Shapos Services Pvt. Ltd. and Shapos Farms Pvt. Ltd. (jointly referred as Corporate Debtors) have jointly requested funds from the Financial Creditor for working capital expenditure and executed the Loan Documents including, Sanction Letter dated 28.02.2023, Master Facility Agreement dated 28.02.2023 for the total loan amount of Rs.2,00,00,000/-.
- ii. Accordingly, the Corporate Debtors till now have made a payment of Rs.72,69,137.49/- towards part repayment of principal and Interest to the Financial Creditor and are still liable to pay an amount of Rs.1,55,48,218/- as on 06.02.2024, which includes outstanding principal as per the Statement of Accounts. Since the Corporate Debtor failed to re-pay loan in total as agreed, loan recall notice dated 19.09.2023 was issued to the Respondents. However, the Corporate Debtors, in spite of receiving the notice, they neither responded nor repaid the outstanding amount. Subsequently, the Corporate Debtors approached the Petitioner through Recur Club Technologies Pvt. Ltd., as Recur had helped the Respondent in availing the present loan from the Petitioner. Recur Club Technologies Pvt. Ltd. and the Petitioner are working together as per the Master Service Agreement entered between them. With regard to the Respondent's proposal, email correspondence was exchanged between the Petitioner, Corporate Debtors, and Recur Club Technologies Pvt. Ltd. However, till date, the Corporate Debtors have failed to repay the loan amount.
- iii. Therefore, this Petition has been filed U/s.7 of the IBC, 2016 for initiation of CIRP.

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3. Ms. Rumeli Sarkar, Authorized Representative of the Corporate Debtors/Respondents has filed an Affidavit vide Diary No.5380 dated 17.09.2024, admitting the debt and default in question and has also not opposed initiation of CIRP against it by *inter-alia* contended as follows:
 - i. It is stated that the Corporate Debtors failed to repay the outstanding loan due to financial difficulties caused by non-payment from its vendors. It is further stated that the said non-payment of the loan amount was neither deliberate nor intentional, and the Corporate Debtor was availing other options to repay the loan provided by the Financial Creditor.
 - ii. As per the Master Facility Agreement, it was agreed between the parties that the Loan Amount shall be paid on Demand without default, and the said condition was abided by the Corporate Debtor as the Corporate Debtor made certain payments towards the repayment of the loan amount. However, it failed to realize the inventory stuck in the market due to which the stated event of default occurred and the Corporate Debtor failed to repay the entire loan within the time stipulated in the Master Facility Agreement.
 - iii. The Corporate Debtor has acknowledged and admitted to the transactions and communications as outlined in the Petition, and there is no denial or counterargument from the Corporate Debtor regarding the said transactions and communications. Therefore, the debt and liability presented are fully accepted.
4. We have heard Shri Rawley Muddappa, learned Counsel for the Petitioner and Shri Sukrit Kapoor with Shri Abhishek Bagga, learned Counsels for the Respondents. We have carefully perused the pleadings of the Parties and extant Provisions of Code and the settled position of law on the issue.
5. The present Petition was filed under Section 7 of the IBC to initiate CIRP against the Corporate Debtor on the ground that the Corporate Debtor has committed a default of Rs.1,55,48,218/- (Rupees One Crore Fifty Five Lakh Forty Eight Thousand Two Hundred and Eighteen only). Therefore, the threshold requirement at the time of filing the Petition is fulfilled. The Date of Default mentioned in Form-1 of the C.P. and the Record of Default issued

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by the NeSL is 28.05.2023. The instant Company Petition has been filed on 20.02.2024, which is within the period of limitation.

6. The next issue to be examined is whether the debt and default have been proven. The loan documents filed with the Petition confirm the debt. Moreover, there is a debt and default are acknowledged in the Affidavit filed by the Corporate Debtors vide Diary No.5380 dated 17.09.2024, as discussed above. Accordingly, for the reasons stated above, the C.P. is liable to be admitted.
7. By exercising powers conferred on this Adjudicating Authority under Section 7(5) (a) of the Code, the present petition bearing **C.P.(IB) No.78/BB/2024** is hereby admitted by initiating CIRP against **M/s. Shapos Services Private Limited and M/s. Shapos Farms Private Limited** with following consequential directions:
 - 1) Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences 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*

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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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be.

8. In Part-III of Form No.1, Shri Ravindra Beleyur, Registration No. IBBI/PA-001/IP-00189/2017-18/10368 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 07.02.2024 are found at Annexure-2 of the Petition along with the Certificate of Registration issued by the Insolvency and Bankruptcy Board of India as per Regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 and has been placed on record.
9. In view of the above, we appoint Shri Ravindra Beleyur, bearing Reg. No. IBBI/PA-001/IP-00189/2017-18/10368, registered address at No.428, 19th B Cross, 3rd Block, Jayanagar, Bengaluru – 560 011, e-mail: ravi@beleyur.com as the Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.
10. The Financial Creditor shall deposit a sum of **Rs.2,00,000/-** (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
11. 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

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shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for 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.

12. A copy of the order shall be communicated to both the 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 the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-
K. BISWAL
MEMBER (JUDICIAL)

Shruthi