

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 104
(IB)/273(PB)/2021

IN THE MATTER OF:

Bhabani Pigments Pvt Ltd

.... Applicant/Petitioner

v.

Emergent Traders Pvt Ltd

.... Respondent

u/s 7 of IBC read with Rule 4 of the INSOLVENCY AND BANKRUPTCY
(Application to Adjudicating Authority) RULES, 2016

Order delivered on: 06.04.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

MR. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner
For the Respondent

Mr. Shivam Wadhwa, Adv.
None

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER(TECHNICAL)

1. This application has been filed by Bhabani Pigments Pvt Ltd, the Financial Creditor (FC) under Section 7 of IBC, 2016 read with Rule 4 of the IBC (Application to Adjudicating Authority) Rules, 2016, on 17.05.2021, seeking Corporate Insolvency Resolution Process against Emergent Traders Pvt Ltd, the Corporate Debtor (CD), for a total amount of debt of Rs.

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4,89,24,986/- comprising of principal amount of Rs. 4,50,00,000/- alongwith interest @ 12 % per annum due from 31.01.2020. The date of default is stated to be 31.01.2020 for loan of Rs. 3,00,00,000/- and 20.03.2020 for loan of Rs. 1,50,00,000/-. In support of his application, the FC has annexed the business loan agreement dated 10.10.2018 (Annexure A-6) for making loan of Rs. 3,00,00,000/- (Rs. 3 crore only) to Emergent Traders Pvt Ltd and second business loan agreement dated 20.12.2019 for Rs. 1,50,00,000/- (Rs. 1 crore 50 lakh only) at Annexure A-10. As per the first loan agreement, the rate of interest is 12 per cent per annum and the repayment date is 31.01.2020. In the case of second business loan agreement, the rate of interest is 12 % per annum and the repayment date is 20.03.2020. The amounts of Rs. 2 crore, Rs. 1 crore and Rs. 1.5 crore have been disbursed by the FC to the CD on 15.10.2018, 20.03.2019 and 21.12.2019 for which it has attached the bank statement at Annexure A-7: (pages 50, 51 and 52). The FC has also attached letters dated 01.02.2020 and 20.03.2020 (Annexures A-12 and A-15) of the CD stating that currently the CD is facing financial constraints and therefore unable to pay the amount of Rs. 3 crore plus interest and Rs. 1.5 crore plus interest respectively.

2. We have heard the Ld. Counsel for the FC. Ld. Counsel for the CD is not present. On the last date of hearing i.e. on 25.03.2022, both the parties were directed to file the hard

copies of their petitions alongwith the Vakalatnama and the matter was listed on 06.04.2022 i.e. today for physical hearing. However, the CD is not present nor ^{is} his reply available on the e-file of the Tribunal. We have heard the Ld. Counsel for the FC and perused the documents available on the file. In view of the business loan agreements having been executed between the FC and the CD with the date of default being mentioned as 31.01.2020 and the 20.03.2020 which dates are not hit by Section 10A, we are inclined to accept the petition.

3. This application under Section 7 is hereby admitted.

4. The applicant has proposed the name of interim resolution professional (IRP) Mr. Akhil Ahuja having address: D-65, Ground Floor, ZBC-001, Defence Colony, South Delhi, New Delhi-110024, Registration No: IBBI/IPA-001/IP-P-02072/2020-2021/13213, contact no. 9911331599 and email: akhil@ahujainsolvency.com . The consent of the IRP as well as self declaration that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICAI Institute of Insolvency Professionals is available with the petition. In addition, further necessary disclosures have been made by Mr. Akhil Ahuja as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Sections 7 (3)(b) and 7 (5)(a) of the Code. Hence, we appoint Mr. Akhil Ahuja, as the IRP of the Corporate Debtor.

5. In pursuance of Section 13(2) of the Code, we direct the IRP to make public announcement immediately with regard to admission of this application under Section 7 of IBC. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
6. As a consequence of the application being admitted in terms of Section 7 of IBC moratorium as envisaged under the provisions of Section 14(1) of IBC shall follow in relation to the Corporate Debtor as per provisos (a) to (d) of section 14(1) of the IBC. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the IBC shall come in force.
7. We direct the Applicant to deposit a sum of Rs. 2,00,000, with the Interim Resolution Professional **Mr. Akhil Ahuja**, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Applicant. 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 Applicant.
8. The registry is directed to communicate a copy of the Order to the Applicant, the Corporate Debtor, the Interim Resolution

Professional and the Registrar of Companies, NCR, New Delhi, at the earliest, but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

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**RAMALINGAM SUDHAKAR
(PRESIDENT)**

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**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**