

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**NEW DELHI**  
**COURT-VI**

C.P. NO. IB-2217 (ND)/2019

**IN THE MATTER OF:**

Indiabulls Consumer Finance Limited

..... **Petitioner**

**V.**

Gautam Techagro India Pvt. Ltd ..... **Respondent**

**SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016**

**Judgment delivered on: 31.01.2020**

**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**

**For the Petitioner: Mr. Shyam Babu, Advocate.**  
**For the Respondent: None.**

**ORDER**

**DR. V. K. SUBBURAJ, HON'BLE MEMBER (T)**

1. Indiabulls Consumer Finance Limited ( formerly IVL Finance Limited) , claiming as the financial creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process



in respect of respondent Company Gautam Techagro India Pvt. Ltd referred to as the corporate debtor.

2. The Respondent Gautam Techagro India Pvt. Ltd against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 08.12.2011 having its registered office at 357, Tarun Enclave Pitampura New Delhi. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. The applicant has proposed the name of Mr.Sunil Prakash Sharma, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00551/2017-2018/11726 resident of E-25, Lajpat Nagar-3, New Delhi. Mr.Sunil Prakash Sharma has agreed to accept appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.
4. The case of the Financial Creditor is as under:



- i. On 10.05.2018 the Corporate Debtor approached the Financial Creditor for availing business loan facilities. Subsequently, after accepting the requests the requests of the Corporate Debtor a loan agreement dated 10.05.2018 for Rs. 2530000/- was executed by and between the Corporate Debtor and the Financial Creditor.
  - ii. The Corporate Debtor committed breach of the loan agreement inter alia by making defaults in payment of the monthly instalments due and payable by the Corporate Debtor to the Financial Creditor on various dates including 05.11.2018, 05.12.2018, 05.01.2019, 05.02.2019, 05.03.2019, 05.04.2019, 05.05.2019, 05.06.2019.
5. The applicant further submitted that despite several reminders on the part of the petitioner, the respondent has failed to make the payment of Rs. 25,30,000/- which are due and in default. On 31.10.2018 the Financial Creditor through its Advocate issued Demand Notice calling upon the Corporate Debtor to clear the outstanding debt.
  6. The Respondent did not reply to either the legal notice or the application.
  7. Despite opportunity non-appeared on behalf of the respondent hence, is proceeded ex-parte vide order dated 07.11.2019 of this Tribunal.
  8. Heard the Applicant and perused the record.



9. It is patent that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

10. The provisions of Section 7 (2) and Section 7 (5) of IBC stand satisfied but the same may be read as under:-

**“Initiation of corporate insolvency resolution process  
by financial creditor.**

7 (1) .....

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3) .....

7 (4) .....

7 (5) Where the Adjudicating Authority is satisfied that—



(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) .....

11. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission as it is complete in all respects.

12. As a sequel to the above discussion, this petition is admitted and Mr.Sunil Prakash Sharma, having registration number IBBI/IPA-002/IP-N00551/2017-2018/11726 resident of E-25, Lajpat Nagar-3,



- (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 Securitisation 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. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation



6 of Insolvency and Bankruptcy Board of India (Insolvency 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 Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction



by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

18. The office is directed to communicate a copy of the order to the Financial Creditor, 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 its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(DR. V.K.SUBBURAJ)  
MEMBER (TECHNICAL)

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(SHRI ABNI RANJAN KUMAR SINHA)  
MEMBER (JUDICIAL)