

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)- 258 (PB)/2019

**Under Section 7 of the Insolvency and Bankruptcy Code,
2016**

In the matter of:

Prayag Polytech Private Limited

Applicant/Financial Creditor

Vs.

Great Aid Marketing Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 25.09.2019

CORAM

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant/Petitioner: Mr. Virender Ganda, Sr. Advocate
Mr. Viputl Ganda, Ms. Shreya Jain,
Mr. S. K. Giri, Advocates

For the Respondent(s): Mr. Ayush Choudhary, Advocate



ORDER

S. K. Mohapatra, Member

1. M/s Prayag Polytech Private Limited 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 M/s Great Aid Marketing Private Limited referred to as the corporate debtor.
2. The Respondent Company M/s Great Aid Marketing Private Limited. (CIN No. U74899 DL1989 PTC 035289) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 01.03.1989 having its registered office situated at 301-302, Anand Chambers 25/34 East Patel Nagar New Delhi - 110008. 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. It is appropriate to mention that the applicant M/s Prayag Polytech Private Limited, is a company incorporated on 16.08.1982 having its Registered Office situated at C-587, Industrial Area, Phase-1, Bhiwadi-301019, Rajasthan.
4. Shri Milan Aggarwal, Director of the company authorized through resolution dated 18.12.2018 of the Board of Directors of the company, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
5. The case of the applicant in brief is that on 01.04.2016 applicant disbursed Rs. 40,00,000/- in favor of respondent company as loan. Thereafter, on



19.12.2016 further amount of Rs. 25,00,000/- was disbursed by the applicant in favour of the respondent. However, it is claimed that the total loan amount of Rs. 65,00,000/- has not been paid till 25.12.2018.

6. As per part IV of the application it is claimed that a sum of Rs. 84,38,656/- including interest is due from the respondent company as on 25.12.2018.
7. The Applicant has filed its relevant statement of bank accounts along with auditors report as on 31st March, 2017. The applicant has also filed the calculation sheet providing the calculation of the financial debt along with the ledger account of the corporate debtor maintained by the financial creditor till 25.12.2018. In addition, copies of Balance Sheets for the year 2016-17 and 2017-18 of the corporate debtor has been placed on record. The applicant has also relied upon Form-26AS for the period of 2016-17 of the applicant financial creditor in support of its claim.



7. It is submitted that the Petitioner issued a demand notice dated 02.01.2019 to the corporate debtor for repayment of the remaining financial debt. As the respondent corporate debtor committed default in payment of the outstanding debt, it is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application.
8. The respondent corporate debtor has filed its reply on 12.03.2019. Rejoinder to the reply was filed by applicant on 27.03.2019.
9. We have heard the learned counsels for the parties and have perused the case records.
10. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,
 - a) Financial creditor
 - b) Operational creditor, and
 - c) Corporate debtor itself.



11. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code, an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

12. One of the objections raised by the respondent is that the applicant is not a *‘financial creditor’*, nor the debt claimed in the application come within the purview of *“financial debt”* as defined under the Code and therefore the present application is not maintainable.

13. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code and precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.



14. In the present case applicant has placed statements including bank transactions to show that loan was disbursed to the respondent. Respondent in their reply, although disputed the entire claim of the applicant but admitted that the *loan was a long-term borrowing*. Respondent therefore has accepted that the debt amount received from the applicant was in the nature of a loan. Once it is accepted that the debt was received as a long-term borrowing, it is evident that the said loan amount was clearly disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest.

15. In that view of the matter it is seen that not only the present claim comes within the purview of '*Financial Debt*' in terms of Section 5(8) of the Code but also the applicant can clearly be termed as '*Financial Creditor*' of the respondent corporate debtor



so as to prefer the present application under Section 7 of the Code.

16. The application filed by the applicant financial creditor has to be admitted under sub-section 5 (a) of Section 7 of the code, on satisfaction that:

- I. Default has occurred.*
- II. Application is complete, and*
- III. No disciplinary proceeding against the proposed IRP is pending.*

17. An application under Section 7 of the Code is acceptable so long as the financial debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. In the present case the claimed financial debt exceeds much above rupees 1 Lac and the respondent has defaulted in making the payment of the debt.



18. In connection with the 2nd requirement of sub-section 5 (a) of Section 7 of the code, it is seen that the present application is complete and has been filed by the petitioner financial creditor in Form-1 in terms of Rule 4 of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 accompanied with the required information, documents and records as prescribed under the Rules.

19. The applicant *inert-alia* has annexed to the application detail particulars of 'financial debt' including documents and records as evidence of default as required under subsection 3 (a) of Section 7 of the Code. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

20. Sub-section (3) (b) of Section 7 of the Code further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the



name of Mr. Sameer Rastogi, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00226/ 2017-18 / 10677 with e-mail id as srastogi@indiajuris.com and address as F-116, Lajpat Nagar-I, New Delhi-110024. Mr. Sameer Rastogi has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 15.01.2019 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. In addition, further necessary disclosures have been made by Mr. Sameer Rastogi as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

21. It is thus seen that the requirement of subsection 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed



under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

22. One of the main objections of the respondent is that the amount was given under an oral agreement, which was due and payable at the convenience of the respondent within a period of seven years and not on demand by the financial creditor. Accordingly, it is pleaded that default has not yet arisen.

23. In this regard it is seen that even if there is no written loan agreement, the disbursal of loan amount of Rs. 25,00,000/- has not been disputed. It is clearly accepted in the reply of respondent that the amount of Rs. 25,00,000/- was received as a long-term borrowing. An agreement can either be oral or written, and therefore an admitted loan given on oral request can be enforceable in law.

24. As regards the objection that the loan is recoverable only after 7 years, it is pertinent to reproduce the e-mail dated 30.09.2018 sent by Mr. Natarajan on behalf of the corporate debtor which is



self-explanatory and is reproduced below for ready reference.

“Dear Manish

In continuation to the trailing mail and with further discussion you had with Mr. R Mani, we would inform you that the advance in question has to be paid by us and in this connection, Mr. Mani had informed you that possibly by today it could be sent to you.

However, it could not be arranged now and it is likely that we would clear the dues as early as possible this coming month. The delay is because of the fund which we have to get is likely to come soon in 2018.

Sorry for inconvenience.

Regards.

R Natarajan/ (Director)

Great Aid Group” (Emphasis Given)

- 25.** It is seen from the letter that the corporate debtor has accepted its liability to pay the debt amount and its willingness to pay the debt to the applicant



financial creditor. In the aforesaid email dated 30.09.2018 the respondent not only has accepted its liability but also has sought time to repay the amount of debt at the earliest. It is further stated in the email that the amount of debt could not be paid by the respondent due to its financial crises. The email states that the debt shall be paid in the next month. The contention of the corporate debtor, therefore, that the amount was payable after seven years is baseless and without any proof and as such cannot sustain.

26. The corporate debtor has further contended that there are pending disputes between the management of the financial creditor before the Hon'ble National Company Law Tribunal, Jaipur.

27. The aforesaid disputes do not have any relation or nexus with the present petition filed under the Code. In this regard it is well settled that pendency of legal proceedings including Company Petition under Section 241 & 242 of the Companies Act, 2013 cannot be an impediment or bar to initiate the



Corporate Insolvency Process against the corporate debtor under the provisions of Section 7 of the Code. Simply pendency of proceedings cannot be a ground to deny admission of an application under Section 7 of the Code, once the application is complete and there has been commission of default.

28. Insolvency and Bankruptcy Code, 2016 being a complete Code and Union Law, will prevail over other earlier laws like the Companies Act, 2013. As per Section 238 of the Code, the provisions of the Code are to be given effect to notwithstanding anything contrary contained in any other earlier laws.

29. Hon'ble NCLAT in the matter of M/s. Ksheeraabd Constructions Pvt. Ltd. V. M/s. Vijay Nirman Company Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 167 of 2017 has observed that:

“The ‘I & B Code’ being a complete code will prevail over other Acts.-----No person can take advantage of pendency of a case to stall ‘Corporate Insolvency Resolution Process’ under the I & B Code”.



30. Similarly in the case of M/s Innoventive Industries Ltd. V. ICICI Bank and Ors reported in AIR 2017 SC 4084 Hon'ble Supreme Court has also held at para 56 that:

“The non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code”.

31. In view of the above discussion, the objection in this regard will not sustain as initiation and pendency of proceedings in any forum is no bar for initiation of Corporate Insolvency Resolution Process under Section 7 of the Code in view of the overriding effect given to the provisions of Section 238 of the Code.

32. As regards the other dispute raised by the respondent in respect of part disbursement of loan, the applicant has clarified in its rejoinder filed on 27.03.2019 that that financial creditor, due to an inadvertent error, did not attach the bank statement



depicting the transfer of an amount of Rs. 40,00,000/- to the respondent, M/s Great Aid Marketing Private Limited. However, relevant bank statement has been filed depicting the transfer of Rs. 40,00,000/- to the respondent on 30.12.2015.

33. Respondent corporate debtor in its reply has clearly admitted that the loan was a '*Long Term Borrowing*'. At paragraph 4 of the reply the respondent has stated that '*if sufficient opportunity is given in a proper and reasonable manner, the respondent is still willing to settle the dues as per the oral arrangement*'.

34. Adjudicating Authority is only to ascertain the existence of a default and not the exact amount that is due and payable. Mere mismatch of the figures will ipso facto not estop the admission of corporate insolvency resolution process, when the default exceeds the threshold limit of Rupees one lac.

35. It is pertinent to mention here that the Code requires the Adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the



application. The material on record clearly goes to show that respondent had availed the loan facilities which was duly disbursed and has committed default in repayment of the outstanding loan amount.

36. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

“Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application.”

37. The applicant has placed various documents in relation to the disbursement of the loan to the respondent company and in support of the default in repayment. In support of the pleading the Applicant has filed its relevant statement of bank accounts along with auditors report as on 31st March, 2017. The applicant has also filed the calculation sheet



providing the calculation of the financial debt along with the ledger account of the corporate debtor maintained by the financial creditor till 25.12.2018. In addition, copies of Balance Sheets for the year 2015-16 and 2016-17 of the corporate debtor has been placed on record. The applicant has also relied upon Form-26AS for the period of 2015-16 and 2016-17 of the applicant financial creditor in support of its claim.

- 38.** The materials on record and the loan documents clearly depict that the loan was disbursed and the respondent company utilized and enjoyed the loan amount. In fact, there has been an admission of receipt of debt with an assurance to repay the debt.
- 39.** In the aforesaid discussions, it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that the applicant financial creditor had disbursed loan to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the outstanding



financial debt despite demand notice. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP.

- 40.** As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
- 41.** Mr. Sameer Rastogi, having registration number IBBI / IPA-002 / IP-N00226/ 2017-18 / 10677 resident of F-116, Lajpat Nagar-I, New Delhi-110024 is appointed as an Interim Resolution Professional.
- 42.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.



43. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lac with the Interim Resolution Professional namely Mr. Sameer Rastogi 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 said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

44. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

- 45.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated



or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- 46.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day to day 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 would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under 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, Rules and Regulations.

47. Directions are also issued to the ex-management to provide all documents belonging to the corporate debtor and lying in their possession and also to furnish every information in their knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

48. 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, NCT of Delhi & Haryana at



the earliest possible 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.

Sd/-

(M.M. KUMAR)
PRESIDENT

25.09.2019

Sd/-

(S. K. MOHAPATRA)
MEMBER (T)

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