

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1191/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

Intec Capital Limited.

[CIN:L74899DL1994PLC057410]

...Financial Creditor

v/s.

Shwet Bio-Tech Private Limited

[CIN:U24100Mh2010PTC209411]

...Corporate Debtor/ Guarantor

Order Delivered on:22.03.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr.Vidit Divya Kumat,
Ld. Counsel

For the Corporate Debtor:

None present.

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Intec Capital Limited. (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Shwet Bio-Tech Private Limited., the Corporate Debtor/Guarantor by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 17,37,63,827/- (Rupees Seventeen Crores Thirty-Seven Lakhs Sixty-Three Lakhs Eight Hundred and Twenty-Seven Only). The Petition is filed on 27.08.2020. The date of default as Specified in Part IV of the Petition is 01.02.2018 (which is captured as the date from which the Corporate Debtor defaulted in making payments under the Settlement Letter dated 22.01.2018).
2. On 04.10.2022, the Adjudicating Authority by way of the Impugned Order, had rejected the Application primarily on the grounds of Non- Maintainability. The present applicant therefore preferred a Company Appeal (AT) (Ins) No. 1403 of 2022 against the impugned order dated 04.10.2022 before National Company Law Appellate Tribunal. The same was allowed on 03.07.2023 and the impugned order was set aside and the matter was

remanded back to this tribunal. The relevant extract of the said order is reproduced below:

.....Counsel for the Apellant has relied upon a decision of the Hon'ble Supreme Court' rendered in Civil Appeal No.9286 of 2019-K Paramasivam Vs. The Karur Vysya Bank Ltd. and Anr. decided on 06.09.2022 and referred to para 13 of it:

"13. Under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default.The guarantor is then, the Corporate Debtor."

8. The issued thus, raised in this appeal is no more res integra as it is covered by the aforesaid decision of the 'Hon'ble Supreme Court' in K.Paramasivam (supra).

9. Thus, taking note of the aforesaid decision of the 'Hon'ble Supreme Court' and the facts and circumstances of the present case, we are of considered opinion that the impugned order is illegal as it is contrary to the law laid down by the Hon ble Supreme Court' in the case of K Paramasivam (supra) Therefore, the present appeal is hereby allowed and impugned order is set aside. The matter is remanded back to the 'Adjudicating Authority' to decide the application in accordance with law.

3. In view of the Order passed by the Hon'ble NCLAT, the Applicant filed an Interlocutory Application 4952/2023 for Restoring the Company Petition No.1191/2020. The said IA was allowed and the CP was restored vide order dated 31.10.2023. The said matter was listed on 30.01.2024 which was heard and Reserved for Orders.
4. The submissions of the Financial Creditor are as follows:
 - 4.1. The Financial Creditor i.e. Intec Capital Limited is one of the leading Non- Banking Financial Institution in India which commenced its operations in 1994 . It is in business of financing small and medium enterprises.

4.2. The Financial Creditor submits that, M/s Shwet Realtors Private Limited i.e. the Principal Borrower approached the Financial Creditor for a financial loan facility of Rs.3,57,14,286/- for the purpose of business expansion in which the Corporate Guarantee was furnished by the Corporate Debtor i.e. M/s. Shwet Bio-tech Private Limited to which a Loan Agreement dated 31.12.2013 was executed between Financial Creditor and the Principal Borrower and a Guarantee Agreement was executed with the Financial Creditor and the Corporate Debtor. The loan was sanctioned vide sanction letter dated 16.12.2013.

4.3. The Financial Creditor on 31.12.2013 disbursed the loan amount after the execution of the loan agreement which was repayable in 60 monthly instalments of Rs.8,31,009. Subsequently, after availing the loan the Principal Borrower failed to adhere to financial discipline and committed wilful defaults.

4.4. In pursuance to thereof, the financial creditor on 07.04.2015, invoked the Corporate Guarantee and sent a legal notice invoking the Arbitration clause. Accordingly, as on 14.08.2015, the Arbitrator passed an Award directing the Corporate Debtor to repay all the outstanding dues along with interest @14% p.a. however the Corporate Debtor was unable to pay any of the outstanding debt. The principal borrower became NPA on 30.06.2016.

4.5. Further, a settlement agreement was executed between the Financial Creditor and the Principal Borrower on 22.01.2018 however they failed to make a payment as per the agreed repayment schedule.

4.6. That as on 30th June 2020, the Principal Borrower owes to the Petitioner an amount of Rs. 17,37,63,827/- (Rupees Seventeen Crores Thirty-Seven Lakhs Sixty-Three Lakhs Eight Hundred and Twenty-Seven Only) for which the present Corporate Debtor is a guarantor. Resultantly, this Company Petition under Section 7 of the Insolvency and Bankruptcy Code is filed.

Findings

5. This bench has perused the documents and pleadings available on record and considered the submissions of the Applicant/Financial Creditor.

5.1. This bench observed that the matter was first listed on 18.01.2021. Thereafter it was listed on several occasions i.e. 24.02.2021, 05.04.2021, 17.08.2021, 06.09.2021, 07.10.2021, 10.12.2021 but there was no representation from the Corporate Debtor. The bench vide order dated 24.02.2021, ordered substituted service. As there was no appearance, the Corporate Debtor was set *ex-parte* on 24.02.2022 and the final order was passed on

04.10.2022. After the said petition was remanded back by the Hon'ble NCLAT, this bench vide order dated 31.10.2023, directed the applicant to issue personal notice to the respondent clearly indicating the next date of hearing and file the proof of service. The same was done and the notice was returned as "*registered office is not located in that particular place*". In the said circumstances the Financial Creditor was permitted for substituted service vide order dated 01.01.2024. In spite of the same, there was no representation on behalf of the Corporate Debtor. In absence of any reply from the Corporate Debtor/Guarantor despite several opportunities and absence of any representation on behalf of the Corporate Debtor/Guarantor, the matter is being decided on merits.

5.2. This bench observes that, as per the loan agreement dated 31.12.2013 the loan was repayable in 60 monthly instalments of Rs.8,31,009. Pursuant to which the Financial Creditor had issued legal notice dated 07.04.2015 invoked the Corporate Guarantee and sent a legal notice invoking the Arbitration clause. Accordingly, as on 14.08.2015, the Arbitrator passed an Award directing the Corporate Debtor to repay all the outstanding dues along with interest @14% p.a. however the Corporate Debtor was unable to pay any of the outstanding debt. Further, a settlement agreement was executed between the Financial Creditor and the Principal Borrower on 22.01.2018. The Corporate Debtor defaulted in payments in terms of settlement Agreement dated 22.01.2018. The

Corporate Debtor has not disputed the loan facility which was provided by the Financial Creditor and this itself shows that debt is established.

5.3. This bench notes that the arbitral award in favour of Financial Creditor gives the Financial Creditor a fresh cause of action and 3 years limitation starts from the date of arbitral award i.e.14.08.2015. In between an Settlement was entered into between the parties. As per the settlement terms the amount was payable in 4 tranches i.e. Before 31.01.2018, 05.02.2018, 25.02.2018, 25.03.2018. That in accordance with the settlement letter, the 1st installment became due on 31.01.2018 pursuant to which the Corporate Debtor/ Guarantor failed to make the payment. The date of default as specified under Part IV of the petition is 01.02.2018, the present petition is filed on 27.08.2020 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.

6. The factum of existence of financial debt and its default stands proven on record. It has also been established that the petition is within time. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor.

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7. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

6. The Petition bearing CP (IB) No.1191/MB-IV/2020 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by by Intec Capital Limited. (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Shwet Bio-Tech Private Limited., the Corporate Debtor/ Guarantor **Admitted.**

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI Act, 2002);

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- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Mr. Udaykumar Bhaskar Bhat**, an Insolvency Professional registered with Indian Institute of

Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P01425/2018-2019/12234** and email-**udaybhat2805@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by

Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
22.03.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)