

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB)1712/MB/C-IV/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Vidarbha Diagnostics Pvt. Ltd.

...Financial Creditor

v/s.

**Vijay Engineering Enterprises Pvt.
Ltd.**

...Corporate Debtor

Order Delivered on 09.08.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Adv. Ami Jain

For the Respondent: Adv. Khushboo Shah Rajani

Per Mr. Rajasekhar V. K. Hon'ble Member (Judicial)

ORDER

1. This is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 by a Financial Creditor, namely Vidarbha Diagnostics Pvt. Ltd. against Corporate Debtor, namely Vijay Engineering Enterprises Pvt. Ltd. to initiate Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Corporate Debtor failed to make payment of Rs.33,00,000/- as principal amount and Rs.3,90,576/- as interest amount. Date of default is 31.07.2018. The Petition filed on 30.04.2019.
2. In part IV of Form 1 against the column "Total Amount of debt granted," the Financial Creditor has stated that an amount of Rs.33,00,000/- was granted as loan and was disbursed by the Financial Creditor to the Corporate Debtor under a loan agreement dated 14.09.2017.

3. The Financial Creditor stated that the Corporate Debtor approached the Financial Creditor for a short-term loan and amount of Rs.33,00,000/- was disbursed by the Financial Creditor to the Corporate Debtor under the said loan agreement dated 14.09.2017. As per terms of the agreement the loan of Rs.33,00,000/- was given @15% p.a. for a period of nine months, which was payable on 31.07.2018.
4. The Financial Creditor stated that, the Corporate Debtor gave two post dated cheques to the Financial Creditor under the loan agreement as security, whose details are as follows,
 - i. Cheque No. 000780 dated 31.07.2018 for Rs.33,00,000/- drawn on HDFC Bank in favour of Vidarbha Diagnostics Pvt. Ltd. for the total outstanding to the lender to be used as security in case of default by the Corporate Debtor in repayment of the loan.
 - ii. Cheque No. 000161 dated 31.07.2018 for Rs.3,90,576/- drawn on HDFC Bank in favour of Vidarbha Diagnostics Pvt. Ltd. For interest accrued to the lender during the tenure of unsecured loan to be used as security in case of default by the Corporate Debtor in repayment of interest.
5. The Financial Creditor stated that, the Corporate Debtor defaulted on the repayment of principal as well as interest thereon on 31.07.2018, the due date for repayment. The Financial Creditor further submitted that the Financial Creditor wrote the letters dated 03.08.2018, 13.08.2018 and 23.08.2018 to the Corporate Debtor in respect of debt due. In response the Corporate Debtor sent two letters dated 06.08.2018 and 14.08.2018 wherein the Corporate Debtor admitted the liability and sought time for payment.
6. It is seen from the affidavit in reply submitted by Corporate Debtor dated 30.07.2019 filed on 06.08.2019 that the Corporate Debtor is undergoing financial difficulties for more than a year due to heavy losses incurred on account of financial crises in operating business. Further the Corporate Debtor stated that the Corporate Debtor's intention is fair to discharge the liabilities of Creditors but due to

some reasons, they are facing difficulties in realising payments to the Financial Creditor.

7. The Corporate Debtor further stated that while there is no dispute with regard to the claim raised by the Financial Creditor. The Corporate Debtor is also not in position to commit to any repayment of loan taken from the Financial Creditor on account of dire financial distress and lack of sufficient funds.
8. We have heard the arguments of both sides and perused the records.
9. The Petition is filed by Mr. Sudhir Manoharrao Neral, Director of the Vidarbha Diagnostics Pvt. Ltd. duly authorised by the Board Resolution dated 01.02.2019.
10. The Financial Creditor has stated that as on 31.07.2018, Rs.33,00,000/- as principal amount and Rs.3,90,576/- as interest amount is due and payable by the Corporate Debtor to the Financial Creditor. The Financial Creditor has stated that the short-term loan and an amount of Rs. 33,00,000/- was disbursed by the Financial Creditor to the Corporate Debtor.
11. The Hon'ble Supreme Court in the matter of ***Innoventive Industries Limited V. ICICI Bank & Anr. [(2018) 1 SCC 407]***, has held that the provisions of Section 7 become applicable as soon as financial debt is established and there is an existence of a default. The Hon'ble court had observed that the moment the Adjudicating Authority is satisfied that a default in repayment of debt had occurred, the process of insolvency is to be triggered unless the application is incomplete.
12. It is clear from ICICI Bank's letter dated 24.08.2018 which stating that the Cheque No. 000780 dated 31.07.2018 for Rs.33,00,000/- and Cheque No. 000161 dated 31.07.2018 for Rs.3,90,576/- drawn on HDFC Bank in favour of Vidarbha Diagnostics Pvt. Ltd. Which were deposited in to the account of the Financial Creditor is returned unrealised in clearing on 24.08.2018 with reason as fund insufficient.
13. It is also noted that the Corporate Debtor has admitted the liability by the letters dated 06.08.2018 and 14.08.2018 and seeking time

for payment. The affidavit in reply of the Corporate Debtor the statement of the counsel appearing on behalf of the Corporate Debtor to the effect that the Corporate Debtor admits the liability and is not in position to repay the debt, also establishes the existence of debt and default.

14. The application made by the Financial Creditor is complete in all respects as required by law, and it clearly shows that the Corporate Debtor has not paid the dues and this has also been confirmed by the Corporate Debtor.
15. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC; the application of the Financial Creditor is complete; an amount of more than Rupees One Lakh is due and payable and in default and no disciplinary proceedings are pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.
16. The Financial Creditor has proposed the name of Ms. Minita D. Raja registration No. IBBI/IPA-001/IP-P00635/2017-18/11088, as Interim Resolution Professional with her consent in Form 2 declaring that no disciplinary proceedings are pending against her.

ORDER

The petition filed by the Vidarbha Diagnostics Pvt. Ltd. Under section 7 of the IBC 2016 for initiating corporate insolvency process against the corporate debtor is **admitted**. We further declare moratorium under section 14 of the I&B Code with consequential directions, as mentioned below:

- I. That this Bench at this moment prohibits:
 - 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 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 possession of the corporate debtor.

II. It is further made clear that:

- a. 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.
- b. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- c. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016.
- e. That this Bench at this moment appoints Ms. Minita D. Raja registration No. IBBI/IPA-001/IP-P00635/2017-18/11088, having address at 138, Charukeshi Apt, 3rd Floor Khare Town, Dharampeth Nagpur 440010, email: minita_9raja@rediffmail.com, contact No. 9423628027 as Interim Resolution Professional 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.

17. The management of the Corporate Debtor shall vest in the IRP in terms of section 17 of IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge within a period of one week from the date of receipt of this order to the IRP, in default of which coercive steps will follow.
18. The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees One 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 (COC).
19. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional (IRP) by speed post/ email/ WhatsApp. **Compliance report of the order by the registry is to be submitted within two days.**
20. A copy of the order shall also be sent to the ROC, Maharashtra, Mumbai for updating the master data of the Corporate Debtor. ROC, Mumbai shall send a compliance report in this regard to the Deputy Registrar, NCLT, Mumbai within seven days.

Sd/-

RAVIKUMAR DURAISAMY

Member (Technical)

09.08.2019

Sd/-

Rajasekhar V. K.

Member (Judicial)