

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.307/ALD/2019**

***In the matter of***

An application under Section 7 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy. (Application to Adjudicating Authority Rules, 2016)

*And*

***In the matter of:***

RAMESH HIRALAL SHARMA,  
R/o Flat No. 1101, Satguru Kalyan,  
Jn. of 13<sup>th</sup> and 17<sup>th</sup> Road, Khar (West)  
Mumbai- 400052

:  
*Versus*

Applicant

**Modinagar Paper Mills Limited**

Having Registered Office at :  
Asha Ram Tyagi Road, Modinagar  
Ghaziabad -201204

:

Respondent

Order reserved on: 14.03.2022

Order pronounced on: 06.04.2022

***Coram:***

Sh. Rajasekhar V.K. : Member (Judicial)  
Sh. Virendra Kumar Gupta : Member (Technical)

***Appearances (via video conference):***

For Financial Creditor : Ms. Babita Jain, Advocate  
For Corporate Debtor : Mr. Nitin Mittal, Advocate  
Mr. Priyanjal Jain, Advocate  
For Kotak Mahindra Bank : Mr. Sandeep Arora, Advocate

**ORDER**

***Virendra Kumar Gupta, Member (Technical)***

1. This application has been filed under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Mr. Ramesh Hiralal Sharma**, Flat No. 1101, Satguru Kalyan, Jn. Of 13<sup>th</sup> and 17<sup>th</sup> Road, Khar

—Sd—

West, Mumbai-221005 (*hereinafter referred as the Financial Creditor*) through its counsel seeking initiation of Corporate Insolvency Resolution Process in respect of **Modinagar Paper Mills Limited**, CIN U51100UP1979PLC004889, having its Registered office at Asha Ram Tyagi Road, Modinagar, Ghaziabad -201204 (*hereinafter referred as the Corporate Debtor*).

***Facts of the case***

2. The facts, in brief, are that the Financial Creditor in pursuance of agreement dated 16.07.2018 gave a sum of ₹20,00,000/- (Rupees twenty lakh only) to the Corporate Debtor as financial assistance. The agreement provided that the principal sum was to be returned along with sum of ₹1,24,916/- after 30 days from the date the amount was received by the corporate debtor for its business purpose. The Corporate Debtor failed, hence, as per the Financial Creditor, the default occurred on 23.08.2018 in terms of the aforesaid agreement dated 16.07.2018.
3. Our attention was also drawn to the agreement dated 25.05.2015 at page no.21 to 23 so as to show that the transaction fell in the definition of financial debt in terms of provisions of Section 5(8) of IBC, 2016. Accordingly, it was prayed that since there was a debt which was outstanding and payable, and a default had occurred, hence, the application was liable to be admitted. It was further submitted that the Financial Creditor has also proposed the name of the IRP to conduct CIRP.

***Reply on behalf of the Corporate Debtor***

4. In the reply, it was claimed that the applicant does not fall under the definition of “Financial Creditor” and the agreement relied upon by the applicant is an agreement of investment of money and not an agreement of loan as the interest is by way of penalty thus the amount due does not fall under the definition of financial debt.

***Rejoinder on behalf of Financial Creditor***

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5. In the rejoinder affidavit, it has specifically been pointed out that the corporate debtor needed money for its business purpose and the loan was given against time value of money for a specific period for which the applicant has relied upon the loan agreement dated 16.07.2018 entered into between the parties.

***Findings & Conclusion***

6. We have considered the submissions made on behalf of the Financial Creditor and material on record. We have also heard the Intervener/Kotak Mahindra Bank. In the case of the Corporate Debtor a number of applications filed under Section 9 are also pending. As submitted by the Intervener/Financial Creditor, the security interest had been realised and all immovable assets had been sold. The Intervener/Financial Creditor was not inclined to be part of CoC. Hence, no useful purpose would be served if the Corporate Debtor is initiated into CIRP as there exist no assets of the Corporate Debtor.
7. On this point, the Bench specifically asked the learned counsel for the Financial Creditor to seek instructions from the Financial Creditor as to whether the Financial Creditor was willing to bear the cost of Insolvency Proceedings so that Insolvency Proceedings could be initiated as if the Financial Creditor was not in a position to bear such cost then there is no purpose would be served. This aspect is also highlighted in the “**UNICTRAL**” that the judicial forum should look into this aspect to avoid insolvency proceedings in such cases, as no useful purposed would be served.
8. Learned counsel for the Financial Creditor categorically stated that the Financial Creditor is willing to bear the interim cost of Insolvency Proceedings in the application, however, during the course of hearing it was clarified that the total cost of Insolvency Proceedings as well as liquidation, if any, would have to be borne, which the learned counsel for the Financial Creditor has confirmed will be borne by the Financial Creditor herein.
9. Having discussed this aspect and considering the agreement dated 16.07.2018 entered into between the parties, we hold there is a debt which is due and

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payable both in law and in fact and default has occurred within the meaning of provisions of section 7 of IBC, 2016.

10. Further, the name of IRP has been proposed by the Financial Creditor whose consent has been placed on record. There exists no material to show that any disciplinary proceedings are pending against such proposed IRP or such IRP is otherwise not ineligible to be appointed.
11. The application filed under section 7 of the Code, is otherwise complete and meet all other procedural requirements of the Code and Regulations made thereunder. Hence, we admit the same and pass the following order.

**ORDER**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **M/s Modinagar Paper Mills Ltd.** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following :-
  - 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 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

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- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Mr. Kamlesh Kumar Taneja having Registration No.IBBI/IPA-003/ICAI\_N\_00365/2021-2022/13796 be appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit Rs.2,00,000/- (Rupees Two Lakh only) with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

12. Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

13. List the main CP on 06.06.2022 for the filing of the progress report.

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

—Sd—

**Virendra Kumar Gupta**  
Member (Technical)

**Rajasekhar**  
V K

Digitally signed by  
Rajasekhar V K  
Date: 2022.04.06  
19:31:51 +05'30'

**Rajasekhar V.K.**  
Member (Judicial)