

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-486/(ND)/2020**

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Dewdrops Mercantile Pvt. Ltd.**

Registered office at:  
Steasalite Tower, Block EP &GP,  
Plot No. E/23, Salt Lake City,  
Sector-V, 7<sup>th</sup> Floor, Room No.5,  
Kolkata, West Bengal- 700091

...Applicant/Financial Creditor

**Versus**

**Metro Management Services Pvt. Ltd.**

Registered office at:  
L-60B, Malviya Nagar,  
New Delhi- 110017

...Respondent/ Corporate Debtor

**Coram:**

**SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ, Hon'ble Member (Technical)**

**Counsel for Applicant:** Mr. Ashish Virmani, Advocate

**Counsel for Respondent:** Mr. Ratnesh Sharma, Advocate

**ORDER**

**Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 01.04.2021**

1. This is an application filed by Dewdrops Mercantile Pvt. Ltd. Through its authorized representative Mr. Anil Saxena to initiate corporate insolvency resolution process ("CIRP") against Metro Management Services Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 16,39,808/- (Sixteen Lakh Thirty-Nine Thousand Eight Hundred Eight Rupees only) paid to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

a. That the applicant i.e., Dewdrops Mercantile Pvt. Ltd. Entered into a loan agreement on 25.07.2019 wherein, the applicant agreed to lend a sum of Rs. 15,00,000/- to the Respondent. The applicant further states that the Respondent was required to repay the Loan amount by



31.07.2020. That the Respondent was required to pay interest @18% P.A. on the Loan Facility on monthly basis. That the interest was payable on the last day of each month commencing from 31.08.2019.

- b. The applicant stated that the Loan amount of Rs. 15,00,000/- was paid to the Respondent on 26.07.2019. It was further stated that in terms of Loan Agreement dated 25.07.2019, the interest on Loan amount became due and payable on 31.08.2019 and subsequently on last day of each month.
- c. That the Respondent defaulted in making the payment of interest amount to the applicant. Subsequently, on 28.11.2019, the applicant stated that the Loan Amount was recalled and applicant demanded the Respondent to repay the Loan amount along with the agreed interest within a period of 15 days from the date of receipt of Letter.
- d. The applicant states that the Respondent vide letter dated 10.12.2019 assured the applicant regarding payment of arrears of interest by 31.12.2019. However, the applicant



submits that the Respondent failed to pay the interest amount as agreed.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

- i. The Respondent submits that no liability is due towards the applicant under the provisions of IBC, 2016 as the Liabilities of Corporate Guarantor as alleged by applicant under the IBC, 2016 cannot be termed as financial debt within the meaning of section 5(8) of the IBC, 2016, Hence, no proceedings against Respondent can be initiated to recover the debt under the purview of section 7 of IBC, 2016.
- ii. The Respondent stated that there has been no occurrence of "default" on the part of the Respondent till date. That any limited inconsistencies in the payment schedule as agreed by the Parties to the agreement should not be constituted as an "default" as the dispute is under constant negotiations and discussions between



the parties. The Respondent further submitted that it is trying its best to settle the account and repay the due amount as per the settlement negotiations. That in the light of the present pandemic situation where the entire economy of the country is in doldrums, this Hon'ble Tribunal should consider the pleas of the Respondent and decide in the interest and justice, equity and good conscience

- iii. Further, the Respondent stated that it was going through a serious financial crisis and due to unforeseen circumstances, was not able to honour the terms of the agreement and unintentionally committed certain defaults in making the payment of interest amount to the Applicant/Financial Creditor.
- iv. That the Respondent orally apprised the Applicant regarding the difficult financial situation of the company and requested for a postponement of the repayment of the dues with an assurance of repaying the same as soon as possible. That the Respondent alleges that the same was duly accepted by the Applicant. Further it is



submitted that the Respondent had bona-fide intentions to repay the debt on time, and took serious efforts on its part to honour the promise.

- v. That the notice issued by the applicant vide dated 28.11.2019, to repay the loan amount together with interest within a period of 15 days from the date of receipt of the notice was completely contrary to the assurances and mutual understanding between the parties.
- vi. The Respondent submits that vide letter dated 10.12.2019 to the Applicant wherein, the Respondent acknowledged the receipt of letter dated 28.11.2019 and apprised the Applicant about the financial crunch in the business and gave an assurance to pay the arrears of interest amount on or before 31.12.2019 and to pay the regular interest as agreed in the Loan Agreement dated 25.07.2019. The Respondent submits that the applicant agreed to the request of the Respondent.
- vii. The Respondent further submits that due to the continued financial difficulties and unforeseen



circumstances, the Respondent was not able to pay the arrears as had been assured. That the Respondent again approached and requested the Applicant to consider the situation of the Respondent on sympathetic grounds as the Respondent was constantly attempting to make best efforts to repay the due amount.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 16,39,808/- (Sixteen Lakh Thirty-Nine Thousand Eight Hundred Eight Rupees only).
4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP Under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. That while dealing with an application under section 7 the Adjudicating Authority is not



required to consider the question of dispute between the parties as long as the 'debt' and 'default' is proved.

5. The Corporate Debtor in his reply to the present petition has submitted that he had entered into a Loan Agreement on 25.07.2019, where under the terms of the Loan Agreement Financial Creditor agreed to lend a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) to the Corporate Debtor along with that the terms of the Loan Agreement also stipulated that the Corporate Debtor shall pay interest @ 18% PA on the loan facility on a monthly basis wherein, the Interest was payable on the last day of each month commencing from 31.08.2019. The Loan Agreement further stipulated that the Corporate Debtor was to repay the Loan Facility in full by 31.07.2020.

6. The Corporate Debtor further submitted that the terms of the loan Agreement could not be honoured by the Corporate Debtor as defaults were committed in making the payment of interest amount to the Financial Creditor owing to the

financial crisis and a difficult financial position of the corporate debtor due to unforeseen circumstances.

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of loan amount.
8. That this tribunal after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates CIRP** on the Corporate Debtor with immediate effect.
9. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

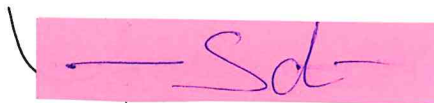
(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.



- (3) 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.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

10. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Ashok Arora, (Email – ashok.arora19@yahoo.com), (Mobile No.- 9999885591) Reg. No: IBBI/IPA-003/IP-N00279/2020-2021/13170 is appointed to carry forward the process of CIRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.



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



**(SHRI. P.S.N. PRASAD)  
MEMBER (JUDICIAL)**

RDS

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