THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No.533/2022
and
CP (IB) No.593/Chd/Pb/2019

Under Section 7 and 60(5)(a) of the IBC 2016

In the matter of:
M/s Intec Capital Ltd.
with its registered office
at 708, Manjusha Building,
57, Nehru Place, New Delhi -110019
CIN: L74899DL1994PLC057410

…………Petitioner-Financial Creditor

Vs.

M/s Victor Drop Forgings Pvt. Ltd.
with its registered office at
C-40, Focal Point,
Jalandhar, Punjab - 144012
CIN: U29265PB1987PTC007591

…………Respondent-Corporate Debtor

Judgment delivered on: 28.06.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Petitioner/Financial Creditor : Mr. Aabhas Singh, Advocate

For the Respondent/Corporate Debtor : Mr. Vishav Bharti Gupta, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by

M/s Intec Capital Ltd. (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s Victor Drop Forgings Pvt. Ltd. (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Dhurv Khanna, Authorized Signatory of the Financial Creditor and the affidavit verifying the contents of the application is on page 17-18 of the petition. The Authorisation by the Board in favour of the applicant is attached as Annexure A-3 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure A-4 of the petition whereby the Corporate Debtor is stated to be incorporated on 07.08.1987 and is doing the business of manufacturing (tools/equipment). The corporate debtor-company having its registered address at C-40, Focal Point, Jalandhar, Punjab - 144012. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for disposal of the same are narrated hereunder:

> 3.1 The Financial Creditor had been approached by the corporate debtor for a availing loan facility. For the said purpose financial creditor and corporate debtor entered into a loan agreement bearing No.012/279/LNJAL00112-130001568 dated 31.07.2012. The corporate debtor duly issued post-dated cheques to the financial creditor towards the repayment of loan amount. The corporate debtor failed to pay the EMI despite repeated requests and there is non-compliance of award passed by learned Sole Arbitrator in favour of the Financial Creditor. Hence, the present petition is filed before this Tribunal.

4. The petitioner-financial creditor has filed IA No.533/2022 to change the existing proposed Interim Resolution Professional. It is stated that at the time of filing of Section 7 petition, the petitioner has proposed the name of Mr. Ajay Kumar Siwach (IBBI/IPA-002/IP-N00668/2018-2019/12214) as the proposed Interim Resolution Professional. However, due to his prior commitment he is not being able to continue as the Interim Resolution Professional in the present matter and for the same reason NOC was issued by him in favour of M/s Intec Capital Ltd.-petitioner. Copy of the NOC is attached as Annexure-A of the application. In view of the aforesaid facts and circumstances of the case this Tribunal allows the replacement of Mr. Ajay Kumar Siwach proposed Interim Resolution Professional with Mr. Gaurav Srivastava (IBBI/IPA-003/N-00285/2020-2021/13253) as the proposed Interim Resolution Professional in the present matter. Further a copy of consent of said proposed Interim Resolution Professional in Form AA along with Certificate of Registration is attached as Annexure-B of the said application.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.75,96,000/- (principal). The total amount claimed to be in default is Rs.4,36,28,743.75/- as on 31.08.2019. Copy of the ledger account of the Financial Creditor (Annexure A-5). Copy of Bank Account Statement maintained with the Bank showing loan disbursement by the Financial Creditor (Annexure A-6). Copy of Statement of dues and loan transaction details (Annexure A-7). Copy of Arbitral Award dated 18.08.2015 (Annexure A-8). Copy of Loan Agreement dated 31.07.2012 (Annexure A-9).

6. The notice of this petition was issued to the respondent-corporate debtor as to why this petition be not admitted. A reply on behalf of respondent-corporate debtor is submitted vide Diary No.1249/1 Dated 31.05.2022 by Mr. Gaurav Raj,

affidavit authorizing him on behalf of the respondent is attached at Page No.4-5 of the reply.

7. The corporate debtor through its reply has submitted that the respondent-corporate debtor has faced a financial crisis due to lack of demand in the market and the Company has been unable to generate revenue which eventually led to huge losses due to which the Corporate Debtor is unable to pay the debts. It is further submitted that this Tribunal may consider the difficulty of the answering respondent and its incapacity to pay the liability to the petitioner.

8. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that—*
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

10. The issue for consideration is whether the present application is filed within limitation. In terms of the order dated 21.11.2019 and to remove the defects pointed out, the learned counsel for the petitioner filed compliance affidavit vide Diary no.6652 dated 27.11.2019 stating that the date of default mentioned in Form No.5 is unintentional and by mistake, and in fact the date of occurrence of default is 02.03.2013 and acknowledgement of the same was made on 07.03.2015 and again on 01.09.2017 as shown in the relevant balance sheets and hence, the CP is within limiation.

11. Another issue for consideration is whether there is default in payment or not. As per Section 7 of IBC which is reproduced below :-

"Section 7 Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[2][Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. "

12. It is observed from the record that in the present case, the occurrence of default is evidenced by the copy of the acknowledgement by the corporate debtor and the account statement of the Petitioner/Applicant and the same are attached as Annexure A-6 and Annexure A-7 & A-8 respectively of the petition. The respondent-corporate debtor has also filed a reply wherein it has been admitted that there is default in respect of financial debt and amount mentioned in the petition is due towards the petitioner and shown its incapacity to pay the liability. The application filed in the prescribed Form No.1 is found to be complete. Another

condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Gaurav Srivastava has been proposed as Interim Resolution Professional.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Gaurav Srivastava, and there is nothing adverse against him. In view of the above, we appoint Mr. Gaurav Srivastava, Registration No.IBBI/IPA-003/IP-N00285/2020-2021/13253, Flat No.908, Charms Solitaire, Ahinsa Khand 2, Indirapuram, Ghaziabad - 201012, Email: srivastava.law@gmail.com, Mobile No.9910510790, the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than the threshold limit. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

"(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.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or

before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

16. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. A copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith. Hence, IA No.533/2020 is allowed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 28, 2022
AV/ASH