

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

Company Petition No. (IB) 228/(ND)/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

CVR Holdings Private Limited

APPLICANT/FINANCIAL CREDITOR

Vs.

Intense Fitness and Spa Private Limited

RESPONDENT/CORPORATE DEBTOR

Order delivered on: 02.08.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

ORDER

PER: SH. DHARMINDER SINGH, MEMBER, (J)

The CVR Holdings Private Limited, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Intense Fitness and Spa Private Limited, referred to as the corporate debtor.

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2. It is appropriate to mention that the applicant M/s CVR Holdings Private Limited is a company registered under the provisions of the Companies Act, 1956 on 13.03.2006 having its registered office situated at 6/1, Druvatara Buildings, Somajiguda, Hyderabad - 500092. Mr. Navin Chandra Joshi, duly authorized on behalf of applicant vide Resolution dated 02.03.2022, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent corporate debtor.
3. The Respondent Company M/s. Intense Fitness and Spa Private Limited (CIN No. U74900DL2009PTC 192466) against whom initiation of Corporate Insolvency Resolution Process has been prayed for is incorporated under the provisions of the Companies Act, 2013 on 22.07.2009 having its registered office situated at C-2/10, Safdarjung Development Area, Main Aurobindo Marg, New Delhi- 110016. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
4. The case of the applicant precisely is that the corporate debtor had availed financial facility from the financial creditor, CVR Holdings Private Limited by way of Assignment Agreement dated 10.02.2020, repayable by 31.12.2020 with the condition that in the event of



any delay in repayment, the Respondent will pay interest on the aforesaid principal sum at 9% per annum with effect from 01.01.2021 but will ensure repayment latest by 30.06.2021. It is further submitted that the parties also did away with the earlier requirement of issuance of NCDs, OCDs or other instrument(s) as mentioned in Clause 1.4 of the Agreement and the said letter was duly signed by the Respondent in acknowledgment and acceptance of the repayment terms. Therefore, as per part IV of the application it is claimed that as on 01.03.2022 a sum of Rs. Rs.11,08,94,834/- is due and payable by the respondent company.

5. The Corporate Debtor has filed its reply which are listed here: -
 - a. In light of the National Lockdown imposed due to the Coronavirus outbreak in the country, the Respondent sent a Letter on 06.04.2020 requesting the Applicant to come to an arrangement for repayment of the amount due in terms of the Agreement.
 - b. On 4 May 2020, the Applicant wrote to the Corporate Debtor, stating that the Corporate Debtor can repay the entire amount of Rs 11.08 crores by 31 December 2020, failing which interest with effect from 1 January 2021 would be levied and was admittedly accepted and countersigned by the authorised signatory by the Corporate Debtor.
 - c. Further on 5 December 2020, the Applicant wrote to the Corporate Debtor seeking information on the status of the repayment. It is stated that on 11 December 2020, the Corporate Debtor responded to the Applicant, seeking an extension on the repayment of the loan till 31 December 2021. Furthermore, the Applicant responded to the Corporate

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Debtor on 23 December 2020, extending the interest-free period for repayment of the loan till 31 March 2021.

- d. On 6 April 2021, following the second wave of Covid-19 cases and subsequent to the nationwide lockdown, the Corporate Debtor again requested for an extension of the interest-free repayment period till 30 June 2021. And in response, the Applicant extended the interest-free repayment period till 13 April 2021.
- e. It is further submitted that on 26 December 2021, the Applicant admittedly sent a letter to the Corporate Debtor demanding repayment of the amount by 31 December 2021. Reminders regarding this repayment was sent by the Applicant on 7 January 2022 and 5 February 2022.
6. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Jagdish Singh Nain for appointment as Interim Resolution Professional having registration number IBBI/IPA-03/IP-N00187/2018-19/12415 resident of 98, Gangotri Apartments, Vikaspuri, New Delhi-110018 with email - id. jsnain@vahoo.com. Mr. Jagdish Singh Nain has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary

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disclosures have been made by Mr. Jagdish Singh Nain as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

7. The applicant has placed following documents on record to prove its claim:
- i. copy of the assignment agreement dated 10.02.2020 executed between applicant and the respondent.
 - ii. copy of letter dated 06.04.2020 sent by the corporate debtor to the applicant.
 - iii. copy of letter dated 04.05 .2020 sent by the applicant to the corporate debtor.
 - iv. copy of letter dated 05.12.2020 sent by the applicant to the corporate debtor.
 - v. copy of letter dated 11 .12.2020 sent by the corporate debtor to the applicant
 - vi. copy of letter dated 23.12 .2020 sent by the applicant to the corporate debtor
 - vii. copy of letter dated 06.04.2021 sent by the corporate debtor to the applicant.
 - viii. copy of letter dated 13.04.2021 sent by the applicant to the corporate debtor.
 - ix. copy of letter dated 26.12.2021 sent by the applicant to the corporate debtor
 - x. copy of the letter dated 07.01 .2022 sent by the applicant to the corporate debtor.
 - xi. copy of the letter dated 05.02.2022 sent by the applicant to the corporate debtor.
 - xii. copy of the letter dated 16.02.2022 sent by the corporate debtor to the applicant.
8. Notice by this Authority was issued to which the Corporate Debtor has filed his reply stating therein that they had intentions to repay the loan but could not do the same due to social distancing norms and other COVID-19 restrictions, they were facing revenue losses and was unable to maintain cash flow. In view of the reply the

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Corporate Debtor has itself acknowledged committing default in repayment of loan and admitting its liability towards the applicant herein.

9. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is of Rupees one hundred lakhs or more, an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
10. The applicant clearly comes within the definition of Financial Creditor. The material placed on record as stated in the paras above further confirms that respondent has debt due and has committed default in repayment of the outstanding financial debt. On a perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.
11. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor.
12. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.

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13. Mr. Jagdish Singh Nain, having registration number IBBI/IPA-03/IP-N00187/2018-19/12415 and email - id. jsnain@vahoo.com is appointed as an Interim Resolution Professional for corporate debtor.

14. We also declare moratorium in terms of Section 14 of the Code.

The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

“(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)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*”

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.


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16. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Jagdish Singh Nain to meet out the expenses 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day

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affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

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(DR.BINOD KUMAR SINHA)

MEMBER (T)

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(DHARMINDER SINGH)

MEMBER (J)