

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1386(PB)/2019

IN THE MATTER OF:

Corporation Bank

.....Financial Creditor/Petitioner

v.

M/s. J B Gold Private Limited

.....Corporate Debtor/Respondent

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

JUDGMENT DELIVERED ON 09.08.2019

CORAM:

**CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT**

**DR. V.K SUBBURAJ,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner:

Ms. Ekta Choudhary, Ms. Suruchi Kumari,
Advs.

For the Respondent:

Ex-parte

M.M.KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Corporation Bank has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s. J B Gold Private Limited.



2. The Corporate Debtor-M/s. J B Gold Private Limited is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 22.11.2011. The identification number of the Corporate Debtor is U36911DL2011PTC227714 and its registered office is situated at 150/79, Block-D, Municipal No. XIV/11163-2, New Rohtak Road, New Delhi-110005.

3. The Financial Creditor has proposed the name of Resolution Professional, Mr. Mahesh Taneja with the address AE-173, Shalimar Bagh, Delhi-110088 and email id - Maheshtaneja111@yahoo.in. His registration number is IBBI/IPA-002/IP-N00739/2018-19/12326. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. It is submitted by the Petitioner-Bank that the Corporate Debtor was availed loan facility namely Corp Vyapar overdraft in two tranches firstly vide sanction letter dated 09.11.2012 and secondly vide sanction letter dated 25.06.2013 from the Petitioner-Bank aggregating to Rs. 186.00 lakhs and Rs. 900.00 lakhs respectively.

5. The details of the securities held by, or charge created for the benefit of 'financial creditor'-Punjab National Bank which fulfils the requirements of Section 77 & 78 of Companies Act, 2013 have been given in Part V of the application.

6. The Financial Creditor has also placed on record a list of all the financial facilities granted by the Financial Creditor to the Corporate Debtor along with the copies of the said Financial Contracts.

7. It is submitted by the Petitioner-Financial Creditor that the account of the Corporate Debtor was classified as NPA by the Petitioner-Financial Creditor on 30.09.2017. Further the bank filed O.A. No. 824/2018 before the Debts Recovery Tribunal, Delhi and the same is pending consideration.

8. The precise case of the Petitioner-Financial Creditor is that the total amount in default due to the financial creditor by the corporate debtor as on 03.05.2019 is Rs. 9,91,11,819.00/-.

9. The Corporate Debtor was served by speed post as well as by email as is evident from the order dated 16.07.2019. However, despite service, no one had put in appearance on its behalf. Thus,



it was vide order dated 16.07.2019 that the Corporate Debtor has to be proceeded ex-parte. In view of the ex-parte order passed, the claim made by the Financial Creditor remains unrebutted.

10. We have heard learned counsel for the Financial Creditor and have perused the pleadings with his able assistance. According to the learned counsel service is complete and there is no resistance. Thus, the claim of the Financial Creditors in respect of 'unpaid debt' has remained controverted. It must therefore be considered to have been admitted. We find substance in the submission.

11. Learned Counsel for the petitioner has then argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. She has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default. The name of the resolution professional has also been specified.



12. Having heard the learned counsel for the petitioner it would first be necessary to examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (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; or

(b)



13. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred. As per requirement of Section 4 of the Code if default amount is one lac or more then the CIR Process would be issued. The application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional.

14. As a sequel to the above discussion, this petition is admitted and Shri Mahesh Taneja, AE-173, Shalimar Bagh, Delhi-110088, email id - Maheshtaneja111@yahoo.in and Registration No. IBBI/IPA-002/IP-N00739/2018-19/12326 is appointed as an Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this

application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus 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 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 the possession of the corporate debtor.”

17. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct

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should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 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/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a 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.

19. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional 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 amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

20. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

21. 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, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of

Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



(M.M. KUMAR)
PRESIDENT



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

09.08.2019
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