

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-227/(ND)/2021

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:

M/s Capital Finance and Investments LLP

Regd. Office at: Office no 4, Property no. 6/83, S/F, Laxmi Nagar,
New Delhi – 110092

...Applicant/Financial Creditor

Versus

M/s Shri Krishna Prasadam Limited

Regd. Office at: 257, 2nd Floor, Satyam Tower, Paschim Vihar,
New Delhi-110063

...Respondent/ Corporate Debtor



Coram:

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

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Petitioner/Financial Creditor: Mr. Deepak Vats,
Advocate

ORDER

Per SHRI. RAHUL BHATNAGAR, MEMBER (JUDICIAL)

Date: 14.03.2022

1. This is an application filed by M/s Capital Finance and Investments LLP to initiate corporate insolvency resolution process ("CIRP") against M/s Shri Krishna Prasadam 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. 29,28,210/- (Rupees Twenty Nine Lakhs Tewnty Eight Thousand Two Hundred Ten Only) as on



04.03.2020. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- That a loan agreement was executed between Capital Finance and Investments, partnership firm and M/s Shri Krishna Prasadam Limited and total advanced amount of Rs. 21,83000/- was given to M/s Shri Krishna Prasadam Limited at an interest rate of ten percent per annum.
- That the Financial Creditor M/s Capital Finance and Investments LLP, was earlier a partnership firm named as Capital Finance and Investments and was later converted into LLP named as M/S Capital Finance and Investments LLP; under The Limited Liability Partnership Act, 2008.
- That the Financial Creditor, M/s Capital Finance and Investments LLP, served the Corporate Debtor a demand letter for the repayment of the concerned loan amount of Rs. 21,83,000/- along with three years interest accrued on the same @ 10 percent per annum amounting Rs. 6,54,301/-. The total amount due against M/S Shri Krishna Prasadam Limited was Rs. 28,37,301/- as on



04.10.2019. Reminder to the same was also forwarded to the Corporate Debtor on 10.01.2020.

- That the Financial Creditor issued a legal notice for recalling of the loan and repayment of the loan amount with the interest accrued on the same which amounted to Rs. 29,28,210/- including principal loan amount of Rs. 21,83000/- and total interest amount of Rs. 7,45,210/- @ ten percent per annum as on date of the legal notice i.e. 04.03.2020.
- That the Corporate Debtor did not maintain financial discipline and committed willful and deliberate defaults in repayment of the dues of the Financial Creditor under the loan agreement which was advanced to the corporate debtor for a limited period of three years.
- That a total debt amounting to Rs.29,28,210/- (Rupees Twenty Nine Lakhs Twenty Eight Thousand Two Hundred and Ten Only) is due and payable by the Corporate Debtor to the Financial Creditor, which includes principal loan amount of Rs. 21,83000/- and total interest amount of Rs.



7,45,210/- @ ten percent per annum. Hence, this petition has been filed by the Financial Creditor.

2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 16.11.2021.
3. The counsel for the Financial Creditor presented his arguments and also his written submissions.
4. The Counsel for the Financial Creditor has further stated in his written submissions that:
 - That a loan agreement took place between Financial Creditor and Corporate Debtor on 05-10-2016 for a term of three years, having rate of interest @ 10% per annum. First demand letter was issued on 04-10-2019 when the term of three years got over by the Financial Creditor for the payment of principal loan amount with interest. Reminder letter with respect to first demand letter was issued on 10-01-2020.
 - That legal notice through counsel for the payment of total due amount till 04-05-2020 was issued on 04-03-2020.



Total amount with interest due on that date was Rs. 29,28,210/-.

- That cause of action against the Corporate Debtor arose on 04.10.2019 when contracted term of loan for 03 years got over and no amount was paid by the Corporate Debtor. Hence, it becomes a continuing offence and cause of action arises on every single day
- That in between, Ministry of Corporate Affairs, Govt. of India vide notification no. S.O. 1205, dated 24-03-2020, enhanced the minimum amount of default from Rs. 1 lac to Rs 1 crore w.e.f. 24-03-2020.
- That the application under section 7 of the Code has been filed before this Tribunal after 24-03-2020, however, the same is maintainable for the fact that the notification dated 24-03-2020 is applicable only prospectively. If a corporate debtor has already defaulted on any debts prior to the notification i.e. before 24-03-2020 the initiation of CIRF under section 7 of the I & B code shall be valid.



5. We have gone through the documents filed by the Financial Creditor and heard the arguments made by the counsel of the Financial Creditor. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 29,28,210/- (Rupees Twenty Nine Lakhs Tewnty Eight Thousand Two Hundred Ten Only) as on 04.03.2020.
6. 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.
7. Vide daily order dated 16.11.2021, it has been noted that the Corporate Debtor has been set ex-parte.
8. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
9. In light of the above discussion, 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.

10. 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. Jaswant Singh, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00372/ 2017-18 / 11135. Mr. Jaswant Singh 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. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

11. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is



complete, and as no disciplinary proceeding against the proposed IRP is pending.

12. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.
13. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
14. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
15. Mr. Jaswant Singh, having registration number IBBI / IPA-002 / IP-N00372/ 2017-18 / 11135 is appointed as an Interim Resolution Professional.
16. 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.

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:

“(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.*

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 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 order. 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. 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 to the public at large.



-Sd-

(SHRI. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)



-Sd-

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