

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1

TP/MP/ 213 of 2019 [CP(IB) 389 of 2019]

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
INDORE BENCH AT AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.01.2021

Name of the Company:

Ritus Creation Pvt Ltd
V/s
PR3 Ritu Lifespaces LLP

Section:

7 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court, vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 7th day of January, 2021

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT-1**

TP(MP) 213 of 2019

[CP (IB) No.389/7/NCLT/AHM/2019]

*[An application filed under Section 7 of the Insolvency and Bankruptcy
Code, 2016]*

In the matter of:

M/s. Ritus Creation Private Limited,
CIN: U74210MH1996PTC259368
Vijay Vilas Society, Building No.12,
Flat No.44, G. B. Road,
Thane (M.H.)- 400607.

... Petitioner/Financial Creditor

V/s.

M/s. PR3 Ritu Lifespaces L.L.P.
LLPIN: AAD-7218
407A, 4th Floor, Megapolis Square,
579, M.G. Road,
Indore (M.P.) – 452001.

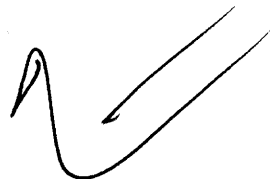
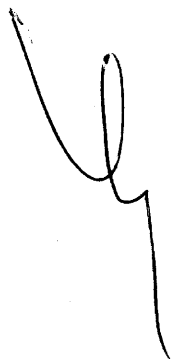
... Respondent/Corporate Debtor

**Date of Hearing: 17th December, 2020
Date of Pronouncement: 7th January, 2021**

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Learned Counsel Mr. Jatin Sehgal for the Petitioner/Financial
Creditor. Learned Counsel Mr. Tirth Nayak appeared for the
Respondent/Corporate Debtor.



[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)

1. M/s. Ritus Creation Private Limited, the Financial Creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against M/s. PR3 Ritu Lifespaces LLP, the Corporate Debtor to initiate Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor on the allegation that the Corporate Debtor committed default in paying the financial debt of Rs.11,37,800/- on 08.05.2019.
2. On 19.12.2017 and 22.12.2017, the Financial Creditor, which is a Non-Banking Financial Company ("NBFC"), lent the Corporate Debtor loan of Rs.10 Lakh. The Corporate Debtor issued in favour of the Financial Creditor a cheque, which was dishonoured by the Banker of the Corporate Debtor and a separate proceeding under Section 138 of the Negotiable Instrument Act is pending.
3. The Financial Creditor stated that as the Corporate Debtor has committed a default in paying the financial debt, this proceeding is filed to initiate CIRP of the Corporate Debtor.
4. The Corporate Debtor has been served with the notice of this Application. The Corporate Debtor appeared through one of his representative



Mr.Raghav Sethi. He filed affidavit-in reply and contested the claim.

5. We have gone through the affidavit-in-reply filed by the Corporate Debtor. It is contended that there is no default occurred; hence, this proceeding is not maintainable. There is no written agreement specifying the date of repayment schedule and agreed rate of interest etc. According to the Corporate Debtor, the cheque in dispute was handed over to the Financial Creditor as in by way of security and it was not towards the repayment of any debt.
6. In Para-5 of the affidavit-in-reply, the Corporate Debtor contended that the loan of Rs. 10 Lakh was repayable during the span of five year from the date of its disbursement. There is no default. Hence, the application may be rejected.
7. We heard the Learned Counsel Mr. Jatin Sehgal for the Financial Creditor and Learned Counsel Mr.Tirth Nayak for the Corporate Debtor. We have gone through the material on record.
8. As noted above, there is no dispute relating the fact that the Financial Creditor granted and disbursed in favour of the Corporate Debtor, a loan of Rs. 10 Lakh. The controversy relating only to the point where the financial debt was due for payment and whether there is default in paying the same.

9. We have considered the defense of the Corporate Debtor in view of the material available on record.
10. It is admitted fact that on 23.06.2018, the Corporate Debtor paid the Financial Creditor a sum of Rs.70,200/- towards the interest. This amount was been paid towards repayment of loan or interest accrued thereon. Thereafter there is default of pay any sum. This fact itself proves that the Corporate Debtor has committed default in paying the debt.
11. Section 3(12) of the Insolvency and Bankruptcy Code, 2016 defines the "Default" as -
“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;”
12. In this case, the Corporate Debtor failed to pay the interest amount or the instalment payable towards principle debt periodically. Hence, we hold that the Corporate Debtor has defaulted in paying the debt.
13. Considering the fact that loan of sum of Rs.10 Lakh was disbursed in the year 2017, hence, by the time, this application was filed (in the year 2019), the default amount was more than rupees

one lakh (i.e. minimum limit as stated under Section 4 of the I.B. Code to file such application).

14. Learned Counsel for the Corporate Debtor submitted that the cheque in dispute (later on dishonoured) was not given for repayment of loan but it was handed over as a security cheque to the loan granted. According to him, it cannot be held that by not honouring a cheque, the Corporate Debtor committed default in paying the debt. We consider this submission. In-fact, on the basis of evidence on record as noted above, it has been established conclusively that the Corporate Debtor was liable to pay debt more than rupees one lakh and it has committed a default in paying the sum. Hence, it is not required for us to enter in to controversy whether the cheque was towards the payment of debt or it was so called security cheque only.

15. Even on the basis of admitted facts as noted, we hold that the Corporate Debtor had handed over the cheque for the sum lent by the Financial Creditor, is enough to draw presumption that the cheque was drawn by the Corporate Debtor in favour of the Financial Creditor towards consideration shown in the cheque. The cheque was dishonoured. We hold that the corporate debtor has committed the default in payment of the debt.



16. In view of the facts and evidence on record, we hold that the Financial Creditor has established two relevant facts that,
- (i) there was debt, due and payable by the Corporate Debtor more than permissible limit and,
 - (ii) the Corporate Debtor committed default in paying the same.
17. The Financial Creditor suggested name of one Mr. Rajesh Lohia, having registration number: IBBI/IPA-002/IP-N00049/2016-2017/10093 for the appointment as the Interim Resolution Professional against whom, no disciplinary proceedings pending.
18. The application is defect free and hence, we direct the Corporate Debtor to be admitted in CIRP by following order:

ORDER

1. The Corporate Debtor, M/s. PR3 Ritu Lifespaces LLP is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.
2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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.
3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

4. We hereby appoint **Mr. Rajesh Lohia**, having **Registration No. IBBI/IPA-002/IP-N00049/2016-2017/10093, Resi: 414, Manas Bhawan (Extn.) 11, RNT Marg, Indore (M.P.), email: lohijarajesh@rediffmail.com, to act as an Interim Resolution Professional** under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.
5. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
6. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP)

and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
9. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven

working days and upload the same on website immediately after pronouncement of the order.

10. Accordingly, CP (IB) No. TP(MP) 213 of 2019, [CP(IB) No.389/7/NCLT/AHM/2019] stands admitted.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

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