IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II

CP (IB) 1602/MB/C-II/2017

Under section 7 of the Insolvency & Bankruptcy Code, 2016

In the matter of

Narottambhai Swomabhai Patel
…Financial Creditor
(Petitioner/Applicant)

Versus

Wow Solutions & Systems Private Limited
[CIN: U74999MH2009PLC196937]
…Corporate Debtor
(Respondent)

Order Delivered on 19.12.2019

Coram:

Hon'ble Member (Judicial)	:	Mr. Rajasekhar V. K.
Hon'ble Member (Technical)	:	Mr. Chandra Bhan Singh

Appearances:

For the Financial Creditor	:	Mr Harmish K. Shah, Advocate
For the Corporate Debtor	:	Mr Rakesh Parikh a/w Mr K Kerawalla, Advocates

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by Narottambhai Swomabhai Patel ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Wow Solutions & Systems Private Limited ("the Corporate Debtor"). The Financial Creditor has furnished information in Form 1 under Rule 4 of the Insolvency

and Bankruptcy Code 2016, Application to Adjudicating Authority Rules 2016, in the capacity of Financial Creditor on 14.11.2017.

2. In the requisite Form, Under the Head Particulars of Financial Debt the total Debt granted is stated to be a sum of

   i. On 06.04.2013 Rs. 20,00,000/-

   ii. On 10.05.2013 Rs. 10,00,000/-

   iii. On 16.09.2013 Rs. 15,00,000/-

   Total of Rs.45,00,000/- (Rupees forty-five lakh only) as principal as on 28.02.2019 along with Rate of interest @ 18% has been mentioned in the requisite Form. The total amount of default thus calculated is stated to be 54,45,370/- as on 22.10.2016.

3. The Corporate Debtor is a Private company limited by shares and incorporated on 09.11.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U74999MH2009PLC196937. Its registered office is at 13, Udyog Bhavan, Sonawala Lane, Goregaon (East), Mumbai, MH - 400063. Therefore, this Bench has jurisdiction to deal with this petition.

4. **Submission made by the Financial Creditor: -**

   4.1 The Financial Creditor had on 06.04.2013, 10.05.2013 and 16.09.2013 in tranches of 20,00,000/-, 10,00,000/-, and 15,00,000/- respectively extended Loan totalling Rs.45,00,000/- to the Corporate Debtor. Therefore, on the date of default i.e. on 22.10.2016 the total amount in default was Rs. 54,45,370/- including rate of interest @18% per annum.

   4.2 The Financial Creditor submits that the Corporate debtor accepted Loan with interest @ 18% vide its Letters 06.04.2013 Rs.20,00,000/-, 10.05.2013 Rs.10,00,000/- and 16.09.2013

Rs.15,00,000/- has also presented a copy of the Loan acceptance letters issued by Respondent attached to the petition.

4.3 The Financial Creditor has also in its Petition enclosed a copy of the Recall Notices to the Respondent dated 04.08.2016 and 11.08.2017 addressed for making payment of the outstanding dues. Copy of the service of these notices has been attached to the Petition.

4.4 The Financial Creditor in furtherance of his case has enclosed copies of statements of account confirmed by the Corporate Debtor for the year ending on 31.03.2015 and 31.03.2016 which clearly testifies to the existence of "Debt" on the part of the Corporate Debtor. The Financial Creditor also provided copy of statement of account for the year ending on 31.03.2017.

4.5 The Financial creditor also enclosed a copy of the bank statement and Bank Certificate which shows that the amount has been given to the Corporate Debtor.

5. The copy of the Petition was served on the Corporate Debtor in advance. The Corporate Debtor's Leaned Counsel appeared when matter was listed on 27.02.2018.

6. **Submission by the Respondent/Corporate Debtor: -**

6.1 The Corporate Debtor has challenged the maintainability of this petition on various grounds. The foremost contention of the Corporate Debtor is in view of provision of Insolvency and Bankruptcy Code, 2016, the alleged debt claimed by the petitioner is not a 'debt' within meaning of Section 3(11), therefore the subject matter of the Petitioner is not 'financial debt' within meaning of Section 5(8) and there is no default as defined in Section 3(12) of the Code.

6.2 The foremost contention of the Corporate Debtor is that Mr. Perbjyot Wariah is promoter of Corporate Debtor and along with him, his family members were the original subscribers to the Memorandum of Association of the Corporate Debtor company. During the tenure of Mr. Perbjyot Wariah at the helm of affairs of Corporate Debtor, he flouted Rules of Corporate governance especially not maintaining transparency with respect to funds of the Corporate Debtor and his personal funds and also various irregularities with regards to conducting affairs of the Respondent.

Submissions by the Financial Creditor:

7. The Financial Creditor rebuts the argument of the Corporate Debtor and mentions that the present petition is tenable and maintainable in view of the provisions of the Insolvency and Bankruptcy Code. The Petitioner advanced unsecured loan of Rs. 45 Lakhs to respondent Company, bearing interest at the agreed rate of 18% per annum and therefore the Petitioner is a Financial Creditor of the Corporate Debtor. The Corporate Debtor has also deducted TDS, which itself suggest that the Corporate Debtor has borrowed the money from the Financial Creditor. Therefore, the said loan amount bearing interest is legal borrowing in the eyes of law. The Corporate Debtor failed and defaulted to make payment of interest after May, 2016 and repayment of principal amount and interest thereon falls within the definition of Section 3(11) of the insolvency and bankruptcy code and Section 5(8) of the code and therefore the petitioner has rightly invoked the provision under section 7 of the IBC Code. Reliance has been placed on Innovative Industries Limited V. ICICI Bank and Another (2018) 1 Supreme Court Cases 407, Order dated 31st August, 2017, wherein it was held that:

> "28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7 (1), a default is in respect of a financial debt owed to any financial creditor of the*

corporate debtor- it need not be a debt owed to the applicant financial creditor. Under Section 7 (2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, Particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule4 (3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

8. The Financial Creditor mentions that in the past the Corporate Debtor has made payment of the interest during the financial year ending on 31.03.2014. The respondent Company had paid a sum of Rs.6,61,520/- towards interest at the rate of 18% per annum. Similarly for year 2014-15 this was Rs.7,29,000/- (Interest 8,10,000/-

less TDS Rs.81,000/-). In the year 2015-16 an amount of Rs.8,12,220/- as interest was paid after deducting TDS. Further, the Financial Creditor submits that on 02.06.2016 the Corporate Debtor paid interest of Rs.1,35,370/- for only two months i.e. April, 2016 and May, 2016. Therefore total outstanding amount as on 31.07.2017 comes to Rs.54,45,370/- The Financial Creditor submits that the Corporate debtor have deliberately and intentionally not paid the interest since 01.06.2016 and even not returned the loan amount till date and same can clearly be termed as a debt within the meaning of Section 3(11) of the IBC Code.

Findings: -

9. On going through the submissions made by the Learned counsels of both the sides and on perusal of documents placed on record, it is necessary to deal with all the important contentions. The Corporate Debtor's foremost contention, that the debt is not Financial Debt as per section 5(8), as per Section 5(8)(a) *"money borrowed against the payment of interest".* However, from the Loan acceptance letter itself is evident that the money has been borrowed with an interest of 18% per annum by the Corporate Debtor. Also Bank statements placed on record shows that money was transferred form Bank account of Financial Creditor. Same has also been Certified by the Bank of Financial Creditor. Hence, no further proof is required in this regard. Also, as per section 5(7) of IBC, Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such a debt is legally assigned or transferred. Hence this contention of the Corporate Debtor is unsustainable.

10. The dispute raised by the Corporate Debtor with respect to the debt amount is also not maintainable because the amount claimed is corroborated by the Statement of Accounts of the Financial Creditor as on 31.03.2014. Otherwise also, after the judgement of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India

& Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

11. On going through the facts and submissions of the petitioner and upon considering the same, the Financial Creditor has established beyond doubt that the loan was duly accepted and duly received by the Corporate Debtor and that there has been default in payment of the Debt by the Corporate Debtor.

12. The Financial Creditor has proposed the name of **Mr Vinod Tarachand Agrawal,** Registration No.IBBI/IPA-001/IP-P00641/2017-2018/11090, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

13. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

14. The petition bearing **CP (IB) 1602/MB/C-II/2017** filed by **Narottambhai Swomabhai Patel,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against

Wow Solutions & Systems Private Limited [CIN: U74999MH2009PLC196937], the Corporate Debtor, is **admitted**.

15. There shall be a moratorium under section 14 of the IBC, in regard to the following:

    i. 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;

    ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

    iii. 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 (SARFAESI) Act, 2002;

    iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

16. Notwithstanding the above, during the period of moratorium: -

    i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

    ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

17. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

18. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. **Mr Vinod Tarachand Agrawal,** Registration No. IBBI/IPA-001/IP-P00641/2017-2018/11090, having address at 204, Wall Street 1, Opp Orient Club, Near Gujrat Colldge, Ellisbridge, Ahmedabad (Gujrat) 384001, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

20. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

21. The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

22. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

23. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

24. Ordered accordingly.

Sd/- **Sd/-**

CHANDRA BHAN SINGH **Rajasekhar V. K.**
Member (Technical) **Member (Judicial)**

19.12.2019
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