



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-464(ND)/2019

IN THE MATTER OF:

Ashika Credit Capital Limited
Registered Office at:
"Trinity" 226/1, A J C Bose Road
7th Floor, Kolkata-700020

...Applicant/Financial Creditor

VERSUS

Mica Industries Limited
Registered Office at :
A-36, 2nd Floor,
Rajouri Garden, Delhi-110027

...Respondent/Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 11.01.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Sourojit Dasgupta, Adv. Sunil Prasad Karan,

For the Respondent : Dr. Pankaj Garg, Sr. Counsel, Adv. Nikita Jain
Garg



ORDER

PER: SHRI L. N. GUPTA, MEMBER (T)

M/s Ashika Credit Capital Ltd. (for brevity the '**Applicant/Financial Creditor**') has filed the present application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Mica Industries Limited (for brevity the '**Respondent/Corporate Debtor**').

2. The Respondent namely, M/s. Mica Industries Limited is a Company incorporated on 07.04.2005 under the provisions of erstwhile Companies Act, 1956 with CIN U74999DL2005PLC134809, having its registered office at A-36, 2nd floor, Rajouri Garden, New Delhi -110027, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.5,00,00,000/- and Paid-up Share Capital is Rs.4,10,74,100/- as per the master data annexed.

3. It is stated by the Applicant that on 03.04.2017, the Respondent made a formal request vide letter dated 03.04.2017 to avail a loan of Rs.3 Crore only for a period of 730 days. Accordingly, the Respondent and the Applicant entered into an Inter Corporate Deposit ('ICD') agreement dated 03.04.2017 for a sum of Rs.3,00,00,000/- for a period from 03.04.2017 to 02.04.2019 and interest @ 14% per annum payable



on quarterly basis and the principal amount repayable in four equal installments of Rs.75,00,000/- each on half early basis. Pursuant to the Agreement, the Applicant lent and advanced a sum of Rs.3,00,00,000/- to the Respondent by way of RTGS, which was acknowledged by the Respondent vide receipt dated 03/04/2017 and a promissory note issued dated 03/04/2017 to the Applicant, The Director Mr. Vinay Gupta also furnished a letter of continuing Guarantee dated 03.04.2017 in favor of the financial creditor. Further the Corporate Debtor forwarded 12 post-dated cheques drawn on Canara Bank, Overseas Branch, New Delhi towards refund of principal amount on half yearly basis and accrued interest on quarterly basis.

4. It is further submitted by the Applicant that the cheques bearing No. 492912 dated 01.04.2018 and No. 492913 dated 01.10.2018 for a sum of Rs. 75,00,000/- each drawn on Canara Bank, Overseas Branch, New Delhi, towards the 2nd and 3rd Installment of the principal repayment returned dishonored with the remark "Exceed Arrangement " and "Account Blocked" respectively. Further, the cheque No.492920 dated 30.09.2018 for Rs.4,76,384/- drawn on Canara Bank Overseas Branch New Delhi given towards payment of interest also got dishonored with the remark "Account 'Blocked". It is stated that for these cheques, Proceedings under section 138/141 of the Negotiable Instruments Act have already been initiated. It is further stated by the Applicant that the principal sum of Rs.1,85,00,800/- remains due and payable by the Respondent along with the accrued Interest @ 14% per

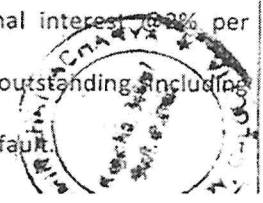


annum (Quarterly payable) and penal Interest @ 2% per month on the amount outstanding.

5. The details of the amount of default and the date of default are mentioned in the Part IV of the application, which is reproduced below, for the sake of convenience:

PART IV

PARTICULARS OF THE FINANCIAL DEBT		
1.	TOTAL AMOUNT OF	The Financial Creditor is a Non-Banking Financial Ashika Credit Capital Limited
	DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>Company and is engaged in the business of providing financial services, etc. In its ordinary course of business the Financial Creditor is also engaged in providing Loan/short term funding.</p> <p>The Corporate Debtor is engaged in the Business of manufacturing of wires and cables etc and approached the Financial Creditor through its Director for a Loan/ Inter Corporate Deposit to meet its short term business requirements. The Corporate Debtor was advanced by way of an Inter Corporate Deposit / Loan of Rs. 3,00,00,000 (Rupees Three Crore Only) bearing Interest @ 14% Per Annum payable quarterly on amount borrowed along with penal interest @ 2% per month on the amount outstanding including interest, in the event of default.</p>





2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN	Rs.1,85,00,000/- Plus Interest Rs.21,99,002/- and Penal interest Rs.41,83,873/- aggregating to Rs.2,48,82,875/- (Rs. Two Crore Forty Eight Lac Eighty Two Thousand Eight Hundred Seventy Five only) As per the Income Tax form 26AS downloaded from the Income Tax Portal www.incometaxindiaefiling.gov.in , the Corporate Debtor has not deposited any amount
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TABULAR FORM)	of TDS in regard to interest paid / accrued on the said loan. Therefore, in the Computation Sheet of the outstanding loan and interest, TDS amount has not been taken into account. Annexure- "G" <u>The dates of defaults is as follows:</u> A) 01.04.2018 is the date of default in respect of the short term loan. The details in respect of the computation of defaulted amount and days of default has been annexed hereto and marked as Annexure 'H'.
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6. As per Part IV of the Application, the Applicant has claimed Rs.1,85,00,000/- plus interest as an unpaid financial debt and relied on 01.04.2018 as the date of default. Further, it has placed the following documents on record to prove the existence of financial debt:

- a) Copy of Inter Corporate Deposit Agreement (ICD) dated 03.04.2017.
- b) Copy of the letter dated 03.04.2017 from Respondent to the Applicant confirming receipt of Rs.3,00,00,000/-.



- c) Letter of undertaking in the form of Demand promissory note dated 03.04.2017 issued by the Respondent acknowledging its liability to pay the financial debt.
- d) Copy of the letter dated 03.04.2017 issued by the Respondent mentioning cheques issued in favour of the financial creditor to secure entire debt.
- e) Copy of demand notice dated 11.07.2018 and 19.11.2018.

7. Basing on the aforesaid facts and documents, the Applicant has prayed for initiation of CIRP against the Respondent.

8. On issuance of the notice, the Respondent has filed its reply affidavit dated 29.04.2019 and submitted that the petition is incomplete as statutory details required in the petition and the documents annexed in the prescribed format are missing. It is further stated that most of the financial exposure of the respondent is Consortium Finance in which Canara Bank and the applicant has no right to initiate the process under Section 7 of the Insolvency and Bankruptcy Code, 2016 particularly when the Revival Package is being considered by the Lead Bank and the respondent has already submitted letter for structuring of their account. The Respondent has further submitted that the intention of the Applicant is not to resolve the insolvency of the Respondent but for recovery, which is impermissible under IBC. Furthermore, the admission of present application would adversely affect the resolution which is already under process and would create multiplicity of proceedings, thereby prejudicially interfering the material rights of the respondent. Hence, the Application is liable to be dismissed.



9. From the records, it is noticed that this Tribunal vide order dated 06.08.2019 had dismissed the petition, as the same was withdrawn by the Applicant. Further, liberty was granted to the Applicant to seek restoration of the petition in the event of default on any of the terms of the compromise. The order dated 06.08.2019 is reproduced below, for the immediate reference:

“Ld. Counsels submits that an agreement has been arrived at between the parties. In view of the same the petitioner wishes to withdraw the present petition. He, however, seeks liberty to seek restoration of this petition in the event of default on any of the terms of the compromise.

Dismissed as withdrawn. Liberty is granted.”

10. Subsequently, the Applicant had filed a Restoration Application bearing No.32/2021, whereby the applicant prayed to recall the order dated 06.08.2019 and restore the IB-464/ND/2019. After hearing, this Tribunal vide order dated 22.11.2021 allowed the RA-32/2021 and restored the main Petition IB-464/ND/2019. The said order is reproduced below, for the sake of convenience:

***“RA-32/2021:** This is restoration application filed by Authorised Representative of Financial Creditor. It is submitted that vide order dated 06.08.2019, the matter was withdrawn as settled. However, a liberty was granted to revive the Petition in the event of default. The Applicant submits that since there is a default in payments, therefore, they are seeking revival of the application.*

RA-32/2021 is allowed.



Dr. Pankaj Garg representing the Respondent is present. Both the parties are directed to file the short-written synopsis of not more than 3 pages each. List it for hearing on 20th January, 2022.”

11. Subsequent to the restoration, the Respondent filed another reply dated 17.10.2022 and stated that the main application dated 10.02.2019 itself is invalid as the facts and circumstances, which existed at that time have changed, after the parties have entered into the Settlement Agreement dated 05.08.2019. As per the terms of the settlement agreement, the applicant was required to institute a fresh proceeding and not to restore the present application. Further, as per the said agreement, entire dispute of the previous matter stood resolved, therefore, new application was required to be instituted. Further, since there is an arbitration clause in the ICD dated 03.04.2017, the applicant has wrongfully and fraudulently approached the NCLT. It is further submitted by the Respondent that the obligation to pay under the settlement agreement does not come under the definition of financial debt. Hence, the present application is not maintainable in view of the above facts and circumstances.

12. We have heard the parties in detail on 06.12.2022. Ld. Counsel for the Respondent reiterated all the arguments as stated in reply of the Respondent dated 17.10.2022 and as already noted in Para 11 above. After hearing, the matter was reserved for orders and the parties were given liberty to file synopsis of not more than 3 pages each along with the judgements relied upon within next 03 days.



13. It is also seen from the record that subsequently, the Respondent had filed an IA bearing no. IA-6222 of 2022, praying for the release of the “Order Reserved in IB-464/ND/2019”. After hearing the Applicant, the said application was dismissed with a cost of Rs. 50,000/- vide order dated 21.12.2022. It was further observed that any Affidavit or Synopsis filed after 09.12.2022, by either of the parties, shall not be considered for the purpose of orders.

14. We have perused all the documents placed by the parties on record. The main contention raised by the Respondent is that the present Application cannot be pursued by the Applicant after it was withdrawn on 06.08.2019. Further, as per the settlement agreement entered between the parties, the old debt stood settled and a new Application was required to be filed for the fresh default made in terms of the compromise agreement.

15. As already noted in Para 9, this Adjudicating Authority, vide order dated 06.08.2019, had given liberty to the Applicant to seek restoration of the Petition, in the event of default made in any of the terms of the compromise. As already noted above, the Restoration Application RA-32/2021 was allowed by this Adjudicating Authority vide order dated 22.11.2021 and the said order of restoration was not challenged by the Respondent. Hence, in our considered view, the same order has attained finality and cannot be recalled. Even otherwise, the Compromise Agreement will not impact the nature of the debt in any manner, since the Petition has been restored to its original state, from



where it was withdrawn. Therefore, the Application has to be adjudicated on the basis of the Part IV of the Original Application. Hence, we find no merit in the contention raised in this regard by the Respondent.

16. Now, we look into the merits of the Application. As per Clause 4 of the agreement, the loan was granted for 730 days. In order to secure the repayment of said loan along with interest, the Respondent had handed over 12 post-dated cheques to the Applicant, the details of the which along with amounts and dates as mentioned in the Loan Agreement are reproduced below:

Ch.No.	Date of Cheque	Amount	Nature
492915	30.06.2017	9,21,699/-	Interest (after TDS)
492916	30.09.2017	9,52,767/-	Interest (after TDS)
492917	31.12.2017	7,14,576/-	Interest (after TDS)
492918	31.03.2018	6,99,041/-	Interest (after TDS)
492919	30.06.2018	4,71,206/-	Interest (after TDS)
492920	30.09.2018	4,76,384/-	Interest (after TDS)
492921	31.12.2018	2,38,192/-	Interest (after TDS)
492922	02.04.2019	2,38,192/-	Interest (after TDS)
492911	01.10.2017	75,00,000/-	Principal
492912	01.04.2018	75,00,000/-	Principal
492913	01.10.2018	75,00,000/-	Principal
492914	03.04.2019	75,00,000/-	Principal

17. As per the submission of the Applicant, the Respondent has paid the 1st installment and interest for 3 quarters only and it has failed to pay the rest of the amount. The summary sheet of the Balance payment as annexed by the Applicant is reproduced overleaf:



Summary Sheet of Total dues: (Principal, Interest and Penal Interest)

Sn	Account	Gross Amount	Amount received Rs.	Balance amount receivable Rs.
1	Principal	30,000,000	11,500,000	18,500,000
2	Interest	5,673,583	3,759,289	1,914,294
3	Interest for Delayed Period	284,708	-	284,708
4	Penal Interest	4,183,873	-	4,183,873
Total Outstanding as on 31/12/2018				24,882,875

In order to demonstrate that the Respondent has committed default in repayment of the remaining amounts, the applicant has annexed the copy of the HDFC Bank advise for cheque Return memo along with the copy of the cheques annexed as "Annexure-O" of the Application. Thus, from the records, it is clear that the Respondent has defaulted in payment of the financial debt.

18. In the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having established the default in payment of the Financial Debt for the default amount being committed above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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 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.”

19. As proposed by the Financial Creditor, this Bench appoints Mr. Ajay Kumar Agarwal (Email ID: cs.aaa.2014@gmail.com) as IRP having Registration No. IBBI/IPA-002/IP-N00608/2018-19/11859, subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority further orders that:

“Mr. Ajay Kumar Agarwal (E-mail: cs.aaa.2014@gmail.com) as IRP having Registration No. IBBI/IPA-002/IP-N00608/2018-19/11859, is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the





IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

20. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

21. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Financial Creditor, the Respondent and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.

(L. N. GUPTA)
MEMBER (T)

(ASHOK KUMAR BHARDWAJ)
MEMBER (J)