**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**

**C.P. NO.IB-1748(PB)/2019**

**IN THE MATTER OF:**

Reliance Commercial Finance Ltd.

....Petitioner

Vs.

Two Brothers Beverages Pvt. Ltd. ....Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

**Order delivered on: 21.10.2019**

**Coram:**
**CHIEF JUSTICE (RTD.) M.M. KUMAR**
**Hon'ble President**

**SH. S.K. MOHAPATRA**
**Hon'ble Member (Technical)**

**PRESENTS:**

| | |
|---|---|
| For Petitioner | : Mr. Rakesh Jangra, Advocate |
| For Respondent | : Mr. Shyam Babu, Advocate |

**ORDER**
**M.M.KUMAR, PRESIDENT**

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Two Brothers Beverages Private Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is a Non-Banking Financial Company incorporated under the provisions of the Companies Act, 1956.

2. The Corporate Debtor – Two Brothers Beverages Private Limited was incorporated on 20.07.2015 under the provisions of the Companies Act, 2013. The identification number of the Corporate Debtor given is CIN U15122DL2015PTC282963.

3. The Petitioner has asserted that the respondent – corporate debtor had availed a loan facility from it amounting to Rs. 67,00,000/- and the same was sanctioned vide loan-cum-hypothecation agreement RLSRDEL000335041 dated 28.01.2017. The said loan facility was granted for the purchase of the machine and in order to secure the loan facility the said machine was hypothecated in favour of the petitioner-financial creditor. The loan was to be repaid within

a period of 30 months as per the schedule detailed in the loan agreement along with interest @ 13.50% per annum. The said loan-cum-hypothecation has been placed on record.

4. The petitioner – financial creditor also averred that that a demand promissory note of Rs.67,00,000/- along with an irrevocable power of attorney, both dated 28.01.2017, was also executed in its favour. The petitioner has also placed on record a Loan Recall Notice dated 13.10.2017 and has stated that despite the notice having been served the respondent did not make any payment.

5. The petitioner has further apprised the Court that a petition being CP No. IB-1175(PB)/2018 was filed before the Tribunal earlier and the same was withdrawn vide order dated 13.02.2019 on the pretext of an amicable settlement between the parties. A settlement deed dated 14.01.2019 was placed on record drawing the schedule of payment. The respondent-corporate debtor failed to adhere to the terms of settlement and the said settlement deed was terminated vide letter dated

02.02.2018. Subsequently, a demand notice dated 30.03.2019 was sent to the respondent-corporate debtor.

6. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor is Rs. 33,98,296/- . A copy of the Statement of account dated 09.07.2019 is placed on record.

7. The Financial Creditor has proposed the name of Mr. Shailendra Singh to act as Insolvency Professional with the address H-29, First Floor, Jangpura Extension, Delhi-110014 and E-mail-id – shailendralaw@gmail.com. His registration number is IBBI/IPA–002/IP–N00471/2017-18/11372. 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.

8. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the

Application the Financial Creditor has mentioned the amount claimed in default and the date of the default.

9. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate the amount of Loan disbursed along with the statement of account, settlement deed and report of the credit agency CRIF High Mark is also placed on record.

10. In the reply filed by the respondent-corporate debtor it has set up the plea that although loan was sanctioned by the petitioner-financial creditor to the tune of Rs.67,00,000/- but the same was never disbursed to the respondent.

Such a plea is wholly unwarranted as the respondent had already admitted their liability in the petition filed earlier and had drawn a settlement deed to pay back the amount. Some payment was also made as per the settlement but then again the respondent-corporate debtor defaulted in making further payment.

11. In view of the aforesaid the amount claimed by the petitioner is 'due and payable' by the respondent-corporate debtor. Even otherwise there is overwhelming evidence placed on record to show that the amount as claimed 'due and payable' was disbursed by the petitioner to the respondent company.

12. As a sequel to the aforesaid discussion and the material placed on record we have no hesitation to hold that the petitioner-financial creditor had disbursed the loan amount to the respondent-corporate debtor. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh. Thus, the petition warrants admission as it is complete in all respects.

13. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

14. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with and after a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed by the petitioner and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional namely Mr. Shailendra Singh and he is appointed as the Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

16. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are

not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee 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 supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. 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 as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

19. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven

days from today. Petitioner is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

**(M.M.KUMAR)**
**PRESIDENT**

Sd/-

**(S.K. MOHAPATRA)**
**MEMBER (TECHNICAL)**

**21.10.2019**
**(VIDYA)**