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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/157/CHE/2021

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. Ram Charan Company Private Limited***

Classic Exports

Represented by Nishant Harsukh Doshi – Partner
G-21, 2nd Main Road, Ambattur Indl. Estate
Chennai – 600 058

... Financial Creditor

-Vs-

Ram Charan Company Private Limited

No.505, Fifth Floor, Delta Wing, Raheja Towers,
Old No. 113 – 134, New No. 177, Anna Salai,
Chennai – 600 002

...Corporate Debtor

Order Pronounced on 21st April 2022

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : K. Gaurav Kumar, PCS
Alpa Jain, PCS*

For Corporate Debtor : Anantha Merathia, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by
Classic Exports (hereinafter referred to as 'Financial Creditor')
under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short,

'IBC, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Ram Charan Company Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is Partnership firm. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 on 14/05/2012 with CIN: U51909TN2012PTC085868. The registered office of the Corporate Debtor as per the MCA master data is situated at No 505, Fifth Floor, Delta Wing, Raheja Towers Old No 113-134, New No 177, Anna Salai Chennai Chennai TN 600002. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. S. Vasudevan, as the Interim Resolution Professional, who has also filed his consent in Form - 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.3,50,66,380/- (Rupees Three Crore Fifty Lakh Sixty six thousand

three hundred and eighty only) is being claimed by the Financial Creditor as the financial debt which comprises of Rs.2,55,00,000/- (Rupees Two Crore Fifty Five Lakh only) as the principal amount and Rs.95,66,380/- (Rupees Ninety Five Lakh Sixty Six Thousand Three hundred and Eighty only) and the date of default is mentioned as 30.11.2019. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

4. Before we proceed on to the merits of the present case, it is seen that the Financial Creditor has moved IA/45(CHE)/2022 for amendment of Part IV of the Petition and the same came to be allowed by this Tribunal vide order dated 11.03.2022. Thereafter, the Financial Creditor has filed the amended copy of the Petition before this Tribunal.

5. The Applicant submitted that they have granted Loan to the tune of Rs. 2,70,00,000/- (Rupees Two Crore Seventy Lakh only) to the Corporate Debtor and accordingly disbursed the said sum, in the following tranches;

- (i) Loan granted on 30.04.2018 – Rs.25,00,000/-
- (ii) Loan granted on 03.05.2018 – Rs.25,00,000/-
- (iii) Loan granted on 25.06.2018 – Rs.60,00,000/-

- (iv) Loan granted on 27.07.2018 – Rs.50,00,000/-
- (v) Loan granted on 18.02.2019 – Rs.50,00,000/-
- (vi) Loan granted on 27.02.2019 – Rs.60,00,000/-

6. It was submitted that the Corporate Debtor has failed to repay the Principal amount of Rs.2,55,00,000/- (Rupees Two Crore and Fifty Five Lakh only) and the outstanding interest of Rs.95,66,380/- at the rate of 2% per month as agreed and reflected in the Demand Promissory Note. It was submitted that the Corporate Debtor vide their reply letter dated 18.01.2021 have admitted that they have taken the financial loan amount. Further the Applicant has also enclosed relevant Form 26AS as proof of deductions of TDS on interest along with the present Application. Under the said circumstances, the Learned Counsel for the Financial Creditor sought for initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

7. The Corporate Debtor has filed counter and it has been submitted that the Financial Creditor has failed to provide any explanation so how the date of default viz. 30.11.2019 as alleged in the Amended Application has been arrived. It was submitted that the Corporate Debtor has committed default only from March 2020 after the advent of Covid – 19 pandemic and hence the benefit of Section 10A of IBC, 2016 will accrue to the Corporate Debtor.

Further, it was submitted that the Legal notice dated 17.12.2020 issued by the Financial Creditor has demanded the repayment of the entire outstanding amount.

8. Heard the submissions made by the Learned Counsel for both the parties. In the present case, the interest was serviced till February 2020 and the Corporate Debtor has not paid the interest for the period commencing from March 2020 till date. However, it is required to be seen that the default in respect of the principal amount of Rs.2.55 Crore has occurred much after the 10A period as stipulated under the provisions of IBC, 2016 and also there is a continuous default in respect of the same by the Corporate Debtor. Thus, the contention of the Learned Counsel for the Corporate Debtor that the debt falls under the 10A period is not sustainable.

9. It is seen that the Applicant has established the financial loan disbursement to the Respondent. Both the parties admits that the entire principal amount of debt is due and payable and the same is also evidence by the Demand Promissory Note dated 27.02.2019 executed by the Respondent / Corporate Debtor in favour of the Applicant. It is also an admitted fact that the Corporate Debtor serviced interest on the principal loan, till February 2020 and hence the Financial debt is proved beyond reasonable doubt.

10. The next issue is whether there is any 'default'. The Respondent / Corporate Debtor admits that since March 2020, the Respondent failed to service interest till date and the main defence of the Respondent is that the interest default fell from March 2020, hence it is clearly hit by Section 10A of IBC, 2016.

11. Section 10A of IBC, 2016 clearly establishes that the period from 25.03.2020 to 25.03.2021, if any default occurs, no Application ever shall be filed under Section 7, 9 and 10 of IBC, 2016. However, the same cannot be construed that there is no default or debt. The shield under Section 10A of IBC, 2016 for Corporate Debtor is that the portion of 'debt' or 'default' occurred during 25.03.2020 to 25.03.2021 cannot give rise to proceedings under IBC, 2016 forever.

12. Hence it is clear that the default of payment of interest from 25.03.2020 to 25.03.2021 is a shield to the Corporate Debtor and the Corporate Debtor post the Section 10A period till date has admittedly not paid interest on the principal amount. The principal amount due and payable is more than one crore and hence the same is not hit by pecuniary jurisdiction. The debt clearly establishes that there is a continuous default during the period of Section 10A and post period of Section 10A to till date. Hence the 'debt' and 'default' is proved.

13. The Financial Creditor has proved the existence of 'financial debt' and 'default' committed on the part of the Corporate Debtor and considering the facts and circumstances of the case as well as the position of Law, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

14. The Financial Creditor has proposed the name of one **S. Vasudevan**, having Registration Number **[IBBI/IPA-002/IP-N00573/2017-2018/11740]**, **(e-mail ID: ksvasu1956@gmail.com)** having Authorisation for Assignment valid upto 22.12.2022 as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR

Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

15. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the

grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

16. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in

terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

20. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

21. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above



named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

23. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

24. Post this CP/IB/157/CHE/2021 for hearing on **07.06.2022**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)


-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond