

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 3540/IBC/NCLT/MB/2018

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

Park Chambers Limited

..... Financial Creditor
(Petitioner/Applicant)

V.

GRL Tires Private Limited

..... Corporate Debtor
(Respondent)

Pronounced on: 20.11.2019

Coram :

Hon'ble M.K. Shrawat, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner : Adv. Jayanta Kar and Soumen Ghosh, C/o S. Jalan & Company.

For the Respondent : None Present

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The Petitioner/Applicant viz. 'Park Chambers Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 06.09.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'GRL Tires Private Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be 418, Creative Industrial Estate, 72, N.M. Joshi Marg, Lower Parel, Mumbai - 400011.

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹7,00,00,000/-, and the amount claimed to be in default is ₹12,65,16,380/- along with interest @ 15% per annum, as on 17.07.2018. The date of default is stated to be 05.05.2017.

BRIEF HISTORY OF THE CASE

3. The Financial Creditor has given financial assistance by granting Loan Facility to the Corporate Debtor for an amount of Rs. ₹7,00,00,000/- of which the Financial Creditor had disbursed an amount of ₹ 5,00,00,000/- to the Corporate Debtor on 05.05.2014 and ₹ 2,00,00,000/- was disbursed on 06.05.2014. The Corporate Debtor vide its letter dated 06.05.2014 had acknowledged the receipt of Loan of ₹ 7,00,00,000/- at an interest @ 15% p.a. for a period of 3 years with effect from 06.05.2014.

SUBMISSIONS BY THE FINANCIAL CREDITOR

4. The Financial Creditor submits that the loan was duly granted and disbursed to the tune of ₹ 7,00,00,000/- to the Corporate Debtor. The Financial Creditor submits that the Corporate Debtor had issued Money Receipts dated 05.05.2019 and 06.05.2019 whereby confirming the Loan amount received by the Corporate Debtor for a sum of ₹ 5,00,000,00/- and ₹ 2,00,000,00/- repayable together with an interest @ 15% p.a. The Corporate Debtor had also executed a demand promissory note dated 06.05.2019 in favour of Financial Creditor for an amount of ₹ 7,00,00,000/- together with an interest @ 15% p.a.
5. The Financial Creditor submits that the Corporate Debtor had issued a letter dated 06.05.2014 acknowledging receipt of the loan and had undertaken to make the repayment of loan within 3 years along with interest @ 15% p.a. The Corporate Debtor vide the same letter had enclosed post-dated cheque dated 06.05.2017 of ₹ 7,00,000,00/- in favour of the Financial Creditor.
6. The Financial Creditor submits that the amount disbursed to the Corporate Debtor is corroborated in the Books of Accounts of the Financial Creditor which reveal the debit balance of the Corporate Debtor wherein the loan amount has been disbursed in two instalments i.e. ₹ 5,00,00,000/- on 05.05.2014 and ₹ 2,00,00,000/-. The said Books of Accounts has been endorsed by the Corporate Debtor confirming the claim filed by the Financial Creditor.

7. The Financial Creditor states the total amount claimed to be in default by adding unserved interest calculated till 17.07.2018 is ₹ 12,65,16,380/-. The date of default is stated to be 05.05.2017.
8. Hence, the Petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

NO SUBMISSIONS BY THE CORPORATE DEBTOR

9. This is a petition under Section 7 of I & B Code. The matter was called for hearing on Six occasions i.e. on 16/01/2019, 13/03/2019, 22/04/2019, 10/06/2019, 06/08/2019 and lastly on 28/08/2019. On all these occasions the Petitioner through his Learned Counsel has been present but the Respondent has neither filed any Reply nor has been represented either in person or through any Counsel. This clearly points out that the Corporate Debtor has nothing to say in its defence. It is in this background that the matter was last heard on 28/08/2019 on its merits.

FINDINGS

10. On going through the submissions made by the Learned Counsel for the Financial Creditor the total amount of Debt given by the Financial Creditor to the Corporate Debtor is ₹7,00,00,000/- and was disbursed in two tranches. The Financial Creditor had disbursed an amount of ₹ 5,00,00,000/- on 05.05.2014 and ₹ 2,00,00,000/- was disbursed on 06.05.2014. Therefore, the total amount claimed to be in default is to the tune of ₹ 7,00,00,000/- plus interest @ 15% p.a. i.e. ₹ 3,66,73,135/- as on 05.05.2017 and ₹ 1,98,43,245/- as on 17.07.2018 thus totalling to ₹ 12,65,16,380/-. The date of default occurred on 05.05.2017.
11. The Applicant has clearly demonstrated by placing a copy of the letter dated 06.05.2014 by the Corporate Debtor wherein the Corporate Debtor had given their acceptance of loan for a total sum of ₹ 7,00,00,000/- and had also enclosed a post-dated cheque in favour of the Financial Creditor for due payment of the loan facility availed by the Corporate Debtor. As per this letter it is also clear that the repayment would be made by the Corporate Debtor of the entire loan along with an interest of 15% p.a. for a period of 3 years w.e.f. 06.05.2014.

12. The total disbursement of ₹ 7,00,00,000/- is also reflected in the Books of Accounts of the Financial Creditor wherein the debit balance of the Corporate Debtor is reflected.
13. On going through the submissions made by the Learned Counsel for the Financial Creditor, the Corporate Debtor has acknowledged the disbursement of loan and its liability to repay on the body of the letter given by the Corporate Debtor to the Financial Creditor on 06.05.2014.
14. The Financial Creditor has placed on record Affidavit of Service dated 22.04.2019 wherein a notice dated 17.01.2019 shows that the Financial Creditors have duly intimated the date of hearing to the Corporate Debtor and have enclosed the postal receipts along with the track report. The Financial Creditor has also placed on record notice dated 11.04.2019 wherein the Financial Creditor have intimated the next date of hearing to the Corporate Debtor and the Corporate Debtor have acknowledged the same.
15. On perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The disbursement of loan amount is substantiated by the Books of Accounts of the Financial Creditor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
16. On going through the facts and submissions of the Financial Creditor and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly disbursed to the Corporate Debtor and there has been default in payment of Debt on the part of the Corporate Debtor.
17. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.
18. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner. Therefore, we are of the conscientious view that this Petition deserves '**Admission**'.

19. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
20. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Pankaj Sham Joshi, having registration No. IBBI/IPA-002/IP-N00507/2017-18/11556, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
21. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
22. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
23. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
24. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
25. Ordered Accordingly.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Dated : 20.12.2019

Sd/-

M.K. SHRAWAT
MEMBER (JUDICIAL)

A.M.

