



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-630/(PB)/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Gogia Leasing Limited

Registered office at:

A-203, Ansal Chamber-1,
Bhikaji Kama Place,
New Delhi-110066

...Financial Creditor

Versus

M/s. JBO Globeworld LLP

Registered office at:

G-12, GF, Plot No. H-2,
Apra North-ex Plaza,
Netaji Subhash Place,
New Delhi-110034

...Corporate Debtor

IB-630/PB/2021

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Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant :Mr. Ashish Makhija
Counsel for Respondent :Mr. Sangam Kumar

ORDER

Per- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date:22.07.2022

1. The present application is filed by M/s Gogia Leasing Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s JBO Globeworld LLP for the alleged default on the part of the Respondent in settling an amount of Rs. 6,49,38,582 (Six Crore Fourty Nine Lakhs Thirty Eight Thousand Five Hundred and Eighty Two Rupees) as on 13.09.2021. The details of

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transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Financial Creditor and Corporate Debtor entered into a Loan cum-Hypothecation agreement on 01.04.2020.
- ii. That the Financial Creditor had given Financial assistance to Corporate Debtor through Term Loan of Rs. 4 Crores on the day of Agreement (01.04.2020) and Working Capital Loan on various dates with maximum limit of Rs. 100 crores.
- iii. That the Term Loan of Rs. 4 crore was given for a period of 1 year at interest rate of 9.00 % P.A. along with Penal Interest at 2% P.A. on the overdue period on outstanding amount.
- iv. That the Working Capital Loan upto Rs. 100 Crores was decided to be given for a period of 3 years at interest rate of 9.20% P.A. along with Penal Interest of 1% P.A.
- v. That on 05.04.2021 the Financial Creditor sent a letter to Corporate Debtor for repayment of term loan on account of expiry of loan agreement, wherein, the amount due was Rs.

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- 4.36 crores including interest of 1 year (01.04.2020-31.03.2021) i.e., Rs. 36 Lakhs.
- vi. That in reply to letter dated 05.04.2021 the Corporate Debtor requested for the time extension of the period of repayment of Term Loan for another 3 months vide its letter dated 10.04.2021.
- vii. That the Financial Creditor approved the request of Corporate Debtor vide its letter dated 20.04.2021 and extended the time of repayment of Term Loan till 30.06.2021.
- viii. That the Corporate Debtor requested for further extension for repayment of term loan till 31.03.2022 vide its letter dated 30.06.2021. Thereafter, the management of Financial Creditor vide its letter dated 05.07.2021 had rejected the extension request of the Corporate Debtor made in its letter dated 30.06.2021.
- ix. That the Financial Debtor through its letter dated 15.07.2021 intimated the Corporate Debtor regarding withdrawal of 'Working Capital Loan' with immediate effect and requested the payment of entire outstanding amount



along with applicable interest and penalty thereof within 60 days expiring on 13.09.2021.

- x. That the Corporate Debtor had sent a letter dated 20.07.2021 requesting not to recall the Working Loan Facility and to extend the tenure of Term Loan by one year i.e., till 31.03.2022.
- xi. That the Financial Creditor on completion of 60 days from 05.07.2021 vide its letter dated 14.09.2021 intimated the Corporate Debtor of the default in the repayment of working capital loan amount along with interest as agreed in the Loan Agreement dated 01.04.2020.
- xii. That the Corporate Debtor defaulted in repayment of Term Loan on 30.06.2021 and Penal Interest @ 2% P.A was charged from 01.07.2021 on the outstanding amount.
- xiii. That the Corporate Debtor defaulted in repayment of Working Capital Loan on 13.09.2021 i.e., after expiry of 60 days from withdrawal of Working Capital Loan vide letter dated 15.07.2021 and Penal Interest @ 1% PA was charged from 14.09.2021 on the outstanding amount.

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xiv. That the Financial Creditor sent various reminders through letters to the Corporate Debtor but received no payment.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

i. That the Corporate Debtor has been availing the financial facilities from the Applicant since 2016 and had always made the payments within the stipulated timelines.

ii. That the application in terms of section 7 of the IBC, 2016 is incomplete as much as the application does not enclose all the communication and documents executed between the parties that are mandatorily required to be filed along with the application as per the provisions of the IBC and the Rules framed thereunder.

iii. That IBC as a statute has serious repercussion on Corporate Debtor and therefore the provisions of the IBC must be strictly interpreted and construed.

iv. That the Corporate Debtor is in the business of trading, purchasing, selling, importing, exporting of gold and the



year 2020 and 2021 had been majorly impacted by COVID - 19 and the whole business has come to a standstill.

v. That the Corporate Debtor always intends to pay back the dues of the Financial Creditor. However, due to the sudden downfall in the economy and due to accumulating losses resulting into cash crunch, the Corporate Debtor could not fulfill its service obligation and thus requested several times to the Applicant for grant of time on account of grave financial turmoil.

vi. That the Corporate Debtor has the honest intention to pay back the claim of the Financial Creditor but just asking for some time to make the repayment as it is under severe financial crunch due to COVID-19 pandemic and currently not in a position to repay the loan.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 6,49,38,582 (Six Crore Fourty Nine Lakhs Thirty

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Eight Thousand Five Hundred and Eighty Two Rupees) as on 13.09.2021.

4. The Corporate Debtor has acknowledged the debt in its reply to the present Section 7 Application and submitted that the present state of affairs of the Corporate Debtor are not favourable and they require time to pay the amount to the Financial Creditor.
5. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.
6. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.



7. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sanjay Garg for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-011365/2019-2020/12919. Mr. Sanjay Garg has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 07.12.2021. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

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9. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

10. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Sanjay Garg has submitted the declaration in Form 2 dated



21.09.2021. The proposed Interim Resolution Professional Mr. Sanjay Garg has also submitted an “Authorisation for Assignment” dated 29.01.2022 issued by Institute of Insolvency Professionals.

11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

12. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

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14. Mr. Sanjay Garg having registration number IBBI/IPA-001/IP-P-011365/2019-2020/12919 is appointed as an Interim Resolution Professional.
15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the

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surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall

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be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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**(RAHUL BHATNAGAR)
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