IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.1
CP(IB) 839 of 2019

Order under Section 7 IBC

IN THE MATTER OF:

Mohan Polyfab Pvt Ltd ....**Applicant**
V/s
Mahip Industries Ltd ....**Respondent**

Order delivered on ..27/04/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules,2016 with consent of other Member.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

CP (IB) No. 839/NCLT/AHM/2019

(A petition filed under Section 7 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process)

In the matter of:
Mohan Polyfab Pvt. Ltd.
Having Registered Office at:
4, Shree complex, shreenagar society,
stadium Road, Post Navjeevan,
Ahmedabad-380014

....Financial Creditor

Versus

M/S Mahip Industries LTD
Having Registered Office at:
S no. 127, Jalalpur Godhneshwar Dholka
Bagodara Highway, Ahmedabad,
Ahmedabad - 387810

.... Corporate Debtor

Order Reserved on: 28.03.2022
Order Pronounced on: 27:04:2022

Coram: Madan B.Gosavi, Member (Member Judicial)
Kaushalendra Kumar Singh(Member Technical)

Appearance:

Learned Counsel, Mr. Aditya Gundecha and Mr. Narendra L Jain appeared for the Financial Creditor.

Learned Counsel, Mr. Ravi pahwa, appeared for the Corporate Debtor.

ORDER

1. The instant Application is filed by the Financial Creditor 'Mohan Polyfab Pvt. Ltd.'(for brevity '**the Applicant**'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a Financial Creditor for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) against the M/S Mahip Industries LTD (for brevity '**Corporate Debtor**').
2. The Applicant is a company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 18.10.1985 and duly registered with the Registrar of Companies, Ahmedabad, with CIN No. U17120GJ1985PTC008194. The registered office is located at 4, Shree complex, shreenagar society, stadium Road, Post Navjeevan, Ahmedabad-380014

3. The Corporate Debtor is a company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 14.11.1995, duly registered with Registrar of Companies, Ahmedabad with CIN: U15549GJ1995PLC028116 and its registered office is located at S no. 127, Jalalpur Godhneshwar Dholka Bagodara Highway, Ahmedabad, Ahmedabad. The authorized share capital of the Corporate Debtor is Rs. 210,000,000/- and the Paid-up share capital of the Corporate Debtor is Rs. 192,399,840/-. The Corporate Debtor was formerly known as **CARE CORUPACK LIMITED**.
4. It is the case where due to business relations between parties, the Corporate Debtor requested for financial help and on the said request, the Financial Creditor provided financial aid to the corporate debtor of amount Rs.50,00,000/- through various RTGS between 05/12/2015 to 19/06/2019
5. During the year 2015 to 2019, the Corporate Debtor made payment towards the interest and partially towards the principal. On 31.10.2019 an amount of Rs. 17,42,753/- was due and payable to the Financial Creditor. This amount has not been paid despite reminders by the applicant and promises of

payment by the Corporate Debtor. A cheque issued towards the part-payment of the aforesaid dues was also dishonoured.

6. The Financial Creditor states that after the filing of the present application and service of notice also, the Corporate Debtor has made a statement before this Hon'ble Tribunal that settlement will be arrived at and that payment of the entire amount shall be made. However, even that statement has been flouted and no payment as promised has been made. No settlement agreement has been entered into.

7. Thereafter, the Corporate Debtor filed several objections to the claims of Financial Creditor that the petitioner has not provided the copies of the entries in the Bankers Books, that the application fee is not being completely paid. The Corporate Debtor further claimed that the petition is barred by the law of limitation.

8. Thus, the Applicant filed present Application under Section 7 of the Code. As per Form-I of the Application, total amount claimed by the Applicant is Rs. 17,42,753/- as on 31.10.2019.

9. After hearing arguments, the Applicant has filed its written submissions and further submitted that the Corporate Debtor has not denied the debt and that the Corporate Debtor has also

serviced the said loan by paying interest for the initial period. However, later on the interest amount has not been paid to the petitioner company and cheques issued for repayment of the part principal amount have also been dishonored on 27/09/2019. The Financial Creditor further states that the as per the statement given by corporate debtor regarding entering into settlement with financial creditor, it was asserted that post dated cheques have been issued to the applicant was entered into despite repeated requests from the Financial Creditor, thereafter some cheques were issued by the Corporate Debtor for settling the matter, admitting the financial dues of the Financial Creditor. However, the cheque no 586674 dated 10/07/2021 was dishonored due to insufficiency of funds and the officer of the Corporate Debtor has not taken any calls after that.

10. An additional affidavit has also been filed by the Financial Creditor with regard to the query raised to change in the name of the Corporate Debtor to bring on record the Certificate of Incorporation from "Care Corupack Limited" to "Mahip Industries Ltd." Which certificate also states that the company was originally incorporated with the name "Care Beverages (India) Limited".

11.In the instant matter, the Corporate Debtor had time and again acknowledged the debt within limitation period which resulted in fresh period of limitation. The Corporate Debtor never disputed the bank statement or any other documents annexed by the Applicant. There is a payment of 50 lakhs has not been denied and the Financial Creditor has also annexed in the petition year vise ledger account of Corporate Debtor in which the interest has also been charged. Therefore, the present Application is within the period of limitation and not barred by law.

In view of the above observations, the present application is admitted with the following order:

i. The Corporate Debtor, M/S Mahip Industries LTD admitted in Corporate Insolvency Resolution Process.

ii. We appoint Mr. Umesh H. Ved to be appointed as Interim Resolution Professional (IRP), who is hereby appointed as IRP of the Corporate Debtor having Registration No. IBBI/IPA-002/IP-N00136/2017-2018/10376 and address at 304, Shoppers Plaza-V, Govt. Servant's Co-op H.S. Navrangpura, Ahmedabad- 380009, Gujarat under section 13 (1) (c) of the IB Code as IRP as proposed by the applicant.

iii. That the Moratorium under Section 14 of the Code shall come to effect from the date of the order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

iv. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

v. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.

vi. The IRP so appointed shall make the Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.

vii. The IRP shall perform all his functions as contemplated, *inter-alia,* by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make the appropriate application to this

Adjudicating Authority with a prayer for passing an appropriate order.

viii. The IRP shall be under a duty to protect and preserve the value of the property of the Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

ix. We direct the Applicant to deposit a sum of Rs. 2,00,000/- 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 Persons) Regulation, 2016. The needful shall be done within one week from the date of receipt this of order by the Financial Creditor.

x. The Registry is directed to communicate this order to the Petitioner-Financial Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order. In addition, a copy of the order shall also be forwarded to IBBI for its records. RoC shall send compliance report to the Registrar, NCLT.

xi. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

xii. This CP(IB) 839 of 2019 stands allowed and disposed-off.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

Divya Sharma