

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.325/ALD/2019

(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016)

IN THE MATTER OF

Exim Scrips Dealers Pvt. Ltd.

.....Applicant/Financial Creditor

VERSUS

Rathi Graphics Technologies Limited

.....Respondent/Corporate Debtor

ORDER RESERVED ON : 17.01.2020
ORDER DELIVERED ON :03.02.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Mr. Aditya Singh, Advocate

For the Respondent/ Corporate Debtor:

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e "**Rathi Graphics Technologies Ltd**". on grounds of its inability to liquidate its financial debt.
2. As per averments made in the petition, the Corporate Debtor and the applicant had entered into a loan facility Agreement dated 17.07.2012, whereby a loan amount of Rs.95,00,000 was disbursed by the applicant to the corporate debtor .
3. As per the agreement, the loan was repayable on demand and further the loan attract an interest @ 9% p.a payable monthly further at the time of final repayment of loan, additional interest @ 2% p.a was also agreed to be paid by the borrower on entire inter corporate deposit..

—Sd—

4. It was submitted that the corporate debtor has time and again paid interest and principal till 31.03.2018, however, the corporate debtor defaulted in making payment of the amount due towards interest in 2018-2019 and other outstanding payments. Thereafter, demand was raised by the financial creditor by issuing notice dated 10.04.2018 & 30.04.2018 for which reply was received by the financial creditor by the corporate debtor vide letter dated 15.05.2018 admitting its liability for the dues claimed and requested for some time for making the payment. However, till 10.02.2019 no payment was received.
5. Pursuant to the mutual terms of loan, amount is due from the year 2018 and the date of default is 07.01.2019. The total amount due as on date of default is Rs.91,87,863/-
6. The Corporate debtor has been duly served by the speed post. Pursuant to the court notice issued to the corporate Debtor, Advocate Devansh Rathore, appeared on behalf of corporate debtor and sought time to file reply but it is a matter of record that although several opportunities were granted but the Corporate Debtor has chosen not to contest the case and neither any reply has been filed and and also none appeared on behalf of the corporate debtor in the matter. Hence vide order dated 30.12.2020, the case is fixed for exparte hearing and on the date of hearing also the respondent opted not to appear, and then the matter was heard.
7. From the perusal of averments made in the application filed on behalf of petitioner and the documents annexed therein, this adjudicating Authority finds, the Corporate Debtor in the reply vide letter dated 15.05.2018 admits the debt and sought further time to liquidate the amount which has not been liquidated.

—Sd—

8. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.) Whether there is duly established financial debt.

ii.) Whether there is default in payment by the corporate debtor.

iii.) Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

9. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in August, 2019 is well within limitation, being within three years from the date of the cause of action. It is seen that the amount in default is in excess of Rs. 1,00,000/- being the minimum threshold limit fixed under IBC.

10. Further the default of the debt has been admitted by the corporate debtor in the reply vide letter dated 15.05.2018 filed by them and applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Considering the circumstances this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted.

11. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

—Sd—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

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.]

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.

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(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.

12. The Operational Creditor has proposed the name of **Mr. Sunil Kumar Agarwal, Registration Number IBBI/IPA-002/IP-N00081/2017-18/10222** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.
13. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.
14. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
15. List on for the filing 25.02.2020 of the progress report.

—Sd—

JUSTICE RAJESH DĀYAL KHARE
MEMBER (J)

Date: 03.02.2020

Swati Gupta
(LRA)