

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 1098/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

Kanoria Chembond Private Limited

905-906, Unique Towers, B/h. Patel Auto,
Off. S. V. Road, Goregaon (W), Mumbai-
400062

.... Petitioner

vs.

Artedz Fabs Limited

H. No.- 1125, Building T-1, Shree
Rajlaxmi, Hi-Tech Park, Sonale Village
Bhiwandi, Thane- 421302

.... Corporate Debtor

Order Pronounced on: 18.02.2021

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Rajat Gupta

For the Corporate Debtor: Adv. Harsh L. Bethany

Per: Chandra Bhan Singh, Member (T)

ORDER

1. Kanoria Chembond Private Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Artedz Fabs Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default to the extent of Rs. 56,07,945/- plus interest at the rate of 12% p.a. as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Counsel for the Petitioner submits that the Corporate Debtor approached the Petitioner to grant it a loan to meet its working capital requirements and its business operations. The Petitioner and the Corporate Debtor then entered into an Inter Corporate Deposit Agreement (hereinafter called the 'ICD Agreement') dated 18.07.2016 through which the Petitioner

lent/ advanced an amount of Rs. 70 lakhs to the Corporate Debtor on the terms & conditions provided therein on the following dates:

Date	Amount
22.07.2016	25,00,000/-
06.08.2016	10,00,000/-
29.08.2016	15,00,000/-
31.08.2016	20,00,000/-
TOTAL	70,00,000/-

3. The ICD Agreement provided that the tenure of the Deposit was 18 months from the date of the last installment of the deposit, i.e., 18 months from 31.08.2016. So, the said sum of ₹70,00,000/- was due to be refunded by the Petitioner on 31.03.2018. The ICD Agreement also provided that the Petitioner would be entitled for interest on the said deposit at the rate of 12% p.a. every quarter on the reduced balance.

4. The Counsel for the Petitioner further submits that the Corporate Debtor refunded an amount of ₹20,00,000/- to the Petitioner on 17.04.2017 and therefore, a balance deposit of ₹50,00,000/- along with interest remained outstanding. In terms of the ICD Agreement, the Corporate Debtor belatedly paid interest on the said deposit on various dates and accordingly, the Petitioner made relevant entries in Ledger Account for the Corporate Debtor with the Petitioner. When the tenure of the deposit expired on 31.03.2018, Director of the Petitioner had a meeting with the Director of the Corporate Debtor wherein the Petitioner called upon the Corporate Debtor to refund the amount of balance deposit of ₹50,00,000/- along with interest accrued thereon, but no payment either towards interest or refund of the deposit was received by the Petitioner from the Corporate Debtor.

5. The Counsel for the Petitioner submits that the Petitioner, by its letter dated 15.05.2018, once again called upon the Corporate Debtor to refund the amount of ₹50,00,000/- along with interest accrued thereon. In reply to the said letter, the Corporate Debtor, by letter dated 30.05.2018, requested and proposed to the Petitioner that the tenure of the ICD Agreement be extended by a further period of 12 months, i.e., till 31.03.2019 and that all the terms and conditions of the same ICD Agreement would govern the said extended period also. The Corporate Debtor therein undertook to repay the balance amount of deposit along with interest on or before 31.03.2019. In the said letter, the Corporate Debtor further stated that the interest amount of

₹4,50,000/- will be paid within 2 weeks from the date of the said letter. The Petitioner, through its letter dated 07.06.2018, consented to the proposal of the Corporate Debtor as contained in its letter dated 30.05.2018. Hence, the tenure of the ICD Agreement was extended for a further period of 12 months, i.e., up to 31.03.2019 as was mutually agreed upon by the parties. Thereafter, on 08.06.2018, 12.06.2018 and 15.06.2018, the Corporate Debtor paid amounts to the Petitioner towards interest accrued. However, the Corporate Debtor failed to pay the interest for the remaining period except the above payments.

6. On 31.03.2019, the extended tenure of the ICD Agreement expired and the balance amount of ₹50,00,000/- along with interest accrued thereon was due and payable by the Corporate Debtor but the Corporate Debtor failed to pay the said balance amount along with interest on the due date, i.e., 31.03.2019. The Petitioner, through a letter dated 15.04.2019, called upon the Corporate Debtor to pay its dues within 7 days from the date of the said letter. However, the Corporate Debtor did not reply to the said letter of the Petitioner and till the filing of this Petition, the Corporate Debtor has not paid any amount towards the debt.

7. The Petitioner has enclosed the following documents in respect of the above said deposit:

- a. Master Data of the Corporate Debtor as available on the website of the Ministry of Corporate Affairs as on 23.01.2018
- b. Copy of the ICD Agreement dated 18.07.2016
- c. Copy of the Bank Statement for the period from 01.07.2016 till 31.10.2016
- d. Copy of Ledger Account of the Corporate Debtor maintained in the books of the Petitioner
- e. Copy of TDS Certificates dated 12.06.2017; 05.02.2018 and 05.06.2018

Contentions of the Corporate Debtor:

8. The Counsel for the Corporate Debtor submits that the business of the Corporate Debtor was severely affected due to the economic lockdown and the Corporate Debtor was facing financial hardships. Also, on 01.08.2019, the cash credit account of the Corporate Debtor with Bank of Baroda was declared as "Non-Performing Asset". As a result, the business of the Corporate Debtor came to a complete standstill. The current pandemic as well as the nationwide lockdown multiplied the financial woes of the Corporate Debtor. To overcome this financial difficulty, the Corporate Debtor is in advance talks with some investors to get some requisite funds to meet its

liabilities including that of the Financial Creditor/ Petitioner. Once the said funds are infused into the Corporate Debtor, then the Corporate Debtor would be in a position to pay off the liability of the Petitioner.

9. The Counsel for the Corporate Debtor further submits that in light of the above stated facts, the present Petition be dismissed with costs.

Findings:

10. The Bench notes that Kanoria Chembond Private Limited (Kanoria) and Artedz Fabs Limited (Artedz) have executed an ICD agreement on 18.07.2016 in accordance to which Kanoria has extended a debt amount of Rs. 70 Lakhs on various dates commencing from 22.07.2016 to 31.08.2016 at an interest rate of 12% per annum every quarter on reducing balance. The Bench also notes that on 17.04.2017, Artedz has repaid an amount of Rs. 20 Lakh to Kanoria leaving an outstanding balance of Rs. 50 lakhs. The Bench further notes that the tenure of ICD expired on 31.03.2018, subsequent to which on 15.05.2018, Kanoria issued a demand letter to Artedz demanding the refund of the balance amount of Rs. 50 lakhs along with interest. Thereafter, as per arrangement arrived at between the parties, the tenure of ICD was extended for a further period of 12 months, i.e., till 31.03.2019. The Bench notes that Artedz has paid an interest on the deposits on 08.06.2018, 12.06.2018 and 15.06.2018. Thereafter, Artedz failed to pay the balance amount along with interest on the due date of 31.03.2019. A demand letter for payment was again issued by Kanoria on 15.04.2019 to which no response came from the Corporate Debtor. As per Part-IV of the Petition filed by the Financial Creditor/ Petitioner, an amount of Rs. 56,07,945/- is due as on 31.01.2020.

11. The Bench also takes note of the fact that the Corporate Debtor has admitted its dues and the fact that it has defaulted in the payment. In this regard the Bench would like to draw attention to Para 2 of the Reply of the Corporate Debtor which reads as under:

*"2. At the further outset, I say that, due to economic slowdown, the business of the Corporate Debtor was severely affected. The Corporate Debtor was facing financial hardship. Thereafter, on 1st August, 2019, the Cash Credit Account of the Corporate Debtor with Bank of Baroda was declared as **"Non Performing Asset"**. As a result, the business of the Corporate Debtor came to a complete stand still. If that was not enough, the current pandemic as well as the nationwide lockdown multiplied the financial woes of the Corporate*

Debtor. To overcome the said difficulty, the Corporate Debtor is in advance talks with some investors and is making all possible efforts to get requisite funds infused in the Corporate Debtor to meet its liabilities including that of the Financial Creditor.”

12. The Bench notes, keeping in view the fact that the Corporate Debtor has admitted its dues to the Petitioner in its Reply as well as during the hearing of the Petition via videoconferencing and also the fact that the said default of the Corporate Debtor is yet reflected in the master Ledger Account maintained by the Petitioner, the default of the Corporate Debtor as of the ICD Agreement is very apparent. The Bench has no hesitation in concluding that there is a debt and that the Corporate Debtor has committed a default and therefore, it is a fit case for admission.

13. This Bench, on perusal of the documents filed by the Financial Creditor, is of the view that the Corporate Debtor defaulted in repaying the advanced/ deposit availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

(I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
(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.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the 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.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Jignesh Ajit Ganatra, having office at 701, Sai Heritage CHS, Opps. Ebenezer Society, Ashok Nagar, Nahur Road, Mulund (W), Mumbai – 400080; having Registration No. IBBI/IPA-001/IP/P-01506/2018-2019/12393 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)