

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR

CP No. (IB)-276/7/JPR/2019

Coram: DR. P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER
SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

SHRI RAGHAV AGGARWAL
22 ARYA SAMAJ ROAD, SRI GANGANAGAR

...FINANCIAL CREDITOR/APPLICANT

VERSUS

M/S KISHORI LAL SUDESH KUMAR
METALS PRIVATE LIMITED
E-127, RIICO INDUSTRIAL AREA, BHIWADI ALWAR,
RAJASTHAN

...CORPORATE DEBTOR/RESPONDENT

FOR PETITIONER (S) : PRAKEEK KEDAWAT, ADV.
FOR RESPONDENT(S) : PARVINDRA DEV SINGH, ADV.

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ORDER PRONOUNCED ON: -30.01.2020

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This application is filed by Shri Raghav Aggarwal ('Applicant'), claiming to be a Financial Creditor, against M/s Kishori Lal Sudesh Kumar Metals Private Limited ('Respondent'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process (CIRP), pursuant to default in repayment of redemption amount of Debentures issued by the respondent to the applicant.
2. The Applicant is a son/legal heir of Late Shri Dharam Veer Aggarwal, holder of PAN No. AHRPA0111A and residing at 22 Arya Samaj Road, Sri Ganganagar-335001.
3. The Respondent is a Private Limited Company, incorporated under the Companies Act, 1956, on 16.09.1991 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U27107RJ1991PTC006195. The Registered Office of the Company is at E-127, RIICO Industrial Area Bhiwadi, Alwar (Rajasthan). The authorized share capital of the company is

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Rs. 50,00,000/- (Rupees Fifty Lakh Only) and paid up share capital is Rs. 20,00,000/- (Rupees Twenty Lakh Only).

4. It is the case of the applicant that Late Shri Dharam Veer Aggarwal, father of the Applicant had purchased 4000 12% Non-Convertible Debentures of Rs. 100 each during the month of December 1999. The said debentures were redeemable on the expiry of 18 years from the date of issue i.e. on 31.12.2017. That after the unfortunate demise of Shri Dharam Veer Aggarwal, the applicant got rights of/on/to the said debentures as a legal heir.
5. The Applicant further submits that he had written numerous letters to the respondent at the address mentioned in Master Data, requesting payment of redemption amount but all went in vain. Subsequently, a letter was received from M/s S. Singhal & Company stating non-existence of respondent at E-127 RICCO Industrial Area, Bhiwadi and suggesting to contact the Director of the respondent. Copy of the letter received from M/s S. Singhal & Company is annexed with the Application. Consequently, the applicant sent letter dated 03.06.2019 to the Director and received a reply via email dated 17.06.2019 from the director of the respondent stating that the respondent has suffered losses and is no longer operational. Copies of the said letter and email reponse are annexed with the Application. Thereafter the Applicant has issued letter of Demand dated 27.06.2019 to the respondent and

demanded the redeemable amount of Rs. 36,94,987/- but the same was never replied. Copy of the Demand Notice is annexed with the Application.

6. As a consequence of default, this application was filed. As claimed by the applicant, the respondent is liable to pay an amount Rs. 36,94,987/- as a redemption amount, as reflected in Part IV of the Form - 1 filed.

Part IV

S. no.	Particulars of Financial Debt	
1.	Total amount of debt granted date(s) of disbursement.	Rs. 36,94,987/- up to June-2019
2.	Amount claimed to be in default and the date on which the default occurred	Rs. 36,94,987/- Date on which default occurred is 01.01.2018.

7. The Corporate Debtor has filed the reply affidavit vide Dairy No. 2696/2019 dated 19.11.2019 and admits the fact of issuance of Debentures to the applicant. It is further submitted by the respondent Corporate Debtor that they have incurred losses and had to shut down their production. Also, the Applicant was duly informed about the facts that since the respondent's plant is non-operational, they are not in position to settle the dues as of now and had further assured the Applicant that the due amount will be paid when funds will be available.



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8. This Tribunal perused all the relevant papers and the documents annexed to the application which are complete in all respects. It is clear financial debt is due from the corporate debtor to the applicant. There is an inability of the respondent to repay the redemption amount as expressed in the reply and there is a default of repayment in excess of Rs. One Lakhs. Further it is seen from the records that there is some variance in amount as calculated/claimed by the Applicant vis-à-vis the terms as stated in the debenture certificate, which should be examined by the Insolvency Resolution Professional.
9. The Registered Office of the respondent/Corporate Debtor is situated in Alwar and therefore this Tribunal has jurisdiction to entertain and try this Application. The matter is within the purview of Law of Limitation. In view of the above facts, the Tribunal is inclined to pass an order to initiate Corporate Insolvency Resolution Process ('IRP') against the respondent as envisaged under the provisions of IBC, 2016.
10. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of the Tribunal, one Mr. Hansraj Mutreja having Registration Number IBBI/IPA-002/IP-N00221/2017-18/10673 (email: mutreja@sancharnet.in, Mobile no.: 8770773326) duly registered with the ICSI, Institute of Insolvency Professional as the Interim Resolution Professional. The Applicant has filed consent in Form 2 under Insolvency



and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.

11. Consequences of initiation of CIRP shall be inter-alia as follows:

- (i) The Resolution Professional proposed by the Applicant, Mr. Hansraj Mutreja, an IP registered with ICSI Insolvency Professional Agency with Registration No. IBBI/IPA-002/IP-N00221/2017-18/10673, is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the respondent/Corporate Debtor and discharge duties as required to be performed by him under the provisions of IBC, 2016, including issue of publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same.
- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the respondent/Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the



respondent/Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the respondent/Corporate Debtor.

- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016, and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time apprising this Tribunal about the progress of CIRP unfolding in relation to the respondent/Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the respondent/Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the respondent/Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, respondent/Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Tribunal to carry



out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

- (v) In the circumstances, this Company Application is admitted.

Sd-

**SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)**

Sd-

**DR. P.S.N. PRASAD
MEMBER (JUDICIAL)**

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