

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV**

CP(IB)-628/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

Indus Container Lines Private Limited

...Financial Creditor

v/s.

Virat Global Logistics Private Limited

...Corporate Debtor

Order Pronounced on: **18.07.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner : Mr. Rashid Khan i/b Ms. Sumi Soman, Advocate.

For the Respondent : Ms. Khatri, Advocate.

ORDER

Per: Kishore Vemulapalli, Member(Judicial)

1. This is a Company Petition filed on 14.02.2020 under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Indus Container Lines Private Limited** (hereinafter called the *Financial Creditor*) - seeking to initiate Corporate Insolvency Resolution Process (CIRP) in the matter of **Virat Global Logistics Private Limited** (hereinafter called the *Corporate Debtor*), [CIN: U63090MH2013PTC243923] on the ground that the Corporate Debtor defaulted on 22.02.2018 (Loan-I) and on 11.03.2018 (Loan-II) in making

repayment of the total outstanding amount of ₹33,19,109/- under both the loans.

- 1.1. The Financial Creditor is a company incorporated on 10.09.2004 having its registered office at 1st Floor, D.C. Silk Mills Compound, Chunawala Estate, Kondivita Road, Andheri (E), Mumbai – 400 059, engaged in the business of shipping, international freight forwarding and also provides credit facility to firms and companies engaged in the shipping, international freight forwarding, etc. The Financial Creditor was initially registered in Gujarat in the name of Indus Container Lines (Gujarat) Private Limited and in June 2013 its registered office transferred to Maharashtra. Thereafter, on 28.08.2013 it changed the name from Indus Container Lines (Gujarat) Private Limited to Indus Container Lines Private Limited.
- 1.2. The Corporate Debtor is a company incorporated on 03.06.2013 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai having CIN: U63090MH2013PTC243923. Its registered office is at 403, 4th Floor, Thakkar Heights, Subhash Nagar, Bhandup (W), Mumbai – 400078. Therefore, this Bench has jurisdiction to deal with the present petition.

Brief Facts of the Case:

2. The Financial Creditor submits that in the year 2015, the directors of the Corporate Debtor approached the Financial Creditor for seeking revolving credit facility to run their business. Both parties executed a Revolving Loan Agreement (RLA) on 01.12.2015. As per the said agreement, the Corporate Debtor can apply for loan repayable after 30/45/60 days with interest @32.4%

p.a. The Corporate Debtor also executed Promissory Notes to the extent of the credit limit as prescribed under the First RLA.

2.1 Pursuant to the RLA, the Financial Creditor disbursed loan from time to time amounting to ₹80,00,000/-. The Corporate Debtor also issued Post Dated Cheques (PDC) in favour of the Financial Creditor for the repayment of the loan with interest as stipulated in the RLA. The Financial Creditor confirms that the Corporate Debtor repaid the full loan amount with interest under the First RLA.

2.2 The Financial Creditor further submits that on 27.04.2016, the Corporate Debtor approached again and sought for an additional loan of ₹10,00,000/-. As the maximum credit limit under the First RLA was ₹30,00,000/- and the same amount was outstanding as on 27.04.2016, the Financial Creditor suggested for Second RLA. Upon agreement between the parties for the Second RLA, new RLA was executed on 28.04.2016 for a credit limit of ₹40,00,000/- with the same terms and conditions that of the First RLA. Under the Second RLA, loans were disbursed to the Corporate Debtor on various dates and most of them have repaid. There were total of 24 loan applications made by the Corporate Debtor. However, two separate loan amounts which were disbursed on 23.01.2018 and 08.02.2018 of ₹10,00,000/- each were not repaid by the Corporate Debtor. As the loan amounts were not repaid, the Financial Creditor sent Debit Notes for the accrued interest month after month, after the due date to repay the loan amount. There were several Debit Notes issued by the Financial Creditor to the Corporate Debtor. As the repayment was not happening for those two loan amounts, the Financial Creditor wrote letter dated 04.10.2018 to the Corporate Debtor informing that

it has invoked the Promissory Note. The Corporate Debtor replied on 07.10.2018 refuting the contents of the above letter. After several continued follow ups, the Corporate Debtor agreed to deposit the security cheque given to the Financial Creditor. Accordingly, the said cheque was deposited by the Financial Creditor but the same was dishonoured by the bank due to “funds insufficient”.

- 2.3 For the dishonoured cheque, the Financial Creditor sent statutory notice to the Corporate Debtor and filed a complaint with the Metropolitan Magistrate Court. Also, the Financial Creditor engaged in discussion with the Corporate Debtor but the dispute was not resolved. Therefore, filed a Petition before this Tribunal vide CP(IB)-2809(MB)/2019. After filing the Petition, negotiations were took place but nothing materialised. In the meantime, due to errors in the pleadings, the said Petition was withdrawn with liberty to file fresh Petition. Hence, filed this Petition.

Reply of the Corporate Debtor

- 3 The Corporate Debtor filed its reply wherein the Corporate Debtor submits that the Petition is not maintainable and the Financial Creditor has suppressed material facts and even the Petitioner does not qualify as “Financial Creditor”, etc.

- 3.1 The Corporate Debtor further submits that the cheque dishonoured is due to the mistake of the Financial Creditor as they deposited the security cheque (undated), which was given to them way back in May 2015 while executing the Loan Agreement in the first instance. Thereafter, the account, from which the security cheque was given, with that bank was closed on 22.08.2017 and

the Financial Creditor deposited the cheque putting the date as 11.10.2018 without informing the Corporate Debtor. It further states that the Financial Creditor has taken recourse to proceed under Section 138 of the Negotiable Instruments Act, 1881.

- 3.2 It is further submitted that the loan was not fully disbursed thereby causing heavy losses to the Corporate Debtor. It is further submitted that after receipt of letter dated 20.09.2019 from the Advocate of the Financial Creditor rejecting the proposal of the Corporate Debtor to settle the entire outstanding of ₹32,02,566/-, for ₹20,00,000/- by making payment in instalment of ₹50,000/- p.m., Mr. Viral Joshi of the Corporate Debtor spoke to Mr. Padmanathan Parikh of the Financial Creditor that they will not be in a position to make the payment of the entire amount in one lump sum payment.

Findings:

- 4 This Bench heard the Counsel and perused the material on record.
- 4.1 This Bench finds that there is a clear admission of debt in the reply dated 23.12.2021 of the Corporate Debtor, whereby the Corporate Debtor expressed its inability to pay the whole of the amount in lump sum. Accordingly, there is no dispute in so far as existence of the debt and default in payment thereof is concerned. It is also not disputed that the transaction resulted into a financial debt. Further, the Financial Creditor has placed on record the communications which clearly suggests the existence of debt. Further, the financial statement of the Corporate Debtor for the year ended 31.03.2018 shows that a sum of ₹20,48,600/- was outstanding as unsecured loan as on 31.03.2018.

4.2 This Bench does not find any merit in the contention of non-disbursal of full amount, as such contentions are immaterial in view of existence of debt and default being on record.

4.3 The Financial Creditor has proposed Mr. Harshad S. Deshpande as Interim Resolution Professional (IRP) in the matter. Consent letter of Mr. Harshad S. Deshpande in Form 2 is also attached to the Petition.

5 It is, accordingly, hereby ordered that this Application bearing No.: **CP(IB)-628(MB)/2020** filed under Section 7 of I&B Code, 2016, presented by **Indus Container Lines Private Limited**, Financial Creditor/Applicant against **Virat Global Logistics Private Limited**, Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) is hereby **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench, as a result of moratorium, prohibits -

- 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 (SARFAESI Act);

d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the Corporate Insolvency Resolution Process (CIRP) shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Harshad S. Deshpande, a registered insolvency resolution professional having Registration Number IBBI/IPA-001/IP-P00166/2017-2018/10335 as Interim Resolution

Professional (IRP) to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/ Directions issued in this regard.

VII. The Financial Creditor shall deposit a sum of ₹2,00,000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- 6 Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by designated Registrar is to be submitted immediately.

Sd/-

Prabhat Kumar
Member (Technical)

18.07.2023/pvs

Sd/-

Kishore Vemulapalli
Member (Judicial)