IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-2460/(ND)/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

VIKRAM JHUNJHUNWALA
S/o Late Hanuman Jhunjhunwala
R/o 230, Pragati Marg, W-8 Lane,
Sainik Farms, New Delhi-110062

...Applicant

Versus

Xecute HR Solutions Private Limited
Plot No. 18, Office No.205,
First Floor, Vinayak Complex,
Veer Savarkar Block, Shakarpur,
Delhi East Delhi-110092

...Respondent

Coram:

SHRI ABNI RANJAN KUMAR SINHA
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Jatin Julka, Advocate

ORDER

Date:20.12.2019

1. This is an application filed by Mr. Vikram Jhunjhunwala seeking to initiate corporate insolvency resolution process ("CIRP") against M/s Xecute HR Solutions Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 33,21,841/- including interest towards the loan given by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

   i. The Applicant is involved in the business of corporate advisory and financial consultancy for the purpose of earning his livelihood.

   ii. Sometime in 2018, the Respondent approached the Applicant to avail a credit facility for meeting its various working capital requirements for the purposes of running its business. At the request of Respondent, the Applicant advanced a loan of Rs. 25,00,000/- to the Applicant vide a loan agreement dated 13.08.2018.

   iii. That aforesaid credit facility was availed by the Respondent on the terms and conditions set out herein below:

      a) The term of this Agreement shall be for a period of 3 (three) months. The same may be extended by a

period of an additional 3 (three) months, at the sole discretion of the Lender.

b) The Loan provided by the Lender to the Borrower shall accrue interest at the rate of 30% p.a., and the same shall be payable along with the Loan after three months, in the manner and mode as decided by the Lender. Non-payment of the same shall be construed as an event of default under this agreement.

c) The borrower shall utilize the loan amount only for the express purpose of meeting immediate working capital requirements.

d) The borrower shall, during the currency of the loan bear all such imposts, duties and taxes including interest and other taxes, (if any) as may be levied from time to time by the Government or other authority with the sanction of law pertaining to or in respect of the Loan.

iv. It is pertinent to mention herein that the above said credit facility was made available to the Respondent through cheque dated 14.08.2018 and bearing number 000233.

v. After availing the aforesaid credit facility, the Respondent failed to make any payment to the Applicant till date and the account of the Respondent became and continues to be irregular. In spite of repeated requests and demands including but not limited to the loan recall notice sent by

the Applicant to the Respondent, the Respondent has failed and neglected to regularize its credit facility and further failed to make payment of the outstanding amounts due under the said credit facility and have thus, committed breach of terms and conditions of the loan agreement dated 13.08.2018 executed and keeping an outstanding of Rs. 33,21,841/- which is due and payable by the Respondent.

vi. As the Respondent failed to repay its outstanding dues, the Applicant sent a loan recall notice dated 19.09.2019 calling upon the Respondent to pay the outstanding amount.

vii. Since the Respondent failed to maintain the said credit facility account in terms of the aforesaid loan agreement dated 13.08.2018 duly signed an accepted by the Respondent and in view of the facts and circumstances as aforesaid, the Respondent is liable to pay Rs. 33,21,841/- till 19.09.2019 and thereafter @30% interest p.a. from 20.09.2019 until recovery of the aforesaid outstanding dues.

2. Since the application filed by the Applicant fulfilled all the conditions required under Section 7 of the Code, this Tribunal ordered issue of notice to the Respondent by all modes. However, the Applicant during the hearing on 23.10.2019 contended that the notice sent through post was received back unserved but the notice sent by e-mail has not bounced back. This Tribunal ordered publication through newspapers. Accordingly, the Applicant filed

an affidavit to the effect that publications have been made in the newspapers 'Statesman' and 'Navbharat Times' dated 09.11.2019. However, despite service of notice by all modes including paper publication, none appeared on behalf of the Respondent and as a result the Respondent was proceeded ex-parte on 18.11.2019.

3. The Respondent was absent even on the hearing on 11.12.2019 and we heard the arguments made by the Applicant. We have heard the arguments made by the counsel for the Applicant and perused the documents filed by him. The Applicant has established the existence of debt and default on the part of the Respondent and the Respondent has not availed the opportunities provided by this Tribunal to defend the arguments made by the Applicant. In view of the above situation, this Tribunal admits this petition and initiates CIRP on the Respondent with immediate effect.

4. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

> "(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

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

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

5. The interim resolution professional ("IRP") proposed by the Applicant is Mr. Neeraj Bhatia (Email – nbtrace1@yahoo.com, Mobile – 9810317585) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

-Sd-

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd-

(ABNI RANJAN KUMAR SINHA)
MEMBER (JUDICIAL)

Deepak

Note: In terms of Rule 151 of NCLT Rules, 2016 this order is being pronounced on behalf of Bench – VI by Hon'ble Member (Technical) Dr. V. K. Subburaj.

Prakhar
20.12.19
Court Officer