



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V**

IB-242/(ND)/2021

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:

EIK Investment and Trading Limited

D-32, Room at Mezzanine Floor, Kamla Nagar,
New Delhi- 110007

...Financial Creditor

Versus

DBG Leasing & Housing Limited

C-88, Gali No. 8, Jyoti Colony,
Shahdara, New Delhi-110032

....Corporate Debtor

Coram:

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

PRESENT-

Counsel for Financial Creditor : Adv. Ankita Bajpai
Counsel for Corporate Debtor : Adv. Aastha Mehta and Adv.
Prerana Mohapatra

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ORDER

PER SHRI P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 16.11.2022

1. The present application is filed by M/s EIK Investment and Trading Limited (hereinafter referred to as 'Financial Creditor'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code'), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP'), against Limited (hereinafter referred to as 'Corporate Debtor'), for the alleged default on the part of the Corporate Debtor, for an amount of Rs. 1,73,08,913/-. The details of transactions leading to the filing of this application, as averred by the Financial Creditor, are as follows:

- i. That in the year 2014, the Corporate Debtor approached the Financial Creditor for availing a short term Inter Corporate Loan amounting up to a sum of Rs. 1,15,00,000/- for the purposes of meeting its operational commitments.

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- ii. That, accordingly, the parties entered into a Loan Agreement letter dated 30.06.2014 and the Financial Creditor sanctioned the short term Inter Corporate Loan amounting to a sum of Rs. 1,10,10,895/- at an agreed rate of interest @ 12% per annum. The amount was sanctioned in 5 installments on 30.06.2014, 21.07.2014, 05.08.2014, 15.09.2014 and 04.10.2014.
- iii. That it was agreed between the parties that the principal amount along with interest under the Inter Corporate Loan will be repaid by the Corporate Debtor in 9 quarterly installments wherein 8 installments were amounting to Rs. 13,95,000/- each and the 9th installment being balance amount along with up to date interest.
- iv. That the first installment was to start on 31.03.2018 with the last installment falling due on 31.03.2020. However, the Corporate Debtor only repaid the first installment for a sum of Rs. 13,95,000/- on 31.03.2018 and Rs. 3,95,000/- on 20/21.07.2018 as against the second installment which fell due on 30.06.2018.

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- v. That the Financial Creditor approached the Corporate Debtor vide letter dated 01.08.2018 requesting to expedite the balance payment, but the Corporate Debtor vide letter dated 18.08.2018 responded stating that despite liquidity problems, they were making the earnest efforts to repay the balance amount of Rs. 10,00,000/- at the earliest.
- vi. That the Corporate Debtor failed to repay the balance amount as well as the amount as against the third installment that fell due on 30.09.2018.
- vii. That the Financial Creditor again requested for repayment vide letter dated 14.10.2018 but the Corporate Debtor failed to disburse any amount.
- viii. That, due to the delay in payments, the Financial Creditor on 15.04.2019 recalled the entire outstanding loan amount with interest.
- ix. That, as on 28.02.2021, Rs. 92,20,895/- being the principal amount towards the loan advanced and amount of Rs. 80,28,018/- being the interest thereto @12% per annum commencing from the date of default i.e. 30.06.2018 till 28.02.2021.



2. Consequent to the notice issued by this Tribunal, the Corporate Debtor filed its reply in which the following contentions are made:

- i. That at the time when the parties entered into the Loan agreement dated 30.06.2014, the Corporate Debtor was carrying on business as a registered Non-Banking Financial Institution (hereinafter referred to as “NBFC”) duly recognised by the Reserve Bank of India vide Certificate of Registration bearing No. B-14.00477 issued under the provisions of Section 45-IA of the Reserve Bank of India Act, 1934.
- ii. That the Applicant vide the present application has sought to initiate Insolvency proceedings against a company for an alleged default that occurred during the period when the Respondent was a registered NBFC and the same is against the provisions of the Code. In support of the same, reliance has been placed upon the decisions of the NCLAT in *Randhiraj Thakur v. Jindal Saxena Financial Services (P.) Ltd* [2018 SCC OnLine NCLAT 508] and NCLT in *HDFC Bank Ltd.*

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v. RHC Holding Private Limited [2018 SCC OnLine NCLT 27947].

iii. That the Respondents herein continued to carry on functioning as a NBFC till 16.09.2019 i.e., the date on which the certificate of registration granted to the Respondent was cancelled in terms of Section 45-IA (6) of the Reserve Bank of India Act, 1934.

3. That the Financial Creditor has filed its rejoinder in which the facts of the case were reiterated and the following contentions were made:

- i. That the Respondent was not a registered Financial service provider in terms of the Reserve Bank of India Act, 1934 at the time of filing of the captioned petition i.e. on 30.03.2021.
- ii. That the Respondent has wrongly placed reliance upon the decision of the NCLAT in *Randhiraj Thakur v. Jindal Saxena Financial Services (P.) Ltd.* , [2018 SCC OnLine NCLAT 508] as well as the decision of a co-ordinate bench of the NCLT in *HDFC Bank Ltd. v. RHC Holding Private Limited* [2018 SCC

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OnLine NCLT 27947] for the reason that in both the cases, the Corporate Debtors were registered NBFCs as per the Reserve Bank of India Act, 1934 and continued to function as same while in the present case, as per Respondent's own admission in their Reply, the registration certificate No. B-14.00477 stood cancelled on 16.09.2019.

iii. That the Respondent was not granted exemption from the purview of Section 7 of the Code on account of functioning as a Non Banking Financial Company in terms of the Reserve Bank of India Act, 1934 because at the time of filing of the present application they has ceased to function as an NBFC.

4. We have heard the Ld. Counsel's who appeared for the Financial Creditor as well as Corporate Debtor and perused the averments made in the application, reply and the rejoinder as well as the additional documents and written submissions filed by the parties.

5. Mere plain reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the

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applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. That while dealing with an application under section 7 the Adjudicating Authority is required to consider the question whether the 'debt' and 'default' is proved or not.

6. In the case at hand, we have perused the Loan Agreement dated 30.06.2014, the Resolution passed in the EGM of the Board of Directors for the purpose of compliance of Section 186 of the Companies Act 2013, Statement of Account of the Corporate Debtor from the period 01.04.2014 to 31.03.2020 and the Bank Statements of the Financial Creditor for the period 01.04.2014 to 31.03.2015, we find that the aforementioned documents evidence that a loan agreement was entered into by the parties and the loan was sanctioned at an interest of 12% per annum. The Financial Creditor disbursed a total loan amount of Rs. 1,10,10,895/- to the Corporate Debtor and further, part-payment of Rs. 13,95,000/- on 31.03.2018, Rs. 3,65,000/- on 20.07.2018 and Rs. 30,000/- on 21.07.2018 was made by the Corporate Debtor towards the repayment of

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loan amount. We have also gone through the correspondences dated 01.08.2018, 18.08.2018, 14.10.2018 and 15.04.2019 which show a working relationship between the parties and also shows that due to financial constraints, the Corporate Debtor was unable to pay the installments.

7. That, the Corporate Debtor, in his reply, has not disputed the fact that there was an agreement between the parties and has reiterated the same in para 8 and 9 of the Reply. The Corporate Debtor has raised one substantive objection on the maintainability of the present application as the default occurred when the Corporate Debtor was a registered NBFC.
8. At this juncture, we would also like to refer Section 3(7), 3(8), 3(17) and 3(18) of the Code which relates to the case in hand and the said Sections are quoted below:-

3(7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

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3(8) “corporate debtor” means a corporate person who owes a debt to any person;

3(17) “financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;

3(18) “financial sector regulator” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;

9. On the conjoint reading of the above, when we consider the case at hand, then we find that the Corporate Debtor has admitted that the certificate of registration dated 25.04.2003 issued by the RBI was cancelled on 16.09.2019 in terms of Section 45-IA(6) of The Reserve Bank of India Act, 1934. This evidently shows that the Corporate Debtor ceased to function as an NBFC and is no more engaged in the business of providing financial services. The present application was filed on 30.03.2021 and therefore, the exemption granted as per Section 3(7) of the Code is not applicable in the present case.

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10. In the light of the aforesaid facts, we find that the Loan agreement executed between the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted the repayment of Loan which is duly admitted by Corporate Debtor vide letter dated 18.08.2018.

11. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates** CIRP on the Corporate Debtor with immediate effect.

12. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Rajeev Ranjan Singh, for appointment as Interim Resolution Professional having registration number (IBBI/IPA-002/IP-N00707/2018-2019/12418) having email id rajeevranjan6476@gmail.com.



13. Mr. Rajeev Ranjan Singh has agreed to accept the appointment as the Interim Resolution Professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 22.03.2021. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Rajeev Ranjan Singh as per the requirement of the IBBI Regulations. The applicant has also placed on record the Certificate of Registration of the Insolvency Professional dated 09.04.2019 and he has valid AFA valid till 24.11.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

14. It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

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15. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
16. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
17. Mr. Rajeev Ranjan Singh, having registration number (IBBI/IPA-002/IP-N00707/2018-2019/12418) having email id rajeevranjan6476@gmail.com is appointed as the Interim Resolution Professional.
18. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
19. We also declare moratorium in terms of Section 14 of the Code.
The necessary consequences of imposing the moratorium flows



from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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;

(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.”

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20. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

21. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. He shall file his report within 30 days before this bench.

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MEMBER (TECHNICAL)

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