



THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III

IB-687/ND/2022

U/s. 7 of the IBC, 2016 and Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF:

YATIN JINDAL

Registered office at:

J-147, Ashok Vihar Phase - I,

Delhi - 110052

...Financial Creditor

Versus

POMEGRANATE COATERS PRIVATE LIMITED

Registered office at:

KD-17, MIG Flates

New Delhi – 110034

...Corporate Debtor

Order Delivered on: 15.09.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

**Appearances:**

Financial Creditor : Mr. Deepak Garg, Advocate

Corporate Debtor : Mr. Vaibhaw Jairaj, Advocate

ORDER**Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The instant application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor, Mr. Yatin Jindal is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., Pomegranate Coaters Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate Debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Financial Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Applicant stood as guarantor for the credit facilities and terms loans availed by the Corporate Debtor from the Bank of Baroda and also mortgaged his property comprising a land situated at Nathupur, Sonapat.



b) It is further averred by the Applicant that, the Corporate Debtor failed to pay the interest and loan instalments to the Bank of Baroda and the Corporate Debtor was declared as NPA by the Bank. Further, to recover it dues the Bank of Baroda initiated SARFAESI proceedings against the Corporate Debtor and through auction sold the above mentioned property of the guarantor for an amount of Rs. 80,28,990/-.

c) The Financial Creditor to recover its dues and being a guarantor requested the Corporate Debtor to repay the funds in accordance with the value of the land that the bank sold at the auction. All the requests of the Applicant fell on deaf ears as the Corporate Debtor failed to pay the due amount. However, the Corporate Debtor entered into a Loan Agreement dated 01.10.2021 and the abovementioned amount was converted into a Loan Agreement with an interest of 8% p.a. The Corporate Debtor again failed to repay the instalments as per the terms of the Loan Agreement.

d) The Financial Creditor sent a Demand Notice of the outstanding loan amount to the Corporate Debtor, wherein the Financial Creditor gave a final reminder to the Corporate Debtor to pay the total amount in default, i.e., 1,22,68,972/-. (Rupees One Crore Twenty Two Lakh Sixty Eight Thousand Nine Hundred Seventy Two only).

3. In response, the Corporate Debtor has not raised any legal defence but however, only submitted that the business of the Corporate Debtor was not running smoothly and due to financial crises it was not possible for the



Corporate Debtor to pay its outstanding dues. The Corporate Debtor has sought time to pay the outstanding dues.

4. We have heard the arguments advanced by Ld. Counsels appearing for Financial Creditor as well as for the Corporate Debtor and also perused the record.

5. In context to the facts of the present case, it is pertinent at this stage to refer to the definition of default stipulated u/s 3(12) of IBC code 2016.

“(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not by the debtor or the corporate debtor, as the case may be”.

Thus, Section 3(12) defines that non-payment of the debt either whole or any part or instalment which has become ‘due’ would be termed as default. It is observed in pursuance of the Loan Agreement dated 01.10.2021 that, the Corporate Debtor itself acknowledged that the amount of Rs. 1,17,97,088/- is outstanding and moreover promised to pay the due amount by 31.03.2022 but failed to do so. The Loan Agreement is duly signed and acknowledged by the Director of Pomegranate Coaters Private Limited i.e., Corporate Debtor which proves that Corporate Debtor was fully aware of the terms and conditions with respect to Loan Agreement. Thus, we are of the considered view that the Loan amount is due and payable upon the Corporate Debtor. In the light of the above mentioned facts, when we consider the submissions of



the Financial Creditor for the claims towards the Loan amount disbursed to the Corporate Debtor, it appears to us that the failure of the Corporate Debtor to make payment of the Loan amount will be considered as 'Default'.

6. It is also pertinent at this stage to refer the decision of Hon'ble Supreme Court given in ***M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (Civil Appeal No. 7121 of 2022)***. The relevant paragraph is reproduced below for reference: -

10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. Thus, even the non-payment of a part of debt when becomes due and payable will amount to default on the part of Corporate Debtor. In such a case, an order of admission under section 7 of IB code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under section 7 can be rejected. Otherwise, there is no ground available to reject the application.

7. Thus, in view of the foregoing, we have no hesitation to hold that the contentions raised by the Corporate Debtor are not tenable in law or fact, and they cannot be taken as valid grounds for rejection of instant application. The Financial Creditor has placed adequate evidence to establish that there exists a Financial Debt of an amount exceeding the threshold provided U/S 4 of the



Code, which the corporate debtor was liable to pay but defaulted in making such payment. Accordingly, we hereby admit the instant application filed by Financial Creditor U/s 7 of the IBC, 2016.

8. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Vinay Kumar Singhal having Regn. No. IBBI/IPA-002/IPN00624/2018-2019/11880 as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

9. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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 (54 of 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.

e. The explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

10. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

11. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

12. The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor’s



assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

13. The Financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Financial Creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

14. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

15. The application bearing IB – 687/(ND)/2022 is ***admitted***.

SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

SD/-

BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)