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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

IBA/40/2019 filed under Section 7 of
the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of *M/s. Prescott Productions Private Limited*

M/s. Jacob Scientifics

Rep by its Proprietor Mr. Reji Jacob

-vs-

... Financial Creditor

M/s. Prescott Productions Private Limited

... Corporate Debtor

Order delivered on 23rd of August, 2019

CORAM :

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : *M/s. Kaushik N Sharma, Counsel*
For Corporate Debtor : *M/s. Jerin Asher Sojan, Counsel*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Adjudication is IBA/40/2019 that has been filed by ***M/s. Jacob Scientifics*** (hereinafter referred to as '**Financial Creditor**') under Section 7 of the Insolvency &

Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Prescott Productions Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Heard the Counsels for the Financial Creditor, Corporate Debtor, and perused the pleadings including the documents placed on file.
3. The Financial Creditor has claimed an amount of Rs.1,13,00,000/- as outstanding against the Corporate Debtor as on the date of filing of the Application, which the Corporate Debtor has failed to pay.
4. The brief facts of the case are that the Financial Creditor is a leading marketing company and distributors of various surgical disposable products to hospitals and

pharma companies in India. The Corporate Debtor is a manufacturer of wet wipes surgical kits. The Financial Creditor has approached the Corporate Debtor with a business proposal to get wet wipes and surgical kits manufactured and supplied by the Corporate Debtor. Accordingly, the Financial Creditor and the Corporate Debtor have entered into an Agreement dated 21.06.2017.

5. Subsequently, the Financial Creditor and the Corporate Debtor have entered into a Memorandum of Understanding on 21.06.2017 wherein the Financial Creditor had agreed to advance Rs.15 Lakhs to the Corporate Debtor which would be adjusted towards the supply of "Cool Bath" wet wipes and surgical kits by the Corporate Debtor. Copy of Memorandum of Understanding dated 21.06.2017 is placed at pages 38 and 39 of the typed set filed with the Application.

6. The Financial Creditor had advanced the following sums of money towards the Working Capital of the Corporate Debtor and the sums advanced by the Financial Creditor was used by the Corporate Debtor in manufacturing wet wipes and surgical kits. The details of the sum advanced by the Financial Creditor to the Corporate Debtor are as follows;

Date	Amount
22.06.2017	₹15,00,000/-
01.08.2017	₹20,00,000/-
07.09.2017	₹30,00,000/-
11.10.2017	₹25,00,000/-
14.11.2017	₹10,00,000/-
29.01.2018	₹6,00,000/-
29.01.2018	₹4,00,000/-
30.01.2018	₹3,00,000/-
TOTAL	₹1,13,00,000/-

The Financial Creditor has placed on the file the statement of transactions for the period from 01.08.2017 to 31.08.2017 at pages 41 to 47 of the typed set filed with the Application, which reflects the sums advanced by Financial Creditor to the Corporate Debtor.

7. The Corporate Debtor has supplied wet wipes and surgical kits to the Financial Creditor for a sum of Rs.71,14,683.80/- (Rupees Seventy One Lakhs Fourteen Thousand Six Hundred and Eighty Paise Only). Thereafter, the Financial Creditor has sent several e-mail communications to the Corporate Debtor requesting to refund the sum of money advanced by the Financial Creditor. The e-mail communications reflect that the Corporate Debtor has admitted the liability and expressed its inability to make the supplies and agreed to repay the sum advanced by the Financial Creditor.

8. The Corporate Debtor has also issued Cheque No.043074 dated 31.08.2018 drawn on Indian Bank, MSME Branch, Mylapore, Chennai for a sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) towards repayment of the sum advanced by the Financial Creditor. On presentation of the aforementioned Cheque to the Financial Creditor's Bank, the same was dishonoured on 10.09.2018 for stop payment

order issued by the Corporate Debtor. The Financial Creditor has filed the present Application under Section 7 of the I&B Code, 2016 and has asserted that the sum advanced by the Financial Creditor falls under the definition of '*financial debt*', under Section 5(8)(f) of the I&B Code, 2016.

9. The Corporate Debtor has filed Counter on 15.04.2019 wherein it has been stated that the Application filed by the Financial Creditor is completely devoid of facts and is filed with an ulterior motive by abusing the provisions of IBC Code. Further, it is stated that the Application is not maintainable as there is no existence of any Financial Debt that is owed by the Corporate Debtor to the Financial Creditor and on this ground alone the Application is liable to be dismissed *in limine*.

10. The lone ground that has been taken by Corporate Debtor in its defence is that 'the Application is not maintainable as there is no existence of any *Financial Debt*'.

Apart from that the Corporate Debtor does not have any other legal tenable grounds to defend his case.

11. Before this Tribunal proceeds further, it is necessary to extract Sec. 5(8) of the I&B Code, 2016;

5. Definitions

(8) "Financial Debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes –

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or

*purchase agreement, having the
commercial effect of a borrowing*

12. The Corporate Debtor in its Counter has stated that an Application under section 7 of the I&B Code 2016 can be filed only by a Financial Creditor based on the existence of a “Financial Debt”. Therefore, the existence of a Financial Debt is a condition precedent for the initiation of the CIR Process. Further, it is contended that the definition of ‘Financial Creditor’, refers to a person to whom such debt has been legally assigned or transferred to.

13. The Corporate Debtor has further contended that for any person to fall within the definition of ‘*Financial Debt*’, the Applicant is required to satisfy that there is a debt along with interest, if any, which has been disbursed and that such disbursement has been made against the ‘consideration for the time value of money’. It is contended that the money advanced by the Financial Creditor and the claim made herein are made with a fraudulent intention of

extracting money from the Corporate Debtor by misusing the Code and there is no supportive documentary evidences to substantiate that the claim made against the Corporate Debtor are disbursed for time value of money. The Financial Creditor neither did render any service to the Corporate Debtor nor provide any goods to the Corporate Debtor.

14. That being the case, on 20.08.2019, one of the Directors of the Corporate Debtor viz., Mr. M. Venkateshwar Rao, holding 50% of the shares, has caused appearance and filed an Affidavit wherein under Para 4, it has been stated as follows;

- “1.
2.
3.
4. *I state that to fund the working capital requirements a “**Financial Arrangement**” was made by our Company M/s. Prescott Productions Pvt. Ltd with the Petitioner whereby he had paid an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) on 21.06.2019 which enabled our*

Company to procure Raw materials, engage labour, manufacture the products and supply finished products.

5.....”

15. Further, in Paras 8 and 9 of the said affidavit, it has been stated as follows;

*“8. I state that to overcome difficulties and to raise funds for the operations, it was decided to approach the Petitioner again with another **“Financial Arrangement”** for funding the working capital requirements.*

*9. I state that the petitioner had agreed to the **Financial Arrangement** and on various dates has paid a total amount of Rs.48,00,000/- (Rupees Forty Eight Lakhs) repayable on demand with interest.”*

16. Thus, it has become evidently clear that the Corporate Debtor has availed *“Financial Arrangement”* from the Financial Creditor for funding working capital of the Company, and hence, the Application filed by the Financial Creditor falls within the meaning of *‘Financial Debt’* as defined under Section 5(8)(f) of the I&B Code, 2016, and

therefore, the Application filed by the Financial Creditor under Section 7 of the I&B Code, 2016 is maintainable. Further, during the course of arguments, one of the Directors of the Corporate Debtor has admitted the liability and prayed to pass an appropriate order. Thus, there is a clear admission of the outstanding debt due to the Financial Creditor by the Corporate Debtor.

17. The documentary evidence which is placed on the case file is sufficient to ascertain the existence of a default on the part of the Corporate Debtor. The Financial Creditor has fulfilled all the requirements of law including the name of the Resolution Professional for appointment as the IRP. Hence, the Application stands admitted. The commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

18. Mr. Pathukasahasram Raghunathan Raman, is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as reflects from Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

19. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is hereby 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;

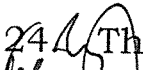
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the 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.

20. The supply of essential goods or services of the Corporate Debtor/Guarantor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

21. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The Directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.
22. The Financial Creditor and the Registry are also directed to send the copy of this Order with immediate effect to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The address details of the IRP are as follows: -

Mr. Pathukasahasram Raghunathan Raman,
Reg.No.IBBI/IPA-002/IP-N00295/2017-18/10896
Flat 'C', Srishas Kamalam Apartments,
No.93, Sivan Koil South Street, Vadapalani,
Chennai – 600 026
Phone No. 91-98410 26621
Email ID: prramancirp@gmail.com

23. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor with immediate effect.

24.  The Order is pronounced in the open court.

-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-
CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)

ATHISTAMANI