

**INTHE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH,  
KOLKATA**

**C.P (IB) No.222/KB/2021**

**In the matter of**

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

**M/s Subham Goodwill Private Limited**, a Private Non-Government Company, registered under the provisions of the Companies Act, 1956 CIN U51101DL2001PTC112279, having its registered office at X-37, Pratap Street, Gandhi Nagar, Delhi East, Delhi- 110031.

*... Financial Creditor*

Versus

**In the matter of:**

**M/s Monet Vyapaar Private Limited**, a Private Non- Government Company, registered under the provisions of Companies Act, 1956 bearing CIN: U51909WB1994PTC061471, having its Registered office at 9/A/1B, Chetla Road, Kolkata-700027, West Bengal.

*...Corporate Debtor*

Date of hearing : 29/03/2022

Order Pronounced on : 27/04/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish ChanderSuri, Member (Technical)***

**Counsels appeared through Video Conference**

1. Ms. Urmila Chakraborty Adv. } For the Corporate Debtor
2. Mr. Ranjana Seal, Adv.

## **ORDER**

**Per: Harish ChanderSuri, Member (Technical)**

1. The Court is convened by video conference today.
2. This petition section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Subham Goodwill Private Limited**, through its Director Mr. Kamal Sapui, having its office at CIN: U51909WB1994PTC061471, having its Registered office at 9/A/1B, Chetla Road, Kolkata-700027, West Bengal (hereinafter referred as the Financial Creditor) and seeks initiation of Corporate Insolvency Resolution Process in respect of **Monet Vyapaar Pvt. Ltd.**, a corporate entity bearing CIN: U51909WB1994PTC061471, having its Registered office at 9/A/1B, Chetla Road, Kolkata-700027, West Bengal (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Corporate Debtor had been sanction an unsecured loan of Rs.6,00,00,000/-(Rupees Six Crores only) by the Assignor i.e. Non Stop Marketing Pvt. Ltd. The Loan agreement was duly accepted and executed by the assignor of the Corporate Debtor. It is submitted that the Financial Creditor disbursed the sum of Rs.5,94,75,000/- from 29<sup>th</sup> March, 2008 to August, 2017 and in several tranches and the said disbursement was confirmed by the Corporate Debtor by issuing of receipt and the promissory notes. It is submitted that on 10<sup>th</sup> June, 2019 and 15<sup>th</sup> July, 2019, the assignor intimated the Corporate Debtor that a balance principal sum of Rs.3,00,25,000/- along with interest @ 12% pa has fallen due and requested the Corporate Debtor to make the said payment immediately. It is submitted that on 29<sup>th</sup> July,2019, the Corporate Debtor requested the assignor for waiver of interest on loan and on 14<sup>th</sup> August, 2019. On the request of the Corporate Debtor, the assignor waived the interest on the condition that the balance amount shall be paid within 4 months from the date of receiving the said letter dated 14<sup>th</sup> August, 2019.

4. It is submitted on 31<sup>st</sup> December, 2019 again, the Corporate Debtor requested the assignor for further extension of time vide letter 31<sup>st</sup> December, 2019. It is submitted that Financial Creditor i.e. Non Stop Marketing Pvt. Ltd. assigned said debt to M/s Shubham Goodwill Pvt. Ltd. vide assignment agreement dated 2<sup>nd</sup> July, 2020 and on 2<sup>nd</sup> July, 2020, the assignor intimated the Corporate Debtor as regards assignment of debt in favour of assignee Shubham Goodwill Pvt. Ltd. On 3<sup>rd</sup> July, 2020. The assignee also intimated to the Corporate Debtor that they had acquired the financial assets of assignor due from the Corporate Debtor and vide letter dated 10<sup>th</sup> July, 2020, the Corporate Debtor intimated the assignor Shubham Goodwill Pvt. Ltd. they have updated their record regarding the debt assigned and replaced the Financial Creditor. It is submitted that on default having been committed by the Corporate Debtor, on 31<sup>st</sup> March, 2021, the Financial Creditor issued demand notice to the Corporate Debtor.
5. It is submitted that a sum of Rs.13,25,96,262/- along with interest @ 12% pa is due till 30<sup>th</sup> June 2021, and further interest till the date of payment. It is further submitted in the petition that the aforesaid debt fell due on 28<sup>th</sup> March,2019, and the date on which the default had occurred and its working in the tabular form is annexed as Annexure- P to the petition.
6. It is submitted that the Corporate Debtor had sent confirmation of account from time to time. It is submitted that the copy of the bank statement of Financial Creditor from March, 2019 to 31<sup>st</sup> March, 2021, evidencing non receipt of due amount from the Corporate Debtors is annexed as Annexure-R to the petition.
7. In the reply affidavit filed by the Corporate Debtor through one of its Directors Mr. Ajay Agarwal, it is submitted that the present application is not maintainable and should be rejected in limine; the application is barred by law of limitation; the application is barred by principles of

estoppel and that the petition is bad in law as the Financial Creditor had suppressed material facts from this Adjudicating Authority.

8. In the reply affidavit, the Corporate Debtor has denied that the Corporate Debtor intentionally or deliberately failed or neglected to repay the loan amount to the Financial Creditor or assignor i.e. Non Stop Marketing Pvt. Ltd. as per the sanction letter. It is further denied by the Corporate Debtor that the Non Stop Marketing Pvt. Ltd. had disbursed the amount of loan in favour of the Corporate Debtor. It is denied that the amount of Rs.13,02,81,201/- along with interest or charges, are due and payable by the Corporate Debtor to the Financial Creditor. It is submitted on behalf of the Corporate Debtor that the Non Stop Marketing Pvt. Ltd. had never informed the Corporate Debtor about the assignment of the loan account to the Financial Creditor and that Non Stop Marketing Pvt. Ltd. as well as the assignor has never declared the account of the Corporate Debtor as NPA. It is further denied that any mounting default is held by the Corporate Debtor. It is denied that the Non Stop Marketing Pvt. Ltd. assigned any financial assets pertaining to the Corporate Debtor by way of any assignment agreement and that by virtue of said assignment agreement, the Financial Creditor stepped into the shoes of the original lender as alleged. It is denied by the Corporate Debtor that the Financial Creditor has become entitled to enforce any of the rights of the original lender bank in respect of the subject loan account of the Corporate Debtor or the underline securities as alleged or at all. The Corporate Debtor has further denied that Corporate Debtor has made any default to repay the amount. It is submitted that the Corporate Debtor had served request letter in favour of the assignor for waiving the rate of interest and extension of time to repay the loan amount. It is submitted that the Financial Creditor or the assignor has never given any response to that effect. It is further denied that the Corporate Debtor is making default to repay the loan amount and it is also denied that the amount of Rs.13,25,96,262 is due or payable by the Corporate Debtor. The Corporate Debtor has disputed and denied all the documents. It is further denied that no demand notice has been served by the Financial

Creditor as per the provisions of the Code before initiating the Insolvency resolution process. The Corporate Debtor has further denied that the Financial Creditor has complied with the requirement under the Code for filing the present application. It is submitted that the Financial Creditor has filed a false case against the Corporate Debtor and the application should be dismissed with cost.

9. Ld. Counsel for the Financial Creditor filed Rejoinder, it is submitted that The Financial Creditor filed rejoinder affidavit of one Kamal Sapui, Director of the Company. The Financial Creditor denied each and every fact mentioned in the reply affidavit and reiterated the facts stated in the petition. It is submitted that the Corporate Debtor had made an attempt to raise a moonshine defense such as the tabular form not been very clear to the Corporate Debtor. It is submitted that all the statements made by the applicant are supported by the letters issued by the Corporate Debtor himself and thus cannot be denied at all, and till date has never been denied by the Corporate Debtor, it is for the first time in this reply affidavit such points are being raised to avoid Corporate Insolvency Resolution Process. It is denied that non-stop marketing private limited has never informed the Corporate Debtor about the assignment of the loan account to the financial Creditor as alleged or at all. Vide letter dated 2<sup>nd</sup> July,2020, Non Stop Marketing Pvt.Ltd. had duly informed the Corporate Debtor about said assignment. Said letter is annexed to the application at page 87. The Financial Creditor herein had also informed the same to the Corporate Debtor which is annexed to the application at page 88. At page 90, the letter dated 10<sup>th</sup> July, 2020 has been disclosed by the applicant wherein the Corporate Debtor itself has accepted that they have updated their record regarding the debt assigned and replacement of the name of non-stop marketing private limited with the Financial Creditor.
10. The Financial Creditor has drawn attention of this Adjudicating Authority to pages 84 to 86 of the application wherefrom it is apparent that the amount due to the financial creditor herein has been categorically

admitted by the Corporate Debtor and there is admission that due to their adverse financial constraints their finances is in grave difficulty and on such ground a plea has been made for extension of time to repay the loan. The Demand promissory notes at pages 49 to 56 (Annexure-F) of the application and the confirmation of payment received at page 57 to 68 which has been issued by the Corporate Debtor itself make it amply clear that the principal amount has indeed been disbursed to the Corporate Debtor.

11. Even though there is no provision for compulsory service of demand notice before a case is instituted under section 7 of the Code, but it is apparent from the documents annexed to the application that several demand notices were served upon the corporate debtor which forms a part of the application.
12. The petition has also been filed by the Financial Creditor under Section 7 of the IB Code within the period of limitation and there cannot be any bar on the ground of limitation as claimed by the Corporate Debtor.
13. The Financial Creditor has proposed the name of **Mr. Sudipta Ghosh**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00484/2017-18/10872**, who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.
14. From the aforesaid pleadings, and after going through all the documents, including the arguments advanced in Court by the Ld. Counsel for the parties, we are fully convinced that the petition of the Financial Creditor under section 7 IBC deserves to be admitted. we ,therefore , pass the following orders:-

## **O R D E R S**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
  
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
  
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
  
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Sudipta Ghosh, IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/IP-P00484/2017-18/10872**, and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor /Applicant is directed to deposit **Rs.3,00,000/- (Rupees Three Lacs only )** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

15.Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

16.List the matter on **16/06/2022** for filing of **Progress Report**.

17. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on the 27<sup>th</sup> day of April, 2022

PJ.