

IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI
COURT-VI

C.P. NO. IB-3228 (ND)/2019

IN THE MATTER OF:

M/S Sai Precious Traexim Pvt. Ltd.

..... **Petitioner**

V.

Pine View Portfolio Consultant Pvt. Ltd **Respondent**

**SECTION: Under Section 7 of The Insolvency and
Bankruptcy Code, 2016**

Judgment delivered on:31.01.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

**For the Petitioner: Mr. Kamalpreet Singh, Proxy
Counsel**

ORDER

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

1. M/S Sai Precious Traexim Pvt. Ltd., claiming as the financial creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency



Resolution Process in respect of respondent Company Pine View Portfolio Consultant Pvt. Ltd. referred to as the corporate debtor.

2. The Respondent Pine View Portfolio Consultant Pvt. Ltd. against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 28.06.2007 having its registered office at property no. 72 A, Shop No.2, DDA Flats, Stayam Enclave, Jhilmil, East Delhi- 110095. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. The applicant has proposed the name of Mr. Ajay Kumar Kathuria, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/ IP-N00655/ 2018-19 /12037 resident of A-139, 2nd Floor, Shanker Garden, Vikaspuri, New Delhi. Mr.Ajay Kumar Kathuria has agreed to accept appointment as the interim resolution professional and has signed a communication dated 09.04.2019 in Form 2 in terms of Rule 9(1)



of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.

4. The case of the Financial Creditor is as under:

- i. That the financial creditor is incorporated with the main objects of doing business related to wholesale in household goods.
- ii. The financial creditor on the instruction of Rajeev Aggarwal, who had certain financial dealing with the financial creditor transferred through its authorised Financial service provider namely Taj Consultancy services, Rs. 15 lacs through RTGS on 30.01.2019 and 31.01.2019 through three RTGS of Rs. 5 lacs each to Corporate Debtor and further paid Rs. 10 lacs by two RTGS by 5 lacs each on 01.02.2019.
- iii. That the Rajeev Aggarwal had assured Financial Creditor that the amount of Rs. 25 lacs only so paid to corporate debtor will be repaid within three



months along with interest @ 24 % per annum from the date of payment.

iv. Despite several request and demand, the corporate debtor did not repay the outstanding amount payable to the financial creditor was compelled to file one criminal complaint vide diary no. 31-A dated 20.09.2019 before the New Friends Police Station and the same is pending enquiry.

v. That the Financial Creditor got served the legal notice dated 05.11.2019 through its counsel to the Corporate Debtor thereby demanding the amount payable by the corporate debtor, however the same was not replied.

5. The applicant further submitted that despite several reminders on the part of the petitioner, the respondent has failed to make the payment of Rs. 29,52,765/- which are due and in default.

6. The Respondent did not reply to either the legal notice or the application.



7. Despite opportunity non-appeared on behalf of the respondent. Proof of service is also annexed with the main petition.
8. Heard the Applicant and perused the record.
9. It is patent that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.
10. The provisions of Section 7 (2) and Section 7 (5) of IBC stand satisfied but the same may be read as under:-

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)



7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b)

11. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default



amounting to lacs of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission as it is complete in all respects.

12. As a sequel to the above discussion, this petition is admitted and Mr. Ajay Kumar Kathuria, resident of A-139, 2nd Floor, Shanker Garden, Vikaspuri, New Delhi is appointed as an Interim Resolution Professional. He has registration no. IBBI/IPA-002/IP-N00655/ 2018-19 /12037.

13. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the



following prohibitions are imposed which must be followed by all and sundry:

- “(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;
- (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.”

15. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the

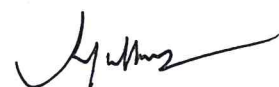


Central Government in consultation with any financial regulator;
(b) a surety in a contract of guarantor to a Corporate Debtor.
Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



17. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate



Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

-Sd-

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

-Sd-

(SHRI ABNI RANJAN KUMAR SINHA)
MEMBER (JUDICIAL)