

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1575(PB)/2019

IN THE MATTER OF:

Emmegi S.p.A. Italy

....Financial Creditor/Petitioner

v.

Emmegi India Private Limited

....Corporate Debtor/Respondent

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

Judgment delivered on 22.10.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

SHRI S.K. MOHAPATRA
HON'BLE MEMBER (T)

PRESENT:

For the Petitioner

Mr. Jayant Mehta, Ms. Tina Abraham
& Ms. Vatsala Kumar, Advocate

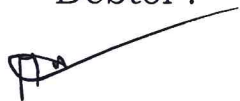
For the Respondent

Mr. Lzafeer Ahmad, Advocate

M.M. KUMAR, PRESIDENT

JUDGMENT

The Petitioner claiming to be 'Financial Creditor' has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of Emmegi India Private Limited, who is stated to be the 'Corporate Debtor'.



2. The Corporate Debtor – Emmegi India Private Limited was incorporated on 10.01.2014 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U29253DL2014PTC263360.

3. The 'Financial Creditor'-Petitioner has proposed the name of Interim Resolution Professional, Mr. Deepak Maheshwari with the address 443, 4th Floor, Tower A-2, Spaze I-Tech Park, Sohna Road, Gurgaon-122001, email id deepak@jindahilive.com. His Registration number is IBBI/IPA-002/IP-N00531/2017-18/11594. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. It is the pleaded case of the petitioner that the Corporate Debtor owes it huge amount which was disbursed vide two loan facility agreements (Annexure A-2 & A-4) dated 25.05.2015 & 17.02.2016. The details of financial debt advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount disbursed under aforesaid two loan agreements on 03.07.2015 & thereafter on 05.04.2016 is claimed to be EURO 60,000/-. The aforesaid amount has been advanced

on interest payable at six months. According to the averments made in Para 2 of Part-IV the default has occurred in respect of the aforesaid facility (two loan facility agreements) on 31.12.2017 and 31.12.2018.

5. In view of the repeated defaults on the part of the Corporate Debtor and to comply with the schedule of repayment of the principal and interest dues, the Financial Creditor issued a notice dated 02.05.2019 (Annexure A-7) to the Corporate Debtor calling upon it to pay an outstanding amount of EURO 62,323.06 together with further interest and other charges as on 31.03.2019.

6. The precise case of the Petitioner thus is that the total amount in default due to the Petitioner by the Respondent-Corporate Debtor under aforesaid two loan agreements as on 31.03.2019 is EURO 62,323.06/-.

7. In response to the notice of the petition the respondent has filed reply. Except other pleadings, in paras 6 & 7 there is categorical admission with regard to the non payment of the amount due and the aforesaid paras 6 & 7 are set out below for facility of reference:-



“6. On 2 May 2019, the Respondent Company received a recall notice from the Applicant Company, calling upon the Respondent Company to repay the entire principal amount and the outstanding interest, aggregating to EURO 62,323.06 with further interest, within 5 days of the receipt of the notice. However, the Respondent Company did not have sufficient funds and was not in the financial position to repay the demanded amount.

7. The Respondent Company has been incurring business losses and does not have the funds to service this debt repayment obligation.”

8. At the hearing today Mr. Lzafeer, Ld. Counsel for the respondent company in categorical terms has stated that there is admittedly default of the amount which was due and payable and the same is more than Rs. 1,00,000/- as per the provisions of Section 4 of the Code.

9. Having heard learned counsel for the parties and in view of the candid admission made by the Respondent in paras 6 & 7 of the reply with regard to the non payment of the amount due we are of the considered view that the Financial Creditor has

succeeded in establishing a case for triggering the Corporate Insolvency Resolution Process.

10. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

11. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, shows that a default has to be proved and the application under sub section 2 of Section 7 must be completed. The proposed IRP does not have any disciplinary proceedings pending against him. As already noticed all these elements are satisfied and therefore the petition warrants admission.

12. As a sequel to the above discussion, this petition is admitted and Mr. Deepak Maheshwari is appointed as the Interim Resolution Professional.

13. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central



Government. 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 supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code. The public announcement is required to be made in all territories/areas where the business have been transacted by the Corporate Debtor so that all stakeholders may have noticed of the fact that Corporate Insolvency Resolution Process has been triggered in respect of the Corporate Debtor.

15. 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 as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

16. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

17. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.



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.

Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (T)

22.10.2019
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