

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 30/ND/2023

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

IN THE MATTER OF:

M/s. Regency Fincorp Limited

Unit No. 57-58, 4th Floor,
Sushma Infinium Chandigarh-Ambala Highway,
Zirakpur Zirakpur Mohali Punjab 140603

...Applicant/Financial Creditor

Versus

M/s. Manhar Logistics Private Limited

A-26, Ground Floor, Jawahar park,
Devli Road, New Delhi-110062

...Respondent/Corporate Debtor

Order Delivered on: 28.02.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)

DR. SANJEEV RANJAN, HON'BLE MEMBER (T)

Appearances:

For the Applicant : Pranam Jain, Advocate and Gursat Singh, Adv.

For the Respondent : Mr. Saral Sharma, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed 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, by M/s. Regency Fincorp Limited (hereinafter referred to as 'Financial Creditor'), represented by Mr. Gaurav Kumar, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Manhar Logistics Private Limited ("Corporate Debtor"). The Financial Creditor was incorporated on 29.03.1993, having Identification No. U65921PB1995PTC016302.

2. The Corporate Debtor was incorporated on 14.06.2006, having CIN: U29270DL2002PTC114993 under the Companies Act, 1956. Its registered office is A-26, Ground Floor, Jawahar park, Devli Road, New Delhi-110062. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is INR 50,00,000 (Fifty Lakhs). The Paid-Up Capital of the Corporate Debtor is INR 26,00,000 (Twenty-Six Lakhs).
3. The present petition was filed on 08.12.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of INR 1,32,98,556.66 which is inclusive of interest at the rate of 24% p.a (Rupees One Crores Thirty-Two Lacs Ninety-Eight Thousand Fifty-Five Hundred and Six and Sixty-Six Paise) on 01.07.2022 (date of default).

Submissions of Learned Counsel appearing for the Applicant are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) Bee Tee Credit & Marketing Private Limited and the Corporate debtor entered into a loan agreement for an amount of Rs. 1,13,15,000/- (One Crore Thirteen Lakhs Fifteen Thousand only) to the Corporate Debtor. Bee Tee Credit & Marketing Private Limited in need of the money which they had lend to the Corporate Debtor; approached the financial creditor for reimbursement of the loan amount provided to the

Corporate Debtor. The Financial Creditor and Corporate Debtor mutually decide to settle the amount to Rs. 1,05,00,000/- (exclusive of processing fees of Rs. 1,00,000/-)

- b) Financial Creditor, Corporate Debtor and Bee Tee Credit & Marketing Private Limited entered into a tripartite agreement dated 31.03.2022. Vide tripartite agreement dated 31.03.2022, it was mutually decided that the loan amounting to Rs. 1,13,15,000/- shall be paid by the Corporate Debtor with 24% interest p.a directly to the Financial Creditor with 3 months and therein the Financial Creditor shall pay Rs. 1,04,00,000/- after reducing a process fee of Rs. 1,00,000/- to the Corporate Debtor immediately after execution of the agreement.
- c) The Financial creditor on 31.03.2022, as per the tripartite agreement dated 31.03.2022, transferred a sum of Rs. 1,04,00,000/- (Rupees One crore four lakhs only). As per the loan Agreement, the Corporate Debtor was to repay the loan amount along with interest to the Financial Creditor.
- d) On several occasions i.e., 01.07.2022, 01.10.2022 and 01.11.2022, the Applicant sent reminder to the Corporate Debtor for the payment towards the repayment of loan and interest on the loan amount. Corporate debtor has also acknowledged the letters sent by the Financial Creditor for payment of outstanding amount. However, no amount has been paid by the Corporate Debtor, which has been due since 01.07.2022.

Submissions on behalf of the Corporate Debtor are as under:

5. The details of the submissions made by the Corporate Debtor in their reply to the Section 7 petition are as follows:
 - a) The Corporate Debtor had borrowed a sum of Rs, 1,13,15,000/- from the Bee Tee Credit & Marketing Private Limited for clearing the office

expense, unsecured loans as well as to pay the remuneration to the staff members, during the Covid-19 period. The borrower was in financial crunch and the Corporate Debtor was unable to repay the loan amount at the time of maturity date, the Corporate Debtor under the undue influence agreed to enter an unreasonable and patently erroneous tripartite agreement with the Financial Creditor.

- b) The Corporate Debtor pleaded the Financial Creditor for few more months to overcome the financial distress and revive the company financial, but the Financial Creditor being adamant towards the harsh decision, filed for insolvency. Financial Creditor and the Corporate Debtor had multiple meetings and telephonic discussions upon repayment to debt and the Corporate Debtor had provided full-assurance to the Financial Creditor acknowledging liability and responsibility.
- c) It is stated that the Corporate Debtor has an intent to clear the outstanding dues of the Financial Creditor, therefore, the Corporate Debtor has sought a reasonable time to repay the outstanding dues to the Financial Creditor in terms of the tripartite agreement.

Analysis and Findings

- 6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition and the reply filed by the Corporate Debtor. No written submissions presented by the either parties. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
8. In the instant petition, the Corporate Debtor had entered into a tripartite agreement with the Financial Creditor on 31.03.2022 wherein M/s Bee Tee Credit & Marketing Private Limited had assigned the loan account of the Corporate Debtor for the consideration of INR 1.05,00,000/- to the Financial Creditor. In terms of the aforesaid tripartite agreement the Corporate Debtor shall require to repay the outstanding amount within 3 months i.e., 30.06.2022 with 24% interest calculated annually. The total amount as declared outstanding and claimed by the Financial Creditor in Part IV is INR 1,32,98,556.66/- (Rupees One Crores Thirty-Two Lacs Ninety-Eight Thousand Five Hundred Fifty-Six and Sixty-Six Paise) till the filing of present petition. The Tripartite Agreement dated 31.03.2022 is placed on record.
9. The contention of the Corporate Debtor that the tripartite agreement was entered under undue influence and entered unreasonably with the Financial Creditor, cannot be considered under Section 7 petition. The issue in the Section 7 petition is merely an existence of debt and default thereon. Hence, it can't be relied upon.
10. On the perusal of the documents as placed before us such as Tripartite Agreement dated 31.03.2022 and Copy of Bank Account Statements, it is established that there was disbursement of loan amount by the Financial Creditor in favor of Corporate Debtor. Further, the Financial Creditor has issued recovery letter dated 01.07.2022, 01.10.2022 and 01.11.2022 to the Corporate Debtor requesting repayment of outstanding amount, which also have acknowledgement of the Corporate Debtor. Further, the Corporate Debtor has nowhere denied the existence of the debt in its averments. Therefore, one essential ingredient with respect to Section 7, that there has been a “debt”, stands substantiated.

11. Further, the Corporate Debtor has failed to repay the amount as undertaken, thereby committing default with respect to loan agreement and subsequent amendment agreement. Thus, it is concluded that there exists a debt worth more than Rs. 1 Crore by the Corporate Debtor towards the Financial Creditor and the said Corporate Debtor has defaulted in the repayment of the said debt. Therefore, another major essential ingredient of Section 7 i.e., “default” with respect to the debt stand substantiated.
12. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

Section 5(7) of IBC defines Financial Creditor: *“Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”*

Section 5(8) of IBC defines Financial Debt. *“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 de-materialised 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 maybe 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;
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”

13. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 08.12.2022, and even admittedly the debt owed to the Financial Creditor is an amount of INR 1,32,98,556.66 which meets the threshold of Rs. One Crore.

14. Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407**, held as follows:

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has

occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

Further, the Hon’ble Supreme Court in **Suresh Kumar Reddy v. Canara Bank in Civil Appeal No. 7121 of 2022** categorically laid down that the view taken in Innovative Industries still holds good, which lays down that the Adjudicating Authority has only to ascertain the existence of ‘debt’ and ‘default’ for admission of an application under Section 7 of the Code.

15. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IB)/30(ND) 2023** filed by M/s. Regency Fincorp Limited, the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Manhar Logistics, the Corporate Debtor, stands admitted.
16. That the petitioner in Part-III of the petition has proposed the name of **Mr. Gagan Gulati**, as Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N00893/2019-2020/12832 and E-mail ID advocategulati@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.
17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - 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 Securitization 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.*
 - e. The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, concessions, clearances or a similar grant or right during the moratorium period.*
18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation

6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Sudhanshu Gupta to meet out the expenses to perform the initial 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 said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
21. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
22. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day-to-day 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 would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.
23. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions

strictly in accordance with the provisions of the Code, Rules and Regulations.

24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
25. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./30 (ND)/2023** stands admitted.
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)