IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.489/ALD/2019
&
IA NO.158/ALD/2022
in
CP (IB) NO.489/ALD/2019

In the matter of
An application under Section 7 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:
M/s Pallia Transport Company
Having Registered office at
505, Manisha Building,
75-76 Nehru Place, New Delhi – 110019 … **Financial Creditor**

Versus

RNV Hospitality Services Private Limited
Having Registered Office at
Plot No.B-180, Flat No.1
Lohia Nagar, Ghaziabad,
Uttar Pradesh – 201001 : **Corporate Debtor**

Order reserved on: 01.06.2022

Order pronounced on: 13.06.2022

Coram:
Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Virendra Kumar Gupta : Member (Technical)

Appearances (via video conference):
For Financial Creditor : Sh. Kaushalendra Nath Singh, Advocate
Sh. Aviral Kapoor, Advocate
Sh. Krishna Dev Vyas, Advocate

For Corporate Debtor : Sh. Sohail Ahmad Ansari, Advocate

ORDER

Rajasekhar V.K, Member (Judicial)

CP (IB) No.489/ALD/2019

1. The present company petition filed 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 by **M/s Pallia Transport Company** (*hereinafter referred as the Financial Creditor*), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of **RNV**

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Hospitality Services Private Limited (*hereinafter referred as the Corporate Debtor*). The amount of default has been stated at ₹32,10,267/- and there are different dates of default which have been mentioned in Part-IV at page no.19 & 20 of Form 1 with the present application. The first date of default started on 10.10.2016 and the last date of default is 13.02.2017.

Facts of the case:

2. The facts, in brief, are that the financial creditor, on being approached by the corporate debtor granted a bridge loan to the corporate debtor to fund acquisition or construction of Micro Brewery at Gurugram. A loan of ₹30,00,000/- was granted, which carried interest @ 24% per annum. It was also agreed by and between the parties that such liability was to be discharged through weekly instalments starting from 10.10.2016 and the last instalment was to be paid on 13.02.2017.

3. It is further noted that even the first cheque was dishonoured and when this fact was pointed out to the corporate debtor, the corporate debtor requested not to initiate legal proceedings and also made promise that the corporate debtor would honour all remaining cheques. It was further assured by the corporate debtor that the amount of cheque so dishonoured will be paid along with interest from the date of default till the date of payment. The financial creditor also wrote letters asking the corporate debtor to discharge its liability. However, none of the promises were converted into reality. Consequently, this application has been filed.

Argument on behalf of Financial Creditor

4. The Ld. Counsel appearing on behalf of financial creditor after narrating these facts drew our attention to the evidence disclosing the disbursement of loan and copies of cheques given by the corporate debtor to discharge its liability. The Ld. Counsel thereafter contended that it was a case where a default had occurred in repayment of a financial debt within the meaning of provisions of section 7 of IBC, 2016. Hence, the application was liable to be admitted.

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5. As regard to the name of the Interim Resolution Professional (IRP), the Ld. Counsel said that the AFA of present IRP had expired; hence, separate application would be filed proposing the name of new IRP having valid AFA.

Arguments on behalf of corporate debtor

6. In the reply, it has been admitted that the corporate debtor took a financial assistance for a period of six months for business expansion. The corporate debtor admits this. However, it seeks to argue that there was no agreement in writing and that the financial creditor was not having business of advancing money as the financial creditor did not have any licence to do so.

7. In lieu of the cheques dishonoured, the corporate debtor made payment through NEFT on 04.10.2016 and 13.10.2016, which fact has not been disclosed by the financial creditor. Hence, the financial creditor has not come with the clean hands. During the period of demonetisation, a sum of of ₹1,00,000/- had been deposited in cash by the corporate debtor into the bank account of the financial creditor on 23.11.2016. Certain further payments have also been made in cash in lieu of the cheques. In the month of March 2017, substantial amount had been paid in cash and only a sum of ₹29,200/- was outstanding. Hence, this application was not maintainable. A chart has also been enclosed in support of such claims. It is also pleaded that the facts stated in the reply has not been denied by the financial creditor by filing rejoinder affidavit, though time to file rejoinder affidavit has been given to the financial creditor by this Adjudicating Authority.

Findings & Conclusion

8. We have considered the submissions made by both the sides and material on record.

9. As far as date and amount of disbursement of loan are concerned, the same is not in dispute though there is no written agreement to this effect. Such amount being of the nature of loan is also not in dispute as it is so admitted by the corporate debtor. The repayment period of six months for such loan is also not disputed.

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10. From the reply of the corporate debtor, it is also evident that both financial creditor as well as corporate debtor are having a business relationship for some time. The only plea which has been taken by the corporate debtor is that the amount has been paid partly through cheques and partly in cash. As regard to payment made in cash, except making oral submissions, no documentary evidence such as receipt or voucher duly acknowledged by the financial creditor has been brought on record. The claim of repayment of loan remains unsubstantiated by any evidence.

11. It is also not explained as to why the financial creditor having long business relationship would deny the fact of receipt of amount of loan back in cash. We further note that the financial creditor has written letters on 09.06.2019, 27.07.2019 and 09.09.2019 for repayment of these loans and reply to these emails by the corporate debtor, if any, has also not been brought on record.

12. Therefore, there is a debt which is due and payable both in law and in fact and a default has occurred therein. Further, the amount of default is more than the threshold limit as prescribed under section 4 of the Code, at the time of filing of the present application.

13. The name of the proposed IRP was changed and an application in IA No.158/ALD/2022 was filed by the financial creditor, proposing the name of **Mr Anurag Nirbhaya** [**Reg. No. IBBI/IPA-001/IP-P00870/2017-2018/11468]**. He holds valid AFA, and has also given his consent. There exists no material to show that any disciplinary proceedings are pending against the proposed IRP or that the IRP is otherwise ineligible to be appointed.

14. This application complies with all requirements of the Code read with relevant Rules made thereunder. There is no impediment to the admission of the present application.

15. Therefore, we pass the following orders: -

(a) The application filed by M/s Pallia Transport Company, the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for

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initiating Corporate Insolvency Resolution Process against the Corporate Debtor, RNV Hospitality Services Private Limited, is admitted.

(b) There shall be a moratorium under section 14 of the IBC.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) **Mr. Anurag Nirbhaya** [**Reg. No.IBBI/IPA-001/IP-P00870/2017-2018/11468]**, having address at 204, Sagar Plaza, Plot No.19, District Centre, Laxmi Nagar, New Delhi 110092 [AFA No.AA1/11468/02/131222/103436] to act as the IRP under section 13(1)(c) of the Code. is hereby appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

(f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. It is directed that the key managerial personnel of the Corporate Debtor shall coordinate with the Interim Resolution Professional to hand over the documents, and this shall be done without further delay.

(g) The IRP/RP shall submit to this Adjudicating Authority quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(h) The Financial Creditor shall deposit a sum of ₹2,00,000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

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16. The Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately.

17. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Uttar Pradesh, Kanpur, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

IA NO.158/ALD/2022

18. IA No.158/ALD/2022 has been filed by the financial creditor for change of the originally proposed IRP. We have taken the same on record and appointed the person proposed as the IRP. IA No.158/2022 is disposed of.

19. List CP (IB) No.489/ALD/2019 on 05 September 2022 for filing of the progress report.

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

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Rajasekhar V K

Digitally signed by Rajasekhar V K
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st=Tamil Nadu,
serialNumber=f05120aee9b7978ef74f18a3ac75eb59d05e036c92d850593b5c6edc8a8c7396, cn=Rajasekhar V K
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Virendra Kumar Gupta
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Typed by :
Kavya Prakash Srivastava
(Stenographer)