

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
AT NEW DELHI**

**Company Petition No. (IB)-786 (PB)/2018**

**Under Section 7 of the Insolvency and Bankruptcy Code,  
2016**

In the matter of:

Anurag Chandra Applicant/Financial Creditor

V.

Affinity Beauty Salon Pvt. Ltd. Respondent/Corporate Debtor

*Judgment delivered on: -- 14.12.2018*

**CORAM**

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

**MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)**

For Applicant: Mr. U.K. Chaudhary, Sr. Adv. With  
Ms. Manisha Chaudhary, Mr. Mansumyer  
Singh & Mr. Himanshu Vij, Advocates.  
For Respondent: Mr. Manik Dogra, Mr. Rohan Jaitley &  
Mr. Saakar Sardana, Advocates.  
For the Intervenor: Mr. P. Nagesh & Mr. Dhruv, Advocates.

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Company Petition No. (IB)-786(PB)/2018



## ORDER

**S. K. Mohapatra, Member**

1. Applicant Shri Anurag Chandra, 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 M/s Affinity Beauty Salon Private Limited, referred to as the corporate debtor.
2. The Respondent Company M/s Affinity Beauty Salon Private Limited. (CIN No. U93020 DL2001 PTC 112227) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 29<sup>th</sup> August, 2001 having its registered office at C-25 Green Park Ext. New Delhi - 110016. 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. It is submitted in the application that the applicant on behalf of two partnership firms namely M/s ACPC Enterprises and M/s ACDC Enterprises, had advanced an amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) and Rs. 5,00,00,000/- (Rupees Five Crores Only) respectively to the Corporate Debtor towards issuance of cumulative convertible redeemable preference shares by executing separate Share Subscription Agreements dated 30.05.2016 and 04.06.2016 with the Corporate Debtor. Copies of the said Share Subscription Agreements dated 30.05.2016 and 04.06.2016 have been placed on record. However, it is stated that the Corporate Debtor could not register the Cumulative Convertible Redeemable Preference Shares with the Registrar of Companies ("ROC"). Consequently, the applicant on behalf of the partnership firms



demanded its money back as neither the shares were allotted nor the money was refunded back. Despite demand as the corporate debtor failed to repay the money, applicant on behalf of the M/s ACPC Enterprises had filed petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, vide Insolvency Application bearing Number CA No. IB-352(PB)/2017 captioned as “M/s. ACPC Enterprises Vs. Affinity Beauty Salon Pvt. Ltd”. The said petition was dismissed by the Adjudicating Authority, against which an appeal was preferred before the Hon’ble National Company Law Appellate Tribunal being Company Appeal (Insolvency) No. 323/2017 captioned as “M/s. ACPC Enterprises Vs. Affinity Beauty Salon Pvt. Ltd.”

4. It is further the case of the applicant that during the pendency of the Appeal, the Corporate Debtor had approached the appellant for ending the disputes between them. Consequently, the applicant entered into a Loan Agreement dated 30.03.2018 with the Corporate Debtor in which both M/s ACPC Enterprises and M/s



ACDC Enterprises signed the document as confirming parties. As per the loan agreement an amount of Rs. 10,46,00,000/- (Rupees Ten Crores Forty Six Lakhs Only) due from the Corporate Debtor as on 31.03.2018 was considered as the loan amount. In terms of the agreed contract dated 30.03.2018 the principal loan amount was to be repaid by the Corporate Debtor to the Financial Creditor within a period of 4 years by way of monthly payment along with applicable interest. A copy of the Loan Agreement dated 30.03.2018 has been placed on record.

5. The applicant has relied upon Clause 3.3 of the aforesaid Loan Agreement, under which the Corporate Debtor was to repay the principal debt along with interest by making a minimum monthly payment of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) by end of each month via bank transfer through NEFT/RTGS. Consequently, the Appeal No. 323 of 2017 was disposed of in terms of the aforesaid settlement with the direction



to the parties to treat the terms of the settlement as directions of the Hon'ble Appellate Tribunal.

6. It is alleged that the Corporate Debtor did not make the monthly payment of loan amount from 1<sup>st</sup> April, 2018 to 31<sup>st</sup> May, 2018, except the payment of Rs. 5,00,000/- (Rupees Five Lakhs Only). As there was a default, applicant served a notice dated 07.06.2018 upon the Corporate Debtor to make payment of all the outstanding amounts along with interest in terms of the Loan Agreement within 15 days of the receipt of the notice. Despite receipt of notice on 12.06.2018, neither any reply was received nor has any payment been made in terms of the Loan Agreement. A copy of the demand notice dated 12.06.2018 along with its dispatch receipt and tracking report have been placed on record.
7. It is the case of the applicant that the Corporate Debtor has committed default in repayment of the principal debt amount along with interest and has failed to make monthly payment as per the terms of the aforesaid Loan Agreement.



8. It is stated in the application that as on 13.05.2018 the total outstanding amount including interest due from the respondent corporate debtor comes to Rs. 11,31,50,794/-. The details of amount due as on 13.05.2018 as detailed in part IV of the application are as follows:

Total amount of debt granted	Rs. 10,46,00,000/- (Rupees Ten Crores Forty Stx Lakhs Only)
Amount claimed to be in default	A total amount of Rs. 11,31,50,794/- (Rupees Eleven Crores Thirty One Lakhs Fifty Thousand Seven Hundred Ninety Four) as on 30.06.2018.

9. The applicant has proposed the name of Mr. Arunava Sikdar, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00022/ 2016-17 / 10047 resident of D-3, LGF, Lajpat Nagar Part-I, New Delhi-110024 with email-id [asikdar1990gmail.com](mailto:asikdar1990gmail.com). Mr. Arunava Sikdar has agreed to accept appointment as the interim resolution



professional and has signed a communication dated 04.07.2018 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. He has enclosed the copy of Certificate of Registration dated 22<sup>nd</sup> February, 2017 issued by IBBI. In addition, further necessary disclosures have been made by Mr. Arunava Sikdar as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

10. The respondent has filed its reply and submitted that the loan agreement upon which the claim of applicant has been based was not executed by the respondent with its free consent and was executed under the undue influence of the applicant. It is alleged that the terms of the loan agreement dated 30.03.2018 are completely bias in nature and favorable only to the applicant. The respondent contended that the loan



agreement is liable to be quashed as executed under undue influence. The respondent even denied the amount claimed by applicant.

11. In this regard the applicant in its rejoinder has submitted that the said loan agreement was placed before the Hon'ble NCLAT while withdrawing the appeal and Hon'ble NCLAT has taken the loan agreement on record and made it clear that the counsel for respondent also confirmed the settlement.

12. The objection of the respondent disputing the loan agreement dated 30.03.2018 cannot sustain as admittedly the loan agreement dated 30.03.2018 was taken on record by Hon'ble NCLAT in its order dated 06.04.2018 passed in in Company Appeal (AT) (Insolvency) No. 323 of 2017. The order also reveals that Ld. Counsel appearing for the corporate debtor had accepted before the Hon'ble NCLAT that the dispute has been settled and the said loan agreement has been executed between the parties.



13. The order dated 06.04.2018 passed by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 323 of 2017 is reproduced below:

*"NATIONAL COMPANY LAW APPELLATE TRIBUNAL*

*NEW DELHI*

*Company Appeal (AT) (Insolvency) No. 323 of 2017*

*IN THE MATTER OF:*

*M/s. ACPC Enterprises ...Appellant*

*Versus*

*Affinity Beauty Salons Pvt. Ltd. ...Respondent*

*Present:*

*For Appellant: Mr. Krishnendu Datta and  
Ms. Preeti Johri, Advocates*

*For Respondent: Mr. Rahul Mukherjee, Advocate*

**ORDER**

**06.04.2018** *This appeal has been preferred by the appellant – 'M/s. ACPC Enterprises' against judgment dated 10th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi in petition No. (IB)-352(PB)/2017 whereby and whereunder the application preferred by the appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016*

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(hereinafter referred to as the 'I&B Code') has been rejected on the ground that the appellant is not a 'Financial Creditor'.

Taking into consideration the 'agreement' and the terms & conditions, this Appellate Tribunal issued notice on the respondent. On appearance, the parties requested to adjourn the case to enable the parties to settle the matter. Learned counsel for the appellant has filed a copy of the 'settlement', **which is in the form of 'Loan Agreement' (14 pages in number)** from which we find that the parties have settled the dispute. **It is also accepted by the learned counsel appearing on behalf of the respondent.**

In view of the fact that the **parties have settled the dispute**, without going into the question whether the appellant is a 'Financial Creditor' or not, **the appeal is disposed of in terms of the settlement with the direction to the parties to treat the terms and settlement as direction of this Appellate Tribunal.**



*The appeal stands disposed of with the aforesaid observations and directions. There shall be no order as to cost.” (emphasis given)*

14. It is thus seen that the respondent corporate debtor has duly signed and executed the loan agreement dated 30.03.2018 and the same was placed before Hon'ble NCLAT in company appeal no. 323 of 2017. Besides the said appeal was disposed of in terms of the loan agreement executed between the parties. Hon'ble NCLAT has also directed the parties to treat the terms and settlement as direction of the Hon'ble NCLAT. In that view of the matter, the respondent cannot dispute the loan agreement at a later stage. Corporate Debtor is under obligation to honour its commitments, especially when made before a court of law. Accordingly, the application has to be decided on the basis of the loan agreement dated 30.03.2018 which has the sanction of the Hon'ble NCLAT.

15. It is pertinent to note here that an application numbering C.A. 1158 (PB)/2018 has been filed by some



of the financial creditors as interveners under section 60(5) of the Code. It has been submitted in the application that previously the claim of applicant was rejected by the Tribunal on the ground that the claim of applicant pertains to share application money and cannot be termed as financial debt. It is submitted that the amount paid under Share subscription Agreement is fraudulently converted in a financial debt, without any amount of loan or debt being actually given.

16. In this regard it is reiterated that the applicant and the respondent have settled their dispute before Hon'ble NCLAT and on independent loan agreement dated 30.03.2018 was executed between the parties including the said two partnership firms. In terms of the loan agreement the applicant has now acquired the status of financial creditor as the respondent itself has agreed to convert the amount earlier disbursed towards share subscription money into a loan and to pay interest on it. As per clause 3.1 of the agreement Rs. 10,46,00,000/- due from corporate debtor as on 31.03.2018 shall be



considered as principle debt. As per clause 3.2 respondent corporate debtor agreed inter-alia to pay the principle debt alongwith compound interest @ 2% per month calculated on the principle debt from 01.04.2018. More over the appellate court has directed the parties to treat the terms and settlement as direction of the appellate tribunal. Parties are therefore, bound to discharge their contractual obligations.

17. Needless to say that the intervener creditors of the corporate debtor would be entitled to raise their claims before the resolution professional/ committee of creditors, which shall be considered in accordance with law. CA 1158(PB)/2018 is disposed of, accordingly, with the aforesaid observations.

18. In the present case admittedly the corporate debtor itself settled the dispute and executed the loan agreement dated 30.03.2018 for repayment of the outstanding amount as loan and also agreed for payment of interest. Therefore in light of the loan agreement dated 30.03.2018, the amount is payable with interest and has



time value of money with a clear commercial effect of borrowing. Moreover the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of 'Financial Debt' but also the applicant can clearly be termed as 'Financial Creditor' so as to prefer the present application under Section 7 of the Code.

19. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

- i. Default has occurred.*
- ii. Application is complete, and*
- iii. No disciplinary proceeding against the proposed IRP is pending.*

20. Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited V. Kirusa Software Private Limited reported in AIR 2017 SC 4532 at Para 19 has observed that:



*“Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. **The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application.**”*

*(Emphasis given)*

21. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent has only paid Rs. 5,00,000/- and thereafter has committed default in repayment of the dues in terms of clause 3.3 of the loan agreement dated 30.03.2018.



When there is no ambiguity in the terms and spirit of the agreement and parties have been fully aware of the same and even placed it before a court of law, the agreement has binding obligations and does not require any further interpretation.

22. As a sequel to the aforesaid discussion it is seen that the applicant clearly comes within the definition of Financial Creditor. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

23. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present petition is admitted.



24. Mr. Arunava Sikdar, having registration number IBBI/IPA-001/ IP-P00022/ 2016-17 / 10047 resident of D-3, LGF, Lajpat Nagar Part-I, New Delhi-110024 with email-id asikdar1990gmail.com., is appointed as an Interim Resolution Professional.

25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by the IBBI Regulations) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

26. 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.”*

27. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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.

28. The Interim Resolution Professional shall perform all his functions 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. 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, the Interim 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 shall be under 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, Rules and Regulations.

29. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, intervenors, Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

Sd/-

**(M.M.KUMAR)  
PRESIDENT**

Sd/-

**(S.K. MOHAPATRA)  
MEMBER (TECHNICAL)**