

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP 1877/I&B/NCLT/MAH/2018

(Under Section 7 of the I&B Code, 2016)

In the matter of
Minda Capital Private Limited
...Financial Creditor
v/s
Dilip Chhabria Design Private
Limited
...Corporate Debtor

Order Delivered on 14.12.2018

Coram: Hon'ble Shri V. P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Ishaan Madaan, Advocate

For the Respondent: None Present

Per Ravikumar Duraisamy, Member

ORDER

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (**IBC**) by Minda Capital Private Limited, Financial Creditor/Petitioner against Dilip Chhabaria Design Private Limited, Corporate Debtor/Respondent, to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the grounds that, as on August 2015, Corporate Debtor has defaulted in making repayment of ₹2,96,00,000/-, inclusive of interest, pursuant to the MoU for loan.

2. The Financial Creditor/Petitioner signed a MoU, dated 15.01.2015, with the Corporate Debtor for assessing the possibilities of

a joint venture in the field of designing, manufacturing of automobiles, automobile parts and different types of vehicles and expanding the existing business of the Corporate Debtor and introduce new business of desing house. Due to the immediate requirement of funds of the Corporate Debtor, it was further agreed to provide financial assistance by the Petitioner which would either be used to allot shares to the Petitioner in the joint venture or would be refunded at interest of 18% within 30 days when the transaction does not conclude. A further undertaking dated 28.01.2015 was signed between the parties for providing financial assistance of ₹3,00,00,000/- till the conclusion of the transaction of joint venture as mentioned in the aforesaid MoU and pledge of 10,20,000 equity shares of Corproate Debtor owned by Mr. Dilip Chhabaria in favor of the Petitioner.

3. The Petitioner has submitted the certified copy of the Board Resolution dated 21.03.2018 resolving to institute IBC proceedings and authorizing, *inter aila*, Mr. Pradeep Mann who had verified the petition.

4. It is the case of the petitioner that pursuant to the MoU dated 15.01.2015 and the undertaking dated 28.01.2015, the petitioner extended financial assistance amounting to ₹3,00,00,000/- to the Corporate Debtor which was to be returned if the transaction of joint venture does not conclude. The Petitioner has stated that it has transferred the said amount via two cheques on 29.01.2015. It is further stated that in June 2015 it was realized that the joint venture would not be possible and that in August 2015 the Corporate Debtor returned ₹1,00,00,000/- to the Petitioner with assurance to pay the remaining amount with interest as per the MoU. On 16.12.2016 the Petitioner sent a legal notice demanding the repayment of ₹2,00,00,000/-

5. The Corporate Debtor, vide its letter dated 31.12.2016, replied to the legal notice of Petitioner seeking time to send a detailed reply

and stating that the Petitioner is precluded from disposing of the pledged shares and the cheques issued were for the purpose of security and not for repayment of the money advanced. Again on 18.01.2017 the Petitioner sent a reminder legal notice demanding the payment of due amount by 31.01.2017. On 27.01.2017 the Corporate Debtor sent a detailed reply to the legal notice of the Petitioner dated 16.12.2016 in which it has admitted that it has paid ₹1,00,00,000/- to the petitioner in August 2015 and that there exists a liability to pay remaining amount. The Petitioner in its notice dated 10.04.2017 again directed the Corporate Debtor to pay the outstanding amount.

6. The Petitioner vide its notice dated 20.06.2017 under section 138 of the Negotiable Instruments Act, 1881 communicated to the Corporate Debtor that it has presented the Cheque bearing no. 007303 dated 15.05.2017 amounting to ₹1,00,00,000/- and the same was dishonored with remarks "insufficient funds" vide memo dated 03.06.2017 and directed the Corporate Debtor to ensure the payment of the due amount within statutory period for payment. Another similar notice dated 08.07.2017 under section 138 of the Negotiable Instruments Act, 1881 was served by the Petitioner upon the Corporate Debtor regarding dishonor of Cheque bearing no. 007302 dated 23.06.2017 amounting to ₹1,00,00,000/-.

7. The Petitioner vide its notice dated 26.12.2017 addressed to the Corporate Debtor informed that there is an outstanding debt which the Corporate Debtor was liable to pay and the non-payment of the debt has led to default. It was required for the Corporate Debtor to make the payment within 7 days from the receipt of the notice otherwise the Petitioner would initiate proceedings under IBC. The Corporate Debtor vide its reply dated 05.01.2018, to the legal notice of the Petitioner dated 26.12.2017, the Corporate Debtor has admitted that the temporary cash flow assistance was agreed to be provided by the

Petitioner to the Corporate Debtor which was to be repaid at 18% interest within 30 days in case transaction of joint venture is not successful. Further, the Corporate Debtor has admitted that an amount of ₹2,00,00,000/- is due to be paid to the Petitioner. The Corporate Debtor has requested the petitioner to reconcile the accounts in consonance with the losses suffered by it, allegedly due to the Petitioner.

8. The Corporate Debtor in its reply to all the notices of the Petitioner has raised claim upon the Petitioner in lieu of the sale and delivery of one Avanti car invoice for which was duly raised amounting to ₹54,28,391/- and another invoice amounting to ₹8,82,441/- for modification and designing works carried on the Innova cars of the Petitioner. The petitioner has annexed e-mail correspondence with the Corporate Debtor wherein in email dated 01.04.2016 the Petitioner has sent the details of the Minda Capital Limited, the petitioner in this petition, to the Corporate Debtor and has attached the Bank statement and Airtel Mobile Bill as address proof. The Corporate Debtor in its email dated 19.04.2016 sent three invoices aggregating to ₹54,28,391/- raised in the name of Minda Capital Limited. In the e-mail dated 24.05.2016 the Corporate Debtor inquired about the insurance and registration of the car. To which the Petitioner has replied vide its e-mail dated 06.06.2016 raising an issue upon the price of the car and accessories. To this issue the Corporate Debtor replied vide its e-mail dated 08.06.2016 by proposing to resolve the issue through discussions. Again vide e-mail dated 20.06.2016 the Petitioner requested the Corporate Debtor to revise the invoices and vide e-mail dated 08.07.2016 intimated the Corporate Debtor that they would proceed with registration of car on the basis of just one out of the three invoices and the rest of the invoices regarding accessories shall be null and void. In the last e-mail attached with the petition, the Petitioner

has asked the Corporate Debtor to confirm the cancellation of invoices issued to Minda Capital Limited.

9. The Petitioner in its written submissions with regard to the claim raised by the Corporate Debtor has stated that such claims are part of evading tactics. The Petitioner has stated that the Corporate Debtor kept referring to some transaction of providing cars to a different entity and sought adjustment of roughly ₹63,00,000/- with the Financial Creditor. It is emphasised that even though the Financial Creditor did not enter into any other transaction with the Corporate Debtor, the Corporate Debtor raised invoices on the Financial Creditor for a car and some modifications, to which the Financial Creditor asked the Corporate Debtor to cancel the invoice and further through notice informed them to raise the issue with the concerned entity and not the Financial Creditor. It is submitted by the Petitioner that the email exchanges regarding the cars were with an entity called Minda Management Services Limited, which is not the Corporate Debtor.

10. We have heard the argument of Ld. counsel for the Petitioner and perused the record.

11. The Petitioner has submitted the MoU dated 15.01.2015 and the undertaking dated 28.01.2015 through which the temporary financial assistance above were granted to the Corporate Debtor. The Petitioner has also annexed the unfilled share transfer form with respect to the shares pledged in favour of the Petitioner. The Petitioner has also attached the dishonored cheques along with the return memo from the Bank. The reply of Corporate Debtor to the various legal notices sent by the Petitioner amount to admission of the debt.

12. None appeared for the Corporate Debtor in any of the hearings even after repeated notices been served upon it. It can be safely

assumed that the Corporate Debtor do not wish to present any defense against the admission of this section 7 petition.

13. In this case the existence of debt and default is reasonably evidenced in the documents supporting the petition. Further the Petition under section 7 is complete. The Petitioner having named the Interim Resolution Professional with his consent, and there being no disciplinary proceedings against the same. We are of the view that the present case is fit for admission under the Insolvency and Bankruptcy Code, 2016.

ORDER

The petition filed under Section 7 of IBC, 2016, against the Corporate Debtor for initiating corporate insolvency resolution process is hereby admitted. We further declare moratorium u/s 14 of IBC with consequential directions as mentioned below:

I. That this Bench hereby prohibits:

- 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.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from 14.12.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mr. Ilam Chand Kamboj, having Registration Number [IBBI/IPA-002/IP-N00056/2017-18/10108] as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

14th Dec, 2018

Sd/-

V.P.SINGH
Member (Judicial)