

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB)-184(MB)2018

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

S.H. Khatod Trust Financial Creditor /
Petitioner

V/s.

Business India Publication Limited
.....Corporate Debtor/
Respondent

Order delivered on : **09.07.2018**

Coram :

Hon'ble M.K. Shrawat, Member (J)

Present:

Dr. S.K. Jain, PCS – Authorised Representative for the Operational Creditor.

Per: M. K. Shrawat, Member (J)

ORDER

1. A Petition has been filed on 29.12.2017 by the Financial Creditor M/s. S.H. Khatod Trust, Mumbai-400000, under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor M/s. Business India Publications Limited, Nirmal, 14th Floor, Nariman Point, Mumbai – 400 021 to claim an outstanding Financial Debt of ₹50,00,000/- (Principal Amount).
2. In the requisite Form No. 1, under the Head “Particulars of Financial Debt” the total amount of Debt granted as Inter-Corporate Deposit stated to be ₹50 Lakhs and the total amount claimed in default is ₹84,71,781/-, including Interest @ 18% p.a.

Rs.34,71,781/-. Detailed calculation as per the Petition is reproduced below:-

DEBTORS: BUSINESS INDIA PUBLICATION LTD.				
PRINCIPAL AMOUNT	: 50,00,000/-			
RATE OF INTEREST (%)	: 18%			
REPAYMENT DATE	: 02- JAN-2014			
DETAILS OF INTEREST CALCULATION & PRINCIPAL DEPOSIT				
PARTICULARS	INTEREST ON QUARTERLY BASIS	DAYS	INTEREST @ 18%	INTEREST AMOUNT
PRINCIPAL AMOUNT				50,00,000
INTEREST	03.01.2014 TO 02.04.2014	90	18%	2,21,918
INTEREST	03.04.2014 TO 02.07.2014	91	18%	2,24,384
INTEREST	03.07.2014 TO 02.10.2014	92	18%	2,26,849
INTEREST	03.10.2014 TO 02.01.2015	92	18%	2,26,849
INTEREST	03.01.2015 TO 02.04.2015	90	18%	2,21,918
INTEREST	03.04.2015 TO 02.07.2015	91	18%	2,24,384
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INTEREST	03.01.2017 TO 02.04.2017	90	18%	2,21,918
INTEREST	03.04.2017 TO 02.07.2017	91	18%	2,24,384
INTEREST	03.07.2017 TO 02.10.2017	92	18%	2,26,849
INTEREST	03.10.2017 TO 10.11.2017	39	18%	96,164
TOTAL INTEREST		1408		84,71,781

3. According to the Learned Counsel of the Petitioner, the Financial Creditor granted ₹50 Lakhs on 03.07.2013 bearing Interest @ 18% p.a. for a period of 6 months to the Corporate Debtor. As against this, the Corporate Debtor has executed a Demand Promissory Note dated 03.07.2013 amounting to ₹50 Lakhs with interest thereon @ 18% p.a..
- 3.1. The Bankers of the Financial Creditor i.e. The Union Bank of India, Fort, Mumbai Branch has confirmed vide their letter dated 22.12.2017 that the amount of ₹50 Lakhs was debited on 04.07.2013 in the Account No.317302010752609 of the Financial Creditor.
4. The Corporate Debtor issued a Post Dated Cheque bearing cheque No. 856334 for ₹50 Lakhs in favour of the Financial Creditor, hence the liability is admitted by the Corporate Debtor..
5. However, the Financial Creditor alleged that when the said cheque was presented for encashment on 02.01.2014 with the bank (Union Bank of India), the same was returned by the drawee Bank (Yes Bank) with remarks "funds insufficient".
6. As a consequence, the Financial Creditor sent legal notice on 24.01.2014 to the Corporate Debtor intimating about the dishonour of the cheque and requested the Corporate Debtor to make payment within 15 days from the receipt of legal notice, failing which Financial Creditor would adopt stringent legal action, civil as well as criminal including the action under section 138 r/w. sec. 141 of Negotiable Instruments

Act, against Corporate Debtor. However, Corporate Debtor has neither replied to the legal notice nor repaid loan/claimed amount.

7. Further, on 20.11.2017 one more notice was issued to the Corporate Debtor intimating about its default in payment of Rs. 84,71,781/- (including Interest) and cautioned that if the payment was not made within 15 days, the matter would be taken up under the Provisions of the Insolvency & Bankruptcy Code. Even to this Notice there was no response from the Corporate Debtor.
- 7.1. It is worth to mention that on 09.07.2018 when the case was called out, none from the side of the Corporate Debtor has appeared to defend its side.
8. Further as per the Petitioner, the Petition under I&B Code, 2016, filed before the Tribunal, is also served upon the Corporate Debtor; however, no reply was filed contesting the Debt in question.
9. It is further submitted that, the non-appearance or non-communication of the Corporate Debtor has thus established that, the Corporate Debtor has nothing to say in defence in respect of the impugned outstanding/claimed amount. It is to be noted that an adhoc payment of ₹5,00,000/- was made as per communication dated 09.02.2018, as confirmed by the Financial Creditor but thereafter never appeared in the Court to fulfil the undertaking given to the Financial Creditor.
10. **FINDINGS :-** Considering the above facts, it is established by the Financial Creditor that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner/Financial Creditor has established that Inter-Corporate Deposit was made which was in the nature of loan sanctioned and duly disbursed to the Corporate Debtor but there is non-payment of Debt on the part of the Corporate Debtor.
11. As a consequence, after the lapse of opportunity to reply and keeping admitted facts in mind that the Financial Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner I am of the conscientious view that this Petition deserves 'Admission'.
12. The Financial Creditor has proposed the name of Insolvency Professional Mr. Manoj Jain, 11, Friend's Union Premises Co-operative Society Ltd. 2nd Floor, 227, P. D'mello Road , Mumbai – 400001, having mail id: manojj2102@gmail.com and having

Registration No. IBBI/IPA-001/IP-P00535/2017-18/10960. The said IRP is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

13. Having admitted the Application, the provisions of “**Moratorium**” as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
14. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
15. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.
16. The IRP so appointed shall also comply the other provisions of the Code including section 15 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
17. Accordingly, this **CP (IB)184/2018** is hereby “**Admitted**”.
18. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

SD/ -

M.K. SHRAWAT
Member (Judicial)

Date : 09.07.2018.

Suresh