

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP No. 1684/IBC/NCLT/MB/MAH/2017

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

Redreef Finance & Investments Private Limited  
..... Financial Creditor  
(Petitioner/Applicant)  
V.

Sunshine Caterers Private Limited.  
..... Corporate Debtor  
(Respondent)

Heard on: 23.10.2018  
Pronounced on: 02.11.2018

**Coram :**

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

**For the Petitioner :**

Advocate Seema J. Verma a/w Advocate A.M. Jaraogi.

**For the Respondent :**

Advocate Rakesh Pipronia i/b RMP Legal.

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

**ORDER**

1. The Petitioner/Applicant viz. 'Redreef Finance & Investments Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 04.12.2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Sunshine Caterers Private Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be Opp. Railway Station, Station Road, Durg, Chhatisgarh.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹2,62,00,000/-, which is inclusive of interest @ 18% p.a.

**Brief History of the case:**

3. The Corporate Debtor is into the business of catering and is managing catering in respect of various chains in India. The Corporate Debtor represented to the Financial

Creditor that it has obtained certain contracts by submitting necessary tenders issued by the Railway Authorities and accordingly, for the purpose of submitting the tenders, it is in need of necessary financial assistance. Accordingly, the Financial Creditor rendered the financial assistance to the tune of ₹2,62,00,000/- in the year 2013 to the Corporate Debtor.

4. The Corporate Debtor has neither repaid the loan amount till date nor it has replied to the correspondences sent by the Financial Creditor calling for the repayment of loan.

**Submissions by the Financial Creditor**

5. The Petitioner submits that the directors of the Debtor Company were close family friends of the directors of the Petitioner Company and as such have been maintaining cordial relations with each other and in view thereof, loan agreement has not been made. However, the Petitioner says that not only the Financial Creditor but also a large number of persons have been cheated upon by the Corporate Debtor. The directors of the Respondent Company were also arrested by the Police authorities in connection with a criminal offence registered against them.
6. The Financial Creditor submits that the details of its accounts as shown in Corporate Debtor's Books of Accounts in Exhibit C annexed in the Petition clearly reveal the credit balances of ₹2,62,00,000/- in the year 2013, which is an ample proof for the amount disbursed on various dates. The Bank statement is corroborating to the computation of claim of the Financial Creditor. The ledger account of the Corporate Debtor in the books of the Financial Creditor also confirm the said amount claimed.
7. The Corporate Debtor issued a cheque of ₹80,00,000/- being cheque no. 001168 on 07.07.2016 to the Financial Creditor which was dishonoured and the Financial creditor has filed a complaint under section 138 of the Negotiable Instruments Act in Bandra Court, Mumbai pursuant to a notice dated 22.07.2016 as required under the provisions of section 138 r/a/w section 141 of the Negotiable Instruments Act.
8. Thereafter, again a Demand Notice dated 07.10.2016 has been sent to the Corporate Debtor, but in vain. Henceforth, another notice dated 22.08.2017 has been forwarded by the Financial Creditor under the Code. However, the Corporate Debtor failed and neglected to reply to the same.

**Submissions by the Corporate Debtor :**

9. The Corporate Debtor has time and again appeared before this Bench. On the hearing dated 21.02.2018, the Corporate Debtor sought time to file reply to the Petition. However, no reply has been received on record till date. The only reply by the Corporate Debtor was pertaining to the Miscellaneous Application No.108 of 2018 filed by the Petitioner for producing additional documents regarding the amount claimed and to make certain amendments in the Petition. Some clarifications were

sought by this Bench regarding the amount claimed. The said Miscellaneous Application dealt with those clarifications as well.

10. However, the Corporate Debtor could not deny the amount claimed anywhere in the detailed reply to the said Miscellaneous Application, but has only sought the dismissal of the said Miscellaneous Application. The Corporate Debtor has nowhere denied his liability to pay the amount claimed.

**Findings :**

11. The corporate Debtor has repaid ₹45,00,000/- in the year 2013 out of the debt of ₹2,62,00,000/-, in partial discharge of his liability. However, the Petitioner has not reduced the received sum out of the claimed amount. When this Bench sought clarification regarding the same, it was contended that the received amount of ₹45,00,000/- has been adjusted towards 18% interest which was payable by the Corporate Debtor. As such, the amount which is due and payable by the Corporate Debtor remains the same.
12. Further, by filing a reply to the Miscellaneous Application and not having a single valid defence to the amount claimed, it seems that the Corporate Debtor is playing dilatory tactics with the Tribunal when it comes to deciding the matter finally. Moreover, the Corporate Debtor has never filed a reply to any of the notices of the Financial Creditor, nor a reply to this Petition. Therefore, it can be very safely presumed that the Corporate Debtor has nothing much to say in its defence. Also, the fact that the Corporate Debtor has made a payment of ₹45,00,000/- in the year 2013 and thereafter issuing a cheque of ₹80,00,000/- in the year 2016, admittedly dishonoured, demonstrates that the Corporate Debtor has time and again admitted its liability to pay.
13. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
14. Considering the above facts, I come to conclusion 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 Debtor.
15. As a consequence, keeping the presumably admitted facts in mind i.e. the payment of ₹45,00,000/- and dishonoured cheque of ₹80,00,000/- by the Corporate Debtor, it is found that the Petitioner has not received the outstanding Debt from the Respondent 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**’.

16. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that, there is any disciplinary action is pending against the said proposed Interim Resolution Professional.
17. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.
18. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Shailesh Bhalchandra Desai, 1006, Raheja Center, Nariman Point, Mumbai-400021, having registration No. IBBI/PA-001183/2017-18/10362 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
19. Having admitted the Petition/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.
20. 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.
21. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** 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. A liberty is granted to intimate even at an early date, if need be.
22. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
23. Ordered Accordingly.

SD/-

Dated : 02.11.2018

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**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**