

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CP No. 1616/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

Mr. Vellurmadam Harish Gopalkrishnan
..... Financial Creditor

v.

M/s. Unitech Transformers Private Limited
..... Corporate Debtor

Heard on : 05.03.2018
Order delivered on : 22.03.2018

Coram :

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

For the Applicant :

Mr. S. Raghunath, Practicing Chartered Accountant i/b. S. Raghunath & Co. – Authorised Representative for the Financial Creditor/Applicant.

For the Debtor :

Mr. Kailash Lokare, Advocate – Advocate for the Respondent/Debtor.

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

ORDER

1. The Applicant viz. Mr. Vellurmadam Harish Gopalkrishnan (hereinafter as **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 15.11.2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head 'Particulars of Corporate Debtor' the description of the debtor is stated as 'M/s. Unitech Transformers Private Limited' having CIN : U31100MH1997PTC110180 and having Registered office at, 10-13, Arkose Industrial Estate, Village Dekhu, Tal. Khalapur, Dist. Raigad, Maharashtra – 410203.



3. Further, under the Head 'Particulars of Financial Debt' the total amount of Debt granted is stated as ₹ 39,00,000/- and the total amount claimed to be in default is stated as ₹ 52,19,375/- along with the interest of ₹ 13,19,375/- at the rate of 18% p.a.

Background of the Case :

4. The Creditor has advanced a Unsecured loan of ₹ 39,00,000/- to the Debtor through a Cheque no. 435539 drawn on HDFC Bank dated 26.10.2015.
5. This loan amount was advanced by the Creditor on oral request by the Debtor as the Debtor was facing Financial Crises.
6. This loan amount was granted for the period of 3 months from disbursement on the interest @ 18% p.a. duly informed vide a letter dated 26.10.2015 for granting "Short Term Loan".
7. The Creditor had sent a reminder on 24.12.2015 to the Debtor for repayment of loan, so that the Debtor would make the arrangement for the same.
8. But the Debtor, through its letter dated 06.01.2016, expressed its inability to repay the said amount and sought 6 more months for repayment. It is worth to mention that to accommodate the Debtor the period of repayment of "Short Term Loan" had also been extended time and again.
9. Thereafter there were number of letters exchanged between the Creditor and Debtor but the Debtor has neither repaid the principal amount nor interest thereupon. Evidences are on record.

Submissions by the Creditor :

10. It is submitted that, the Debtor has through its letter dated 27.10.2015 acknowledged the receipt of unsecured loan of ₹ 39,00,000/- which was advanced by the Creditor. The copy of that letter is annexed with the Application/Petition.
11. It is further stated that, on various occasions, from 24.12.2015, the Creditor through his various letters followed up for the repayment of loan amount but the Debtor had never repaid the amount.

12. Hence, being aggrieved, the Creditor has finally, vide a letter dated 11.04.2017, demanded the loan amount stating therein that failing to repay shall attract legal consequences.



13. In spite of the same the Debtor has failed to repay the amount hence; the Creditor has filed this Application/Petition praying to declare Debtor as Commercially Insolvent.

14. It is also stated that, the Debtor has, through its various letters had accepted that there was default on his part to repay the availed loan amount. Specifically, through its letter dated 15.12.2016 the Debtor has expressed his inability to repay the money as the Company was incurring losses.

Submissions by the Debtor :

15. The Learned Advocate for the Debtor has appeared and stated that, the Debtor is incurring losses.

16. It is further stated, that the accepted position that the Debtor is unable to repay the loan amount of Creditor and there is default in repayment. Hence, as the Debtor is in great financial crunches hence there is nothing much to say in defence. The Debtor has no objection for Admission of this present Petition/Application. However, without prejudice to the legal rights to protect its interests under the I & B Code or any other Court of Law.

Findings :

17. I have gone through the pleadings on Record and the submissions made by both the parties and came to know that, the Creditor has duly disbursed the loan amount to the Debtor and the respective entry is reflected in the Statement of Bank Account of the Creditor.

18. Further, 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.

19. It has also been established that there is a 'Default' as defined under section 3 (12) of the Code on the part of the Corporate Debtor. The same is allegedly accepted by the Debtor.

20. On the basis of the evidences on record the Applicant/Financial Creditor has established that the loan was sanctioned and duly disbursed to the Corporate Debtor but there is non-payment of Debt on the part of the Corporate Debtor.

21. Hence, keeping admitted facts in mind and that the Applicant had not received the outstanding Debt from the Debtor and that the formalities as prescribed under the Code



have been completed by the Creditor, it is my conscientious view that this Petition deserves '**Admission**'.

22. The Applicant has proposed the name of Insolvency Professional. The IRP proposed by the Applicant, Mr. Pravin R. Navandar, R/at. D – 519/520, Neelkant Business Park, Nathani Road, Vidyavihar (W), Mumbai, Maharashtra – 400086 and having registration No. IBBI/IPA-001/IP-P00008/2016-17/10027 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
23. 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.
24. 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.
25. That the Interim Resolution Professional shall perform the duties as assigned under **Section 15** and **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. A liberty is granted to intimate even at an early date, if need be.
26. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Dated : 22.03.2018

sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)



Certified True Copy
Copy Issued "free of cost"
On 27/03/2018


Assistant Registrar
National Company Law Tribunal Mumbai Bench