

In the National Company Law Tribunal
Mumbai Bench.

C.P.(IB)-1545/MB/2019

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

Bombay Sales Agency : Petitioner/ Financial Creditor

V/s

JSK Marketing Limited : Respondent/ Corporate Debtor

Order delivered on: 23.09.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

For the Petitioner(s) : 1. Mr. A.S. Pal, Advocate, i/b. J J Associates.

For the Respondent(s) : 1. Anand Damle, Advocate, i/b. Mehta & Padamsey.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition in Form No.1 was filed on 16.04.2019 by the "Financial Creditor" M/s. Bombay Sales Agency, u/s.7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 for initiating Corporate Insolvency Resolution Process against the "Corporate Debtor" M/s. JSK Marketing Ltd., Worli, Mumbai-400 018 for an outstanding Debt amount of Rs.50,00,000/- Plus Rs.4,76,712/- being Interest @ 24% from the date of disbursement of the loan i.e. 22.11.2018 till 16.04.2019. Thus total default amount claimed at Rs.54,76,712/-.

Brief background of the case:-

2. It is informed by the Petitioner/ Financial Creditor that on 16.11.2018, M/s. JSK Marketing Ltd. (Borrower/ Corporate Debtor) executed a Loan Agreement to avail a loan of Rs. 50 Lakhs from the Financial Creditor upon the terms and conditions set out in the said Loan Agreement. Copy of Loan Agreement is on record. The amount of Rs.50 Lakh was transferred by RTGS through COSMOS Bank on 22.11.2018.

- 2.1. It is pleaded by the Petitioner/ Financial Creditor that as per Clause 4.1 of the said Loan Agreement, the first instalment along with interest was due on 31.12.2018 along with 16.5% interest. However, the Corporate Debtor defaulted to make the said payment.
- 2.2. As a consequence, the Financial Creditor sent a letter of default on 03.01.2019 to the Corporate Debtor intimating the service of the Interest of Rs.94,931.51 due on the Principal loan amount of Rs.50 Lakhs. The Financial Creditor also informed the Corporate Debtor that failure to pay the Interest due would cause the increased rate of interest i.e. 24% p.a. to be applied on the Principal loan amount in accordance with Clause 4.2 of the Loan Agreement and might result in the recall of the Principal loan amount.
- 2.3. The Financial Creditor has sent one more Letter of default dated 03.04.2019 to the Corporate Debtor intimating the payment towards the service of interest at an increased rate of interest at 24% p.a. amounting to Rs.4,33,972.60 on account of his failure to make payment towards the first instalment and recalling the entire Principal loan amount. It is alleged that both the "Letters of default" have been received by the Corporate Debtor. On this background the Financial Creditor filed the impugned Application u/s. 7 of the IB Code, 2016 against the Corporate Debtor.
3. Ledger Account of the Corporate Debtor in the Books of the Financial Creditor for the Financial Year 2018-19 is on record.
4. From the side of the Respondent Debtor Learned Representative is present. However, no reply has been filed to defend its case. To defend the default of non-payment of Debt, no substantial defence was pleaded.

FINDINGS

5. Heard the submissions of the Petitioner Creditor, perused the contents of the Petition in the light of the annexed evidences.

6. It is pleaded by the Petitioner/ Creditor that the Corporate Debtor had defaulted to make repayments of the loan in accordance with the terms of the Loan Agreement. There was no pleadings from the side of the Respondent Debtor.
7. In the light of the above discussion and on due perusal of the documents annexed, the Debt is to be qualified as "Financial Debt" as defined under section 5(8) of Insolvency & Bankruptcy Code, 2016. As a result, the Financial Creditor has filed this Application for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Facts and circumstances have also established the "Default" on the part of the Debtor Company.
8. Since this is a Petition of "Financial Creditor", therefore, the Insolvency Process shall commence as prescribed under Section 7 of I&BC, 2016.
9. The Petitioner / Financial Creditor has proposed the name of the IRP **Mr. Abhilash Lal**, Registration No. IBBI/IPA-001/IP-P00344/2017-18/10645, Address: C-192, Belvedere Towers, DLF Phase II, Gurgaon-122002, Haryana. The proposed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.
10. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution process 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.
11. It is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of

essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

12. Accordingly, this **C.P.(IB)-1545/(MB)/2019** stood "Admitted".

13. The Corporate Insolvency Resolution Process is commenced from the date of this Order.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)
Date : 23.09.2019
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Sd/-
M.K. SHRAWAT
Member (Judicial)