

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

IB No. (IB)-229 (ND)/2017

In the matter of

Davinder Ahluwalia & Anr

..... **Petitioner**

V/s.

M/s Sumit Aviation

..... **Respondents**

SECTION: U/s 7 of IBC, 2016

Order delivered on 01.08.2017

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SH. S. K. MOHAPATRA, HON'BLE MEMBER (T)

For the Petitioner (s) Ms. Priyanka Ghorawat. Advocate, Financial
Creditor with Mr. Davinder Ahluwalia, Financial
Creditor in person

Order

PER SMT. INA MALHOTRA, MEMBER (J)

1. The petitioner has invoked the provisions of Section 7 of the Insolvency Bankruptcy Code, 2016 (hereinafter referred to as Code for triggering Resolution Process against the Respondent/Corporate Debtor on account of its inability to pay their debt.

2 The Brief background of the case on which the petitioner seeks relief as a Financial Creditor is primarily a debt paid for and on behalf of the Corporate Debtor to Punjab National Bank.

3. The petitioners who were guarantors for the loans availed by the Corporate Debtor from Punjab National Bank had mortgaged their immovable property. To redeem the same and reduce the liability of the Corporate Debtor in their loan account, they paid a sum of Rs. 1.05 crores on 21.07.2017. Accordingly, they became entitled to recover the same from the Corporate Debtor. As the Corporate Debtor failed to liquidate this liability, they seek to invoke the proceedings as Financial Creditors against the respondent/Corporate Debtor.

To evidence the aforesaid transaction, Ld. Counsel has drawn our attention to the photocopy of cheque no. 502671, dated 21.07.2014, in favour of the Corporate debtor and has relied upon the Financial Creditor's bank statement confirming remittance thereunder to the Corporate Debtor's account on 21.07.2014. The factum of having paid this amount for liquidating the dues of the Corporate Debtor is also recorded in the order dated 21.01.2015 by the Hon'ble Debt Recovery Tribunal in OA No. 456/2013 (Bank of Maharashtra V. Sumit Aviation). The Financial Creditors also acknowledge the receipt of Rs. 27 lakhs paid by the Corporate Debtor towards reduction of this liability.

4. Ld. Counsel submits that even prior to this date, the financial creditors had given various loans aggregating to Rs. 29,97,000/- to enable the Corporate Debtor meet its business exigencies. In acknowledgment to this outstanding liability, the Corporate Debtor had tendered a cheque no. 113720 dated 30.10.2014, drawn on J&K bank, Lajpat Nagar- IV, New Delhi for Rs.29,97,000/-. The said cheque was returned dishonoured vide memo dated 06.12.2014.

5. Despite notice issued to the Corporate Debtor, none appeared on their behalf before this Tribunal.

6. As the petition fulfils the required criterion for invoking the Resolution Process and as the debt claimed is within limitation, this petition stands Admitted.

7. The Financial Creditor has also taken the consent of the proposed Insolvency Resolution Professional, Mr. Abhishek Anand, E-103, G.K Enclave-1, New Delhi-110048 (Email ID: irpepoch@gmail.com) who has certified that there is no disciplinary proceeding pending against him and that he is duly empanelled with the IBBI vide Registration No. IBBI/IPA-002/IP-N00038/2016-17/10077.

He is therefore being appointed as the Interim Resolution professional in this case.

8. In pursuance of Section 13(2) of IBC we direct that public announcement shall be immediately made by the Interim Resolution Professional with regard to admission of this application under Section 7 of IBC. We also declare moratorium in terms of Section 14 of IBC. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed:

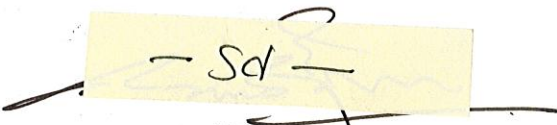
- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) transferring, encumbering, alienating or disposing of by the corporate 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) the recovery of any property by an owner of lessor where such property is occupied by or in the possession of the corporate debtor.”*

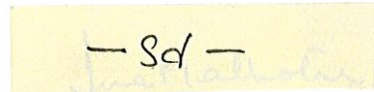
9. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period.

10. The Interim Resolution Professional shall perform all his functions as contemplated under the code, interalia, vide Sections 15, 17, 18, 19, 20 & 21 of IBC. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of IBC to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of IBC and perform all his functions strictly in accordance with the provisions of IBC.

11. Copy of the order be sent to both the parties.

12. The Petition is disposed of in the above terms.


(S. K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)