

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. (IB)-156(PB)/2017

IN THE MATTER OF:

Reliance Commercial Finance Limited

.....Financial Creditor

v.

Ved Cellulose Limited

.....Corporate Debtor

SECTION : Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 30.06.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Deepa Krishan
Hon'ble Member (T)

For the Financial Creditor(s) : Shri Parvinder, Advocate
Shri B.K.V. Subrahmanyam, Advocate
Shri Abhishek Sharma, Advocate
Shri Harsh Sinha, Advocate
Shri Shruynesh Rastogi, Authorised Rep.

JUDGMENT

CHIEF JUSTICE (RETD.) M.M. KUMAR, HON'BLE PRESIDENT

Reliance Commercial Finance Limited has approached this Tribunal with a prayer for initiation of Corporate Insolvency

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Resolution Process against Ved Cellulose Limited by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity the 'Code'). The petitioner-'Financial Creditor' become entitled to realize the default amount from the 'Corporate Debtor' having been duly transferred to it within the meaning of Section 5 (7) of the Code. The debt was originally payable to Reliance Capital Finance Limited by virtue of an order dated 09.12.2016 passed by Hon'ble Bombay High Court (Annexure-I) duly sanctioning a scheme of arrangement between Reliance Capital Ltd. and Reliance Commercial Finance Limited under the provisions of Section 391-394 of the Companies Act, 1956. As a result of the approval of the scheme by Hon'ble Bombay High Court the loan amount stands transferred to and vested in the petitioner-'Financial Creditor', together with the securities and/or benefits, rights and obligations. Accordingly, the petitioner has acquired the status of 'Financial Creditor' in terms of Section 5 (7) of the Code. It has made adequate disclosure being the transferee of the financial contract by placing on record a copy of the order dated 09.12.2016 passed by Hon'ble Bombay High Court. Thus, it has fulfilled the requirement of Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'Adjudicating Authority Rules').

2. The 'Financial Creditor' was incorporated on 17.08.2000 as is evident from a copy of the Company Master Data obtained from the website of Ministry of Corporate Affairs (Annexure-III). All other necessary disclosures have been made. The 'Corporate Debtor' was incorporated on 08.03.1995 with authorized and paid up share capital of Rs. 9,00,00,000/- which is evident from the Master Data of the 'Corporate Debtor' obtained from the website of Ministry of Corporate Affairs (Annexure-IV). The registered office of the 'Corporate Debtor' is 29, Gujarat Vihar, Vikas Marg, Delhi.

3. The 'Financial Creditor' granted a loan of Rs. 1,92,38,526.00 (Rupees One Crore Ninety Two Lakhs Thirty Eight Thousand Five Hundred Twenty Six only) to the 'Corporate Debtor' on 28.03.2014. The loan was to be repaid alongwith interest @ 16% per annum in 60 EMIS of Rs. 467844/- each. The loan was disbursed on 29.03.2014. The 'Financial Creditor' has submitted that the 'Corporate Debtor' failed to make payment of the EMIs as per the schedule of repayment and thus the 'Financial Creditor' was forced to recall the loan facility. As on 31.05.2017 a total sum of Rs. 2,01,26,510/- (Rupees Two Crores One Lakh Twenty Six

Thousand Five Hundred Ten Only) is recoverable. A copy of the statement of working computation has been placed on record (Annexure-V). The 'Corporate Debtor' was required to make the payment of EMI starting from 05.05.2014 upto 05.04.2019 on the 5th day of every calendar month. The arrangements made by the 'Corporate Debtor' got dishonoured and thus it defaulted in making the payments of EMI as per repayment schedule although some payments of EMIs were made by the 'Corporate Debtor' on belated dates. The detailed list is provided in part-IV of Form 1 prescribed by rule 4 of the Adjudicatory Authority Rules. After 31.03.2016 no instalment has been received as per the loan repayment schedule.


4. The loan was advanced after the 'Corporate Debtor' entered into the secured lending loan agreement with the 'Financial Creditor' towards the equipment. The hypothecation was duly marked and agreed under the agreement. A copy of Form 8 filed by the 'Corporate Debtor' registered in favour of the 'Financial Creditor' with the Registrar of Companies, NCT of Delhi & Haryana is enclosed (Annexure-VI). In support of the claim of default, report of CIBIL has been enclosed (Annexure-VIII). The parties had also executed an agreement to that effect which has been placed on

record concerning hypothecation (Annexure-VI). A copy of the account statements from 30.05.2000 to 30.05.2017 has also been placed on record which shows that on 31.03.2016 a cheque for EMI of Rs. 467,844/- was issued and the same was paid which was the last payment received. On 30.04.2016 a cheque of similar amount was issued and presented for payment. However, the same was dishonoured as is evident from the entries dated 05.05.2016. Similar is the position with regard to another cheque dated 06.05.2016 which bounced on 10.05.2016. The story is no different for the month of July, August and October, 2016 and so on.

5. At the hearing, we asked learned counsel for the petitioner that disclosure has been made in para 2 part-V of the petition that the arbitration proceeding were pending and in face of arbitration proceeding how the Corporate Insolvency Resolution Process can be initiated. Learned counsel has stated that under Section 7 of the Code there is no bar to initiate Corporate Insolvency Resolution Process even if arbitration proceeding is pending. According to learned counsel such a bar exists in respect of claim made by Operational Creditor under Section 9 of the Code. In support of his view learned counsel has placed reliance on the observation made

by the learned Appellate Tribunal in the case of **Kirusa Software Private Limited v. Mobilox Innovations Private Limited**, Company Appeal (AT) (Insolvency) No. 6 of 2017 decided on 24.05.2017 and has argued that Section 7 of the Code is free from any such bar of pendency dispute in a civil suit or arbitration proceeding which operate in case of 'Operational Creditor'.

6. Having heard the learned counsel and perusing the paper book with his able assistance, we are of the view that all necessary requirements contemplated by Section 7 of the Code stand complied with. The 'Financial Creditor' has disclosed the relevant data by placing on record the evidence of advance, the delay in payment of EMIs and the last payment made on 31.03.2016. It is thereafter that the 'Corporate Debtor' has committed default as is evident from the statement of accounts maintained by the petitioner in respect of the respondent accounts. The default has also been established on account of dishonoured of cheques. Therefore, we are satisfied with the petitioner answer the prescription of Section 7 of the Code and the Rules framed thereunder. The pendency of arbitration proceeding is also not a hindrance under Section 7 of the Code for initiating the Corporate Insolvency Resolution Process.


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7. For the reasons, aforementioned this petition is admitted. Shri Rakesh Wadhwa has been proposed as an Interim Resolution Professional. He has also filed his written communication in connection with the application to initiate Corporate Insolvency Resolution Process. The disclosure has been made in the letter dated 05.06.2017. Accordingly, in pursuance of Section 13 (2) of the Code we direct that public announcement shall be immediately made by him with regard to admission of the application under Section 7 of the Code. We also declare moratorium for the purposes of Section 14. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). 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



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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 or lessor where such property is occupied by or in the possession of the corporate debtor.”

8. 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.

9. The Interim Resolution Professional shall perform all his functions contemplated inter alia by Sections 15, 17, 18, 19, 20 & 21 of the Code. 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 the Code to extend all 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 the Code and perform all his functions strictly in accordance with the provisions of the Code.

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

Sd/-
(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

Sd/-
(DEEPA KRISHAN)
MEMBER(JUDICIAL)

30.06.2017
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