

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-973/ND/2019

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')

IN THE MATTER OF:

M/s INDUS CONTAINER

LINES PRIVATE LIMITED

...Applicant/Financial Creditor

VERSUS

M/s SVMR LOGISTICS PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 08.01.2020


CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

 For the Applicant : Mr. Anshul Rai, Adv.

For the Respondent : Ex-Parte

MEMO OF PARTIES

M/S INDUS CONTAINER LINES PRIVATE LIMITED

Having Its Registered Office At:
D.C. Silk Mills Compound,
Chunawala Estate, Kondivita Road,
Andheri (E), Mumbai City, MH- 400059

...Applicant/Financial Creditor

VERSUS

M/s SVMR LOGISTICS PRIVATE LIMITED

Having Its Registered Office At:
Flat No. 608A, 6th Floor,
Devika Tower, Nehru Place
New Delhi-110019

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating

Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Indus Container Lines Private Limited, (for brevity 'Applicant'), through its authorized representative Mr. Ayon Mitra, authorized by the board resolution dated 27.03.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s SVMR Logistics Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, namely M/s Indus Container Lines Pvt. Ltd. is a Private Limited company, registered under the Companies Act, 1956, incorporated on 10.09.2004, with CIN No. U35117MH2004PTC243939, having its registered office at 1ST Floor, D.C. Silk Mills Compound, Kondivita Road, Andheri (E), Mumbai City, MH 400059.

3. The Respondent, namely M/s SVMR Logistics Private Limited, is a company incorporated on 28.11.2013, under the provisions of Companies Act, 1956 with CIN No. U74140DL2013PTC261227, having its registered office at Flat No. 608A, 6th Floor, Devika Tower, Nehru Place, New Delhi-110019. The Authorised Share Capital of the respondent company is Rs.30,00,000/- and Paid Up Share Capital of the company is Rs.10,00,000/- as per Master

Data of the company, which is based on the details given in master data as reflected on the official website of Registrar of Companies. Since the registered office of the corporate debtor is in Delhi, this Tribunal being Adjudicating Authority, has territorial jurisdiction in respect of respondent corporate debtor as per the provisions of sub-section (1) of Section 60 of the Code.

4. The applicant states that, the Corporate Debtor is engaged in the business of service, in terms of international movement of cargo, as freight forwarding agent and to carry on business of freight and forwarding, multi model transportation and international logistics. It has been stated that the Respondent had approached the Applicant in November, 2015 for availing loan of Rs.20,00,000/- (Rupees Twenty Lakhs) ("**Loan Amount**"), on interest @ 32.4% per annum for 30 days for their business. Since the Financial Creditor and the Corporate Debtor were in the similar trade, the Financial Creditor agreed to provide loan facility to the Corporate Debtor. Accordingly, the director of the Corporate Debtor entered into Revolving Loan Agreement (hereinafter referred to as '**Agreement**'), dated 23.11.2015 with the Financial Creditor.

5. In pursuance of the said Revolving Loan Agreement, the Corporate Debtor had withdrawn short term loan of Rs.20,00,000/- (Rupees Twenty Lakhs), each at a time, seven times out of which repayment of loan was made against six withdrawals in more or less in a time bound manner. However, the 7th withdrawal of Rs.20,00,000/- by the Corporate Debtor was not fully repaid, which became the cause of action for the present petition. As per clause 9 of the agreement, the Corporate Debtor issued two security cheques in lieu of amount availed by him under the agreement. It is further submitted that as per Clause 12 of the agreement, in case the Corporate Debtor fails to pay the amount, then the Financial Creditor would be entitled to deposit the security cheques for the recovery of outstanding dues.
6. Further it is stated that, the Corporate Debtor signed a promissory note dated 12.12.2016, whereby, the Corporate Debtor gave post dated cheque and two security cheques towards an admitted liability, i.e., loan availed from the Financial Creditor. Accordingly, the Financial Creditor disbursed an amount of Rs.20,00,000/- (Rupees Twenty Lakh), into the account of Corporate Debtor, vide

RTGS No. KKBKR52016122200688839 dated 22.12.2016. The Corporate Debtor failed in honoring the terms of the revolving loan agreement and as on the date of issuance of the cheque, Rs.16,78,954/- (Rupees Sixteen Lakhs Seventy Eight Thousand Nine Hundred Fifty Four), was due upto 31.12.2018, from the Corporate Debtor which includes an amount of Rs.42,605/- (Rupees Forty Two Thousand Six Hundred Five), towards TDS deducted by the Corporate Debtor from the interest towards previous loan instances and not paid to the government treasury.

7. From the date of the disbursal of the loan amount i.e., 22.12.2016, the Corporate Debtor has paid an amount of Rs.5,37,550/- (Rupees Five Lakhs Thirty Seven Thousand Five Hundred Fifty), towards principal amount (i.e., Rs.20,00,000/-) and an amount of Rs.4,11,379/- (Rupees Four Lakhs Eleven Thousand Three Hundred Eleven Thousand Three Hundred Seventy Nine), towards Interest and an amount of Rs.5900/- (Rupees Five Thousand Nine Hundred), towards miscellaneous Invoices totaling to Rs.4,17,279/- (Rupees Four Lakhs Seventeen Thousand Two Hundred Seventy Nine), towards interest and Miscellaneous

Invoices receipt till date. The Corporate Debtor thereafter, has neither paid any amount towards the principal nor the monthly interest. Thus, the Corporate Debtor has committed a default in respect of the financial debt owed to the Financial Creditor.

8. The Financial Creditor, vide its letter dated 02.01.2019, called upon the Corporate Debtor to clear the outstanding amount of Rs.16,78,954/- (Rupees Sixteen Lakhs Seventy Eight Thousand Nine Hundred Fifty Four), within three days of the receipt of the said letter. Thereafter, Mr. Ayon Mitra, Deputy General Manager of the Financial Creditor, met the Directors of the Corporate Debtor on 16.01.2019 and the latter handed over Cheque No. 151674, dated as 23.01.2019 drawn on IndusInd Bank, Nehru Place Branch, Shop No. G-5, G-6, New Delhi, towards the discharge of liability of the Corporate Debtor and advised Mr. Ayon Mitra, to deposit the said cheque on the due date. However, the cheque was dishonored by the bank due to insufficient funds. It is important to note that the cheque was drawn on the account which did not have sufficient balance to honour it. The intimation dated 28.01.2019 of dishonoring of the aforesaid cheque was received by the Financial

Creditor on 30.01.2019. The reason given for the dishonor was “insufficient funds”. Aggrieved by the same, the Financial Creditor was constrained to initiate the proceedings under section 138 of the Negotiable Instrument Act.

9. It is further submitted by the applicant, that the Corporate Debtor failed to adhere to the repayment schedule of credit facilities and defaulted in the repayment of the loan. Consequently, the applicant submitted the security cheque bearing no. 151674, drawn on Indusind Bank Ltd. issued by the respondent, for encashment against the repayment of the loan amount. The above mentioned security cheque was not encashed due to insufficient funds in the account of corporate debtor and were returned by the bank. The copy of returned cheque along with the return memo stating ‘insufficient funds’ as the reason for return has also been annexed with the application.
10. In Part-IV of the Application, the Financial Creditor has given the details of the total amount of the financial debt and the transactions on account of which the debt fell due.

| PARTICULARS OF FINANCIAL DEBT | |
|--|--|
| TOTAL AMOUNT OF DEBT GRANTED AND DATE (S) OF DISBURSEMENT | TOTAL AMOUNT OF DEBT IS RS.20,00,000/- (RUPEES TWENTY LAKHS ONLY) DATE OF DISBURSEMENT- 22.12.2016 |
| AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED | AMOUNT CLAIMED- Rs.18,08,772/- (RUPEES EIGHTEEN LAKHS EIGHT THOUSAND SEVEN HUNDRED SEVENTY TWO) DEFAULT OCCURRED ON- 21.01.2017 |

11. The Financial Creditor has filed affidavit of service, stating that, the notice issued by this Bench in the matter, was duly dispatched by speed post and on 24.04.2019. The said notice was duly delivered on 26.04.2019. The Financial Creditor has also filed the postal receipt along with delivery report and the same has been annexed along with the affidavit.

12. In spite of proper service to the Corporate Debtor he has not caused appearance, In view of the same, the Corporate Debtor was proceeded ex-parte on 03.05.2019.
13. Facts which are material to the controversy raised are that the Applicant has provided a loan/ credit facility to the Corporate Debtor sanctioning credit facility of Rs. 20,00,000/- (Rupees Twenty Lakhs), as per the Revolving Loan Agreement dated 22.12.2016. As on 31.03.2019, a total sum of Rs. 18,08,772/- (Rupees Eighteen Lakhs Eight Thousand Seven Hundred Seventy Two) became due and payable by the Corporate Debtor to the Applicant, out of which Rs. 14,62,450/- being the outstanding principal loan amount, Rs. 2,88,967/- being with interest as per the loan agreement, Rs.14,750/- towards Miscellaneous Invoice and Rs. 42,605/- being the TDS deducted from the interest amount but not paid to the government.
14. Having heard learned counsel, for the party we are of the considered view that the Financial Creditor has succeeded in making out a case for triggering the Corporate Insolvency Resolution Process. The material on record clearly goes to show

that the Corporate Debtor had availed the loan facility and has committed default in the payment of the said debt amount. The applicant 'financial creditor' has placed on record evidence in support of the claim as well as to prove the default. The Corporate Debtor, in spite of being given various opportunities for repayment by the Applicant, has failed to make payment there is no bar for Financial Creditor from proceedings under the provisions of the Code. All the more so when the Corporate Debtor has failed till date in making efforts of settling the debt. There is no document placed on record by Corporate Debtor to show that payment of debt, as claimed by the applicant, is made or is not due and payable.

15. Under sub-section (5)(a) of section 7 of the Code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

- a. Default has occurred;
- b. Application is complete, and
- c. No disciplinary proceeding against the proposed IRP is pending.



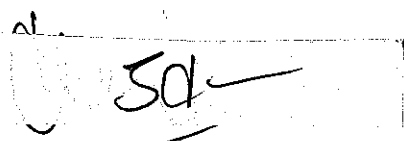
16. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default has occurred and debt has remained unpaid. Thus, the application warrants admission, as it is complete in all respects and is admitted initiating CIRP as prescribed under the Code.
17. The 'Financial Creditor'- applicant has proposed the name of Insolvency Resolution Professional, Mr. Ajit Kumar, address at 1A, Sanskriti Apartment, GH-22, Sector-56, Gurgaon-122011 and having registration No. IBBI/IPA-003/IP- N00062/2017-18/10548, mobile No. 9818228882 and email id cmaajitjha@gmail.com. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or ICAI. In addition, further necessary disclosures have been made by Mr. Ajit Kumar as per the requirement of the IBBI Regulations.

Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

18. In pursuance of Section 13 (2) of the Code, we direct the Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
20. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Ajit Kumar to meet out the expenses to perform the functions assigned to him in accordance

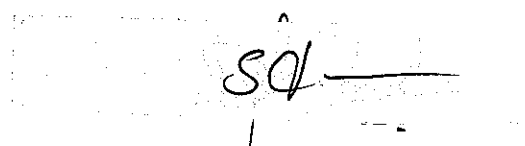
with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

21. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



(HEMANT KUMAR SARANGI)

MEMBER (Technical)



(DR. DEEPTI MUKESH)

MEMBER (Judicial)