

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.301
(MP) CP(IB) 53 of 2020

Proceedings under Section 7 IBC

IN THE MATTER OF:

Mayuri Fincap Pvt Ltd
V/s
Gwalior Distilleries Ltd

.....Applicant

.....Respondent

Order delivered on 01/07/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-Sd-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT-1**

(MP) CP (IB) No. 53 of 2020

In the matter of :

An application filed under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

In the matter between:

Mayuri Fincap Private Limited

Registered Office at:

B- 172, Lok Vihar Pitampura,
Delhi, North West Delhi-110034,
India.

...Financial Creditor

Versus

Gwalior Distilleries Limited

Registered Office at:

Ater Road, Bhind,
Madhya Pradesh- 477001.

..Corporate Debtor

Order Reserved on:03.06.2022
Order Pronounced on: 01.07.2022

Coram: MADAN B. GOSAVI, MEMBER (J)

KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

For Financial Creditor: Ld. PCA Mr. Kiran Shah

For Corporate Debtor: Ld. Adv. Mr. Sanjeev Chaudhary

ORDER

[Per: MADAN B. GOSAVI, MEMBER(J)]

1. This application has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) by Financial Creditor namely **Mayuri Fincap Pvt Ltd** for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against the Corporate Debtor namely, **M/s. Gwalior Distilleries Limited** on the ground that the Corporate Debtor committed the default in paying financial debt of **Rs.6,19,33,390/-(Rupees Six Crore Nineteen Lakh Thirty-Three Thousand Three Hundred and Ninety only)** which includes interest thereon and the date of default is 19.11.2019.

2. The Financial Creditor, non-banking Financial Company, states that as per the loan agreement dated 18.11.2018, it has granted and disbursed the loan of Rs. 5,00,00,000/-in favour of the Corporate Debtor. Total amount was disbursed in account of the Corporate Debtor on the various dates in between 19.11.2018 to 18.02.2020. In order to repay the loan, the Corporate Debtor issued in favour of the Financial Creditor two cheques which was drawn on Punjab National Bank, Gwalior Branch; Cheque No. 184403 dated 31.12.2019 was for sum of Rs. 5,00,00,000/- and Cheque No. 184403 dated 31.12.2019 was for sum of Rs. 50,00,000/-. Both Cheques were presented in cashment. However, both cheques were dishonoured by the Banker of the Corporate Debtor for the reasons (Funds insufficient) on 22.01.2020. The Financial Creditor served the notice on the Corporate Debtor calling upon it to clear the outstanding debt of Rs. 6,07,19,696/-. In spite of receipt of the Demand Notice, the Corporate Debtor did not pay the amount and thereby committed default hence, this application is filed for initiation of CIRP of the Corporate Debtor.

3. The Corporate Debtor has been served the notice of this application. It has appeared through one Mr. Sunil Yadav, one of the Directors of the Corporate Debtor. He has filed affidavit in reply.

4. We have gone through the contents of the affidavit in reply. In para 5 of the affidavit in reply, the Corporate Debtor put forth its defence contending that the Financial Creditor had agreed to purchase the shares of the Corporate Debtor. The amount shown as disbursement of loan by the Financial Creditor is in fact, the amount paid towards purchase of the shares hence, it is not financial debt. It has prayed for dismissal of the Application.

5. We heard the Learned PCA Mr. Kiran Shah for the Financial Creditor and Learned counsel Mr. Sanjeev Chaudhary for the Corporate Debtor at length. We have gone through the evidence and material on records.

6. It is not in dispute that the Financial Creditor disbursed in favour of the Corporate Debtor sum of Rs. 5,00,00,000/-. In between November 2018 to February 2020 (Annexure-G). It is also not in dispute that the Corporate Debtor did not pay back the said amount so received.

7. The Financial Creditor asserted that it was term loan disbursed in favour of the Corporate Debtor whereas, the Corporate Debtor contents that the amount so paid by the Financial Creditor was towards purchase of its shares.

8. The Financial Creditor produced on record, the evidence in form of loan agreement and the Bank's statement to show that the amount has been disbursed in the account of the Corporate Debtor. It is not in dispute that Financial Creditor is non-banking Financial Company. In view of this, it is for the Corporate Debtor to establish that the amount so received was towards consideration of sale of the shares.

9. The Corporate Debtor produced on record, the share purchase agreement dated 10.05.2019. We have gone through the same. This agreement is executed in between the Directors of the Corporate Debtor and some individuals says Anil Agrawal, Akshat Agrawal and Mini Bansal etc. The Financial Creditor i.e. Mayuri Fincap Pvt Ltd- the NBFC was not party to this agreement. Moreover, there is no evidence on record to show

that the shares were, in reality transferred to the name of those persons. Be that as it may, we are not concerned thereto but the fact remain on record is that the Corporate Debtor's contentions that it has received the amount from the Financial Creditor towards sale price of the shares is not at all maintainable and acceptable.

10. The Corporate Debtor has also no explanation to the fact that if it has received the amount as the sale price of the shares, then why it had issued in favour of the Financial Creditor, the Cheques of Rs 5,00,00,000/- and 50,00,000/- that too in January, 2020 after so called share purchase agreement?

11. In view of the evidence material on record, we have come to the conclusion that the Corporate Debtor committed default of the financial debt of more than Rs. 1,00,00,000/- as per the Section 4 of the IBC. The Financial Creditor has established the existence of financial debt payable by the Corporate Debtor and its default by the Corporate Debtor. This application is filed within limitation and it is defect free.

12. The Financial Creditor stated that the name of one Mr. Dhaval Jitendrakumar Mistry, Registration No. IBBI/IPA-001/IPP01853/2019-2020/12849, having address at: 9-B, Vardan Tower, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014 for appointment of IRP with respect to no disciplinary proceedings being pending against the RP is also obtained.

13. Intervention Application No.04 of 2021 is filed by the Madhya Pradesh Financial Corporation against the Corporate Debtor. It appears to us that Madhya Pradesh Financial Corporation is one of the Creditors of the Corporate Debtor. Keeping open right to the Applicant of this application to submit their claim to the IRP in the proceeding. In fact, we have already disposed of this application vide order dated 06.01.2022.

14. In view of the above discussion, we admit this application and pass the following order as under:

ORDER

1. The Corporate Debtor M/s. Gwalior Distilleries Limited, is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. The name of the IRP Mr. Dhaval Jitendrakumar Mistry, Registration No. IBBI/IPA-001/IPP01853/2019-2020/12849, having address at: 9-B, Vardan Tower, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014, under section 13(1) (c) of the IB Code as IRP.
3. That the Moratorium under Section 14 of the Code shall come to effect from 13.09.2021 till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
4. That the Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.
7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20& 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 2,00,000/- (Rupees Two Lakh only) as fees & expenses till the COC decides about his fees / expenses.
11. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

13. Accordingly, (MP) CP(IB) No. 53 of 2020 is allowed and stands disposed of.

-Sd-

(KAUSHALENDRA KUMAR SINGH)
MEMBER (TECHNICAL)

-Sd-

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Braj Mohan/Stenographer