

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(IB)-1481(PB)/2018

IN THE MATTER OF:

Corporation Bank
vs.
Indosolar Pvt. Ltd.

.... Applicant / petitioner
.... Respondent

Under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on: 12.04.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the applicant : Mr. Alok Kumar, Ms. Somya Sadava,
Ms. Snighda Singh, Advs.
For the Respondent(s):- Mr. Pritpal Singh Nijjar, Mr. Ashish Kumar, Ms.
Anubha Dhulia, Advs.

ORDER

M.M. KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Indosolar Pvt Limited (for brevity the 'corporate debtor').

2. The Corporate Debtor – Indosolar Pvt Ltd was incorporated on 08.04.2005 under the provisions of the Companies Act. The identification number of the Corporate Debtor given is CIN L1801DL2005PLC134879.

3. It is submitted by the Petitioner that it had initially granted credit facilities amounting to Rs. 344 Crores which were enhanced to Rs. 460 Crores vide agreement dated 16.01.2009 (**Annexure P6**). The facility were further enhanced up to Rs. 672.13 Crores vide Working Capital Consortium Agreement dated 28.07.2010. The said facilities were restructured through CDR Mechanism vide Master Restructuring Agreement dated 28.03.2012 (**Annexure P4**). The details of the facilities have been provided in Part-IV of the petition.

4. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor as on 30.09.2018 is Rs. 364,82,19,929.42/-. The account of the respondent- corporate debtor was classified as NPA on 01.07.2013. The statement showing the computation of the outstanding amount is depicted in tabular form (**Annexure 21**).



5. The Financial Creditor has proposed the name of Mr. Gulshan Gaba as the Insolvency Professional with the address E – 149, First Floor, Opposite Sainik Vihar’s Gate – 1, Rishi Nagar, Rani Nagar, New Delhi - 110034 and E-mail-id – gulshan@vpgs.in. His registration number is IBBI/IPA–001/IP–P00548/2017-18/10978. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration (**Annexure P1**).

6. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Financial Creditor has mentioned the amount claimed in default and the date of the default.

7. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate the Loan disbursed and the amount claimed to be in default. A bare perusal of these documents would reveal that Charge was created under Sections 77-78 of the

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Companies Act, 2013 duly registered with the Registrar of Companies and vide letter dated 07.11.2017 the corporate debtor has acknowledged the debt. The same are placed on record **(Annexure P19 & Annexure P15)** respectively. Certificate of the financial creditor under the Banker's Book Evidence Act is also attached with the petition **(Annexure P13)**.

8. A reply to the petition is filed by one Mr. Anand Kumar Agarwal, being the Authorized signatory of the Respondent-Corporate Debtor, who has been given authority vide Board Resolution dated 10.08.2018.

9. The only objection raised on behalf of the corporate debtor is that Hon'ble Delhi High Court has passed a judgment in favour of the corporate debtor and has decreed their claim subsidy amount in Writ Petition (Civil) No. **2265/2013 dated 03.07.2015**. A copy of the judgment has been placed on record. Thereafter, Letter Patent Appeal No. 837/2015 was filed and the same has been dismissed on 10.04.2017. Even the Special Leave Petition was dismissed on 25.08.2017. Accordingly, the amount of subsidy which was payable to the corporate debtor became due. Even contempt proceedings



were initiated for realising the amount of about Rs. 300 Crores but it could not be realised despite the time granted by us. Therefore, the aforesaid objection cannot be sustained as the liquidity is not available with the corporate debtor so as to meet the liability created on account of various loans facilities availed by the corporate debtor.

As matter of fact, in para 3 of the reply the corporate debtor has stated as under:-

“That the Respondent, further, has no objection to the Corporate Insolvency Resolution Process (CIRP) being initiated in relation to the indebtedness of the Respondent to the Petitioner.”

A perusal of the aforesaid para would show that no objection has been raised by the corporate debtor to grant the prayer made by the financial creditor.

10. In view of the aforesaid statement made by the learned counsel for the Respondent-Corporate Debtor, we find that advancement of loan and default stand admitted. Even Otherwise there is overwhelming documentary evidence on record which support those findings.



11. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.
12. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in our Order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).
13. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.
14. As a sequel to the above discussion, this petition is admitted and Mr. Gulshan Gaba is appointed as the Interim Resolution Professional.



15. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.
16. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of 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. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
17. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Gulshan Gaba 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.

18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.


(M.M.KUMAR)
PRESIDENT

12.04.201


(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

12.04.2019
(VIDYA)