

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No. 702
IB-758/ND/2021

IN THE MATTER OF:

M/s. Shambhu Agencies Pvt. Ltd. and Ors.

...Applicants

V/s.

M/s. World Connect Impex Pvt. Ltd.

...Respondent

ORDER UNDER SECTION 7, IBC, 2016

ORDER DELIVERED ON: 14.09.2023

CORAM:

SHRI. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IB-758/ND/2021 stands admitted.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(P.S.N PRASAD)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-758/(ND)/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

1.M/s. Shambhu Agencies Private Limited.

Through its Authorised Representative Mr. Shamsheer Singh

Having its registered office at: 154, Lenin Sarani,
4th Floor, Kolkata, 700013

...Financial Creditor No.1

2. M/s. Zing Merchant Private Limited

Through its Authorised Representative Mr. Shamsheer Singh

Having its registered office at: FE-83, Near Bidhan Nagar
Municipal Government School, Sector - III, Salt-Lake City,
Kolkata, 700106

...Financial Creditor No.2

3. M/s. Sunshine Commodities Private Limited

Through its Authorised Representative Mr. Shamsheer Singh

Having its registered office at: 154, Lenin Sarani, 4th Floor,
Room No. 401A, Kolkata, 700069

...Financial Creditor No.3

4. M/s. Unishire Urban Infra Limited

Through its Authorised Representative Mr. Shamsheer Singh

Having its registered office at: 13/ 1A, Government Place (East)

Top Floor, Kolkata - 700069

...Financial Creditor No.4

5. M/s. Vista Food Products Private Limited

Through its Authorised Representative: Mr. Shamsheer Singh

Having its registered office at: 1, Crooked Lane,

P.S. Hare Street,

Kolkata, 700069

...Financial Creditor No.5

6. M/s. Kashmir Motor and General Finance Private Limited

Through its Authorised Representative: Mr. Shamsheer Singh

Having its registered office at: 10, Princep Street, 2nd Floor,

Kolkata, 700072

...Financial Creditor No.6

Versus

M/s. World Connect Impex Private Limited

Having its registered office at: Ground Floor, H.No 4, Khasra No.

765 Sant Nagar, Burari, North Delhi-110084

...Respondent/ Corporate Debtor

Coram:

SHRI.P.S.N PRASAD, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner: Adv. Sandeep Bajaj

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 14.09.2023

1. This is an application filed by Shambhu Agencies Private Limited (hereinafter referred to as “Financial Creditor No.1”), Zing Merchant Private Limited (hereinafter referred to as “Financial Creditor No.2”), Sunshine Commodities Private Limited (hereinafter referred to as the “Financial Creditor No.3”), Unishire Urban Infra Limited (hereinafter referred to as “Financial Creditor No.4”), Vista Food Products Private Limited (hereinafter referred to as “Financial Creditor No.5”) and Kashmir Motor and General Finance Private Limited (hereinafter referred to as “Financial Creditor No.6”) (hereinafter collectively referred to as “Financial Creditors”) to initiate

Corporate Insolvency Resolution Process against M/s. World Connect Impex Private Limited. (hereinafter referred to as the “Corporate Debtor”) due to the failure on the part of the Corporate Debtor in making the repayment of a total amount of Rs.5,13,80,639.72/- (Rupees Five Crores Thirteen Lakhs Eight Thousand Six Hundred and Thirty-nine and Seventy-Two Paise) including interest @ 16% per annum as on 15.08.2021 which it owes to the Financial Creditors despite repeated demands. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Financial Creditors are Companies duly incorporated under the provisions of the Companies Act, 1956.
- ii. That the present Application arises out of Loans taken by the Corporate Debtor from the Financial Creditors and acknowledged by Loan Acknowledgement letters, Demand Promissory Notes, Receipts, Loan Roll over letters and other means. The Corporate Debtor has acknowledged receiving loans amounting to a sum total of Rs.3,38,00,000/- (Rupees Three Crores Thirty-Eight

Lacs) from the Financial Creditors on an applicable interest rate of 16% per annum.

- iii. That there existed frequent financial dealings and frequent exchange of monies between the Corporate Debtor and the Financial Creditors during the course of their day-to-day business activities. During such dealings, the Corporate Debtor approached the Financial Creditors on different occasions and sought financial assistance in form of a Loan for a varying amount of money. At the request of the Corporate Debtor, after negotiations, the Financial Creditors agreed to advance a loan of the requested sum to the Corporate Debtor.
- iv. That as per the understanding between the parties, the Corporate Debtor was liable to pay interest on the said Deposit amount @16% per annum to the Financial Creditors.
- v. That it was further agreed between the Parties that the Corporate Debtor shall repay the said Deposit amount to the Financial Creditors on a certain pre-ascertained date. Accordingly, the Financial Creditors transferred the

requested amount to the bank account of the Corporate Debtor. In furtherance thereof, the Corporate Debtor issued Loan Acknowledgement Letters in favour of the Financial Creditors, respectively. The said Loan Acknowledgement Letters incorporated the terms of the understanding between the parties including the rate of interest as well as the terms of repayment. Along with the said Loan Acknowledgement Letters, the Corporate Debtor also issued Demand Promissory Notes and Receipts in favour of the Financial Creditors acknowledging the receipt of the Loan amount.

- vi. That no repayment was received by the Financial Creditors from the Corporate Debtor till the respective due dates. The Corporate Debtor rather approached the Financial Creditors and expressed its inability to repay the said Loan at the relevant time i.e. on the respective due dates and sought for extension of the same. Accordingly, the Corporate Debtor vide its letter dated 01.01.2019 requested each of the Financial Creditors for a Roll-Over of the said Loans thereby extending the

timeline for repayment thereof by a period of 181 days i.e. by 30.06.2019. The said extension request letters incorporated the complete terms of the understanding between the parties including the rate of interest as well as the terms of repayment.

vii. That the Financial Creditors, owing to the frequent dealings between the parties, agreed to the said requests of the Corporate Debtor. However, as per the understanding between the parties, the Corporate Debtor was liable to continue to pay interest upon the said Loan amounts to the Financial Creditors at a rate of 16% per annum. Further, in order to secure the amounts under the said Loan transactions, the Corporate Debtor issued certain post-dated cheques to the Financial Creditors. However, at the request of the Corporate Debtor, the said cheques were not presented by the Financial Creditors on their due dates as the Corporate Debtor once again failed to repay the said Loans and thereafter orally requested for extensions from time to time. The said requests were

accepted by the Financial Creditors to maintain cordial business relations.

viii. That despite such cooperation, the Corporate Debtor has not made any repayment till date, thereby constraining the Financial Creditors to approach this Tribunal.

- 2.** Vide order dated 07.03.2023 the Corporate Debtor was set ex-parte.
- 3.** We have heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application. The Applicant has claimed the default on part of the Respondent for an amount of Rs.5,13,80,639.72/- (Rupees Five Crores Thirteen Lakhs Eight Thousand Six Hundred and Thirty-nine and Seventy-Two Paise) including interest @ 16% per annum as on 15.08.2021.
- 4.** Section 7(1) of the Code states as follows: “A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating

corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.” Therefore, it implies that two or more financial creditors can converge or join hands to meet the threshold of Rs.1 Crore and file an Application under Section 7 of the Code seeking to initiate CIRP in the matter of the Corporate Debtor.

5. The Hon’ble Supreme Court in the matter of *M/S. Innoventive Industries Ltd Versus Icici Bank & Anr. Civil Appeal Nos. 8337-8338 of 2017* held as follows:

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

6. Therefore, to initiate CIRP under Section 7 the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the Adjudicating Authority to only ascertain and

record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. What constitutes a 'default' must be determined under the provisions of the Code. Section 3(12) of the Code defines default as:

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

7. The Financial Creditor has reproduced loan acknowledgment letters dated 24.08.2018 issued by the Corporate Debtor accepting the receipt of loan from the Financial Creditors. Further, it is clearly stated in the said letters that the loan shall bear interest at the rate of 16% per annum. The documents submitted by the Financial Creditors substantiate the claim that the Corporate Debtor had taken loans from the Financial Creditors and has indebted and defaulted the repayment of such debt.

8. We are satisfied that the present application is complete in all respects and the applicant financial creditors are entitled to claim

their outstanding financial debts from the corporate debtor and that there has been default in payment of the financial debt.

9. In light of the above, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

10. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicants have proposed the name of Mr. Vishnu Kumar Tulsyan for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-01428/2019-2020/12525. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no

disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Vishnu Kumar Tulsyan has submitted the declaration in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 23.10.2021. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

- 11.** Mr. Vishnu Kumar Tulsyan having registration number IBBI/IPA-001/IP-P-01428/2019-2020/12525 is appointed as an Interim Resolution Professional.

- 12.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code.

The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

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 Securitization 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.”

14. 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, are not to be terminated or

suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. 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 every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone

else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (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, Rules and Regulations.

16. The office 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, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(P.S.N PRASAD)
MEMBER (JUDICIAL)