

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. III)****Company Petition No. IB-741/ND/2021**

(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

IN THE MATTER OF:**HIVELOOP CAPITAL PRIVATE LIMITED****...Applicant/Financial Creditor****VERSUS****RADIANT CASTINGS PRIVATE LIMITED****...Respondent/Corporate Debtor****Pronounced on: 24.08.2022****CORAM:****SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)****SHRI SATYA RANJAN PRASAD
MEMBER (TECHNICAL)****For the Applicant:** Soumya Dutta, Advocate**For the Respondent:** Shashwat Anand, Adya Singh, Advocates*IB-741/ND/2021*

ORDER

Per- Satya Ranjan Prasad, Member (T)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Hiveloop Capital Private Limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Radiant Castings Private Limited (for brevity 'Corporate Debtor').
2. It is submitted that the Financial Creditor/Applicant is a non-banking Financial Company and enables credit facility to the users of particular website. The Financial Creditor/Applicant submits that the Corporate Debtor, being one participant seller ('the borrower') in the said platform availed of revolving credit facility from the financial creditor to the tune of Rs. 1 Crore vide Credit Facility Agreement dated 04.09.2020 secured by way of postdated cheques and demand promissory note along with Letter of Continuity. The Credit Facility was to be disbursed by the Financial Creditor in one or more tranches, repayable in accordance with the terms set out in the agreement together with accrued interests applicable thereon in accordance with the interest payable date as set out in the Agreement (18% p.a.).
3. The Financial Creditor/Applicant submits that the Corporate Debtor initially complied with the terms of the agreement and repaid the initial dues till it began faltering on its payment obligations. It is submitted that from 27.04.2021, the corporate debtor started making default and therefore the financial creditor recalled the credit facility and called upon the corporate debtor to repay the outstanding

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amount by notice date 23.06.2021. In reply to notice, the corporate debtor admitted to loan facility availed by it from the financial creditor while denying any repayment liability on its part citing, inter alia, the pandemic as well as the 'force majeure' clause in the agreement for non-payment of its dues.

4. The Financial Creditor/Applicant further submits that a show cause notice was finally issued upon the corporate debtor, to show cause within 15 days of the date of issuance of the notice as to why the borrower should not be classified as 'Willful Defaulter' in terms of the RBI Circular dated 01.07.2015. The corporate debtor replied to the notice vide an email dated 29.09.2021, wherein he clearly acknowledged its liability towards the financial creditor and stated as follows:

"With reference to above & our several meetings from time to time, please be informed that we shall be trying to repay the loan amount within short time. However, this should not be taken as our firm commitment and is subject to prevailing financial situation at the relevant time."

5. The Financial Creditor filed present application on 22.11.2021 under Section 7 of the I & B Code, 2016 against the Corporate Debtor, Radiant Castings Private Limited. The Corporate Debtor is in default of a sum of Rs. 1,24,76,854.43/- as on 13.11.2021 with further costs, interest and other expenses till date of realization.
6. The Corporate Debtor has replied to the present application on 02.04.2022 and has admitted its inability to clear the outstanding due to the Applicant/Financial Creditor:

"It is submitted that the corporate debtor may have has some liquidity crunch due to the onset of the covid-19 pandemic but as the said pandemic is now subsided and business is reviving, the corporate debtor aims to revive its business and take care of the interest of all the stakeholders"

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7. Heard the Ld. counsels for both the parties and perused the documents on record, It is observed that in email dated 29.09.2021, there is a clear admission on part of the corporate debtor. The corporate debtor has also admitted in the reply affidavit dated 02.04.2022 of the corporate debtor, wherein he has admitted that the corporate debtor may have some liquidity crunch due to some to the onset of the Covid-19 pandemic. Therefore, the application deems to be admitted.
8. The registered office of the corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
9. The default of the corporate debtor is subsisting & continuing till date. Hence, the application was filed within the period and is not barred by limitation.
10. In the given facts and circumstances, the present application is complete and the Applicant/Financial Creditor is entitled to claim its dues, which remain uncontroverted and yet duly admitted by the Corporate Debtor vide its email dated 29.09.2021 and 30.10.2021, establishing the default in payment of the financial debt, beyond doubt. In the light of above facts and records, the present application is admitted, in terms of section 7 (5) of IBC, 2016.
11. The Applicant has proposed Mr. Gaurav Katiyar to be appointed as the Insolvency Resolution Professional, who is be and hereby appointed as IRP of the corporate debtor, having registration number IBBI/IPA-001/IP-P00209/2017-18/10409 (email –cagauravkatiyar@gmail.com) subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority)

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Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

12. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Gaurav Katiyar to meet out the expense 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 for 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.
13. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.
14. A copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. 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.

— Sd—

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

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— Sd—

**SHRI SATYA RANJAN PRASAD
MEMBER (TECHNICAL)**