

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH**

CP (IB) No.1058/PB/2020

A Petition 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:

M/s INTEC CAPITAL LIMITED

CIN: L74899DL1994PLC057410

(Unitel Credit (P) Ltd. Amalgamated into Intec Capital Ltd.)

At 708, MANJUSHA BUILDING

57, NEHRU PLACE, NEW DELHI-110019

EMAIL: IBC@INTECCAPITAL.COM

... Applicant/Financial Creditor

Versus

M/s SRD MANAGEMENT COMPANY PRIVATE LIMITED

CIN: U74140DL2008PTC181405

C-109, DEFENCE COLONY, SOUTH DELHI,

NEW DELHI- 110024, INDIA

EMAIL: SRDUGAL@ICRIINDIA.COM

...Respondent/Corporate Debtor

Order Delivered on: 06.03.2023

Coram:

SHRI P.S.N. PRASAD: Member (Judicial)

SHRI RAHUL BHATNAGAR: Member (Technical)

Appearances (through video conferencing):

For the Applicant : Ms. Nidhi Saini, Mr. Dhruv Parwal, Mr. Aabhas Singh, Advs.

For the Respondent : Mr. Sunil Choudhary, Adv.

ORDER

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

1. This is a Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by **Intec Capital Limited** [CIN: L74899DL1994PLC057410] (**“Financial Creditor”**), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **SRD Management Company Private Limited** [CIN: U74140DL2008PTC181405] (**“Corporate Debtor”**). The hearing of this matter was held through hybrid mode.
2. The Corporate Debtor was incorporated on 28.07.2008 under the Companies Act, 2013. Its registered office is C-109, Defence Colony, South Delhi, New Delhi-110024, India. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Authorised Share Capital of the Corporate Debtor is Rs. 2,00,00,000 (Two Crores) and the Paid-up Share Capital is Rs. 1,00,000 (One Lakh).
4. ***Submission of learned Counsel appearing for the Financial Creditor***
 - a) The M/s Unitel Credit Private Limited was amalgamated into M/s Intec Capital Limited, after approval of Hon'ble High Court of Delhi vide its order dated 27.07.2010. Intec Capital Limited (Financial creditor) is a non- banking financial company engaged in the business of providing financial facility. The Financial Creditor granted two loan facilities worth Rs. 3,14,00,000 (Three Crores Fourteen Lacs) to the M/s SRD Management Company Private Limited (Corporate Debtor) for buying assets, of which one such facility was sanctioned by Unitel Credit Private Limited.

- b) The two Loan Agreements are UL9/106 and 009/157, for Rs. 1,57,00,000 (One Crore Fifty-Seven Lacs) each. On the faith given by Corporate Debtor, the Financial Creditor issued the sanction letters dated 25.03.2010 for collective amount of Rs. 3,14,00,000 (Three Crores Fourteen Lacs) and the same were accepted by Corporate Debtor and returned to Financial Creditor duly signed and acknowledged.
- c) The loan agreement UL9/106 dated 27.03.2010 was disbursed vide Instrument No. 693953 & 693965 and the loan agreement 009/157 dated 27.03.2010 was disbursed vide Instrument No. 000616. The Financial Creditor had financed both loans for 24 months with interest @ 8.5 % p.a.
- d) The Corporate Debtor had to repay the loans in 24 Equal Monthly Instalments of Rs. 7,65,375 (Seven Lacs Sixty-Five Thousand Three Hundred Seventy-Five) and such was payable from 01.05.2010. in lieu of such payment, the Corporate Debtor duly handed over post-dated cheques to the Financial Creditor. However, the Corporate Debtor started making defaults in both the loan accounts.
- e) The Corporate Debtor submitted a representation dated 27.10.2010. requesting the Financial Creditor for restructuring of loans. On such request, the Financial Creditor executed a settlement deed dated 30.10.2010.
- f) Thereafter, the EMI of loan agreement UL9/106 was reduced from 7,65,375 (Seven Lacs Sixty-Five Thousand Three Hundred Seventy-Five) to 3,86,221 (Three Lacs Eighty-Six Thousand Two Hundred Twenty-One). The EMI of loan agreement 009/157 was reduced from 7,65,375 (Seven Lacs Sixty-Five Thousand Three Hundred Seventy-

Five) to 3,11,763 (Three Lacs Eleven Thousand Seven Hundred Sixty-Three). Further, as per restructuring, the number of EMI for both the loan accounts were increased from 24 to 60.

- g) The Corporate Debtor made default in payment even after restructuring, therefore, by invoking clause 32 of the Loan Agreement, which speaks about mandatory Arbitration Clause, Arbitration Proceedings were initiated against the Corporate Debtor via Arbitration Notices dated 21.07.2012.
- h) During the pendency of the Arbitration Proceeding, the Financial Creditor and the Corporate Debtor entered into a Settlement Agreement dated 19.12.2012.
- i) The Corporate Debtor made payment of Rs. 3,80,000 (Three Lacs Eighty Thousand) & 1,90,000 (One Lakh Ninety Thousand) on 14.01.2013. The Arbitral Award was passed on 18.01.2013, wherein, it was stated that a settlement has been reached between the parties that if the Corporate Debtor made any further default in payment, the Financial Creditor is entitled to receive further interest on the said outstanding amount from the date of default, till the date of realization @15% p.a. for the loan agreement 009/157 and a rate of 20.08% p.a. for the loan agreement UL9/106.
- j) Even after restructuring, the Corporate Debtor made default in payment and acknowledged the debt at multiple occasions. Therefore, on 24.09.2018, a further settlement was reached between the parties that the abovementioned 3rd settlement shall be considered null and void-ab-initio and all the outstanding amount shall be adjusted against two loan accounts and therefore, the present petition under

Section 7 of the Insolvency and Bankruptcy Code, 2016
 (“*Code*”) is filed.

5. The Financial Creditor proposes the name of Mr. Piyush Moona, having Registration No. IBBI/IPA-001/ IP-P00990/2017-18/11630, as the Interim Resolution Professional (IRP). The Registered address of the IRP is Flat No. 04034, ATS Advantage Ahinsa Khand 1, Indirapuram, Ghaziabad, Uttar Pradesh-201014.

6. ***Submission of learned Counsel appearing for the Corporate Debtor***

a) The petition is time barred as the Financial Creditor failed to mention the date of default in the petition, which is 30.05.2015.

b) It was also submitted that there has been no acknowledgement of debt by the Corporate Debtor prior to 24.09.2018. The acknowledgement made by Corporate Debtor is of 29.09.2018, which was made after the expiry of the limitation period on 29.05.2018. Therefore, acknowledgement made after the expiry of limitation period cannot extend the period of limitation.

c) The Financial Creditor has before filing the present petition, filed two petitions seeking enforcement of arbitral awards before Hon’ble High Court of Delhi and such petitions are still pending. Therefore, the present petition is not maintainable on the ground of forum shopping.

d) The documents relied upon by the Financial Creditor is neither signed nor executed by the Corporate Debtor and that the Financial Creditor is making the false claim which is apparent from the fact that the amount allegedly mentioned to be in

default by the Corporate Debtor is not matching with the account statement and credit entries in the account of the Corporate Debtor.

- e) Further, during Arbitration proceedings, the Corporate Debtor was not represented by an Advocate and Section 138 proceedings were going on at the same time. Also, no detail of outstanding debt was furnished by the Financial Creditor, no information was given on interest on the collateral deposits, no TDS certificates were given to the Corporate Debtor.
- f) Therefore, the Financial Creditor misused the entire debt recovery process by harassing the Corporate Debtor.

Analysis and Findings

- 7. We have heard Learned Counsel for both the parties and perused the averments made in the application, reply, rejoinder and written submission filed by the parties. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
- 8. The present petition by Financial Creditor is filed on 09.11.2020. As per the Corporate Debtor's contention, the present petition is barred by limitation, since the debt is of 2010. The sanction letters approving the loan applications are issued on 25.03.2010. The parties entered into a loan agreement on 27.03.2010. Therefore, the limitation period is supposed to end on 26.03.2013. However, there had been several acknowledgements by Corporate Debtor, which extended the limitation period from time to time. The loan accounts had been restructured time and again at the request of

the Corporate Debtor i.e., on 30.10.2010, 19.12.2012 and 18.01.2013. Multiple cheques provided by the Corporate Debtor were bounced and hence, the loan accounts were declared NPA on 30.05.2015.

Considering the date of NPA to be the date of default, the three years limitation period is supposed to end on 29.05.2018. After the date of default i.e., 30.05.2015, the Corporate Debtor acknowledged the Financial Debt via email in August & November 2015 and also acknowledged the same in his Balance Sheet on 05.09.2017, which is under the extended period of limitation. As per the decision of Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Shailesh Sangani v. Joel Cardoso & Ors., 2019*, an acknowledgement of a debt by way of balance sheet is a valid acknowledgement and such will start a fresh period of limitation from the date of acknowledgement. Therefore, now, the limitation period is supposed to end on 04.09.2020. Further, a new settlement regarding repayment of financial debt was entered into between parties on 24.09.2018. Other than that, the Corporate Debtor made express acknowledgement of debt on 29.09.2018, which is again within the extended period of limitation. Such express limitation of financial debt would extend the limitation period and hence, the limitation period would end on 28.09.2021. The present petition is filed on 09.11.2020 and therefore, is under the period of limitation.

9. In order to ascertain the sustainability of the claim of the Financial Creditor, we need to look into the provisions of the Insolvency and Bankruptcy Code, 2016. To initiate CIRP under Section 7 of the Code, there has to be a 'Financial debt'. As per Section 5(8)(b) of the Code, 'Financial Debt' includes a debt which is raised by acceptance under any credit facility. It is to be noted that in the

present case, the Financial Creditor is a non-banking financial institution engaged in the business of providing credit facilities. Therefore, it would be correct to say that the debt claimed by the Financial Creditor against the Corporate Debtor would be considered as a Financial Debt.

10. The Financial Creditor has mentioned that the amount claimed to be in default is Rs. 10,99,36,605 (Ten Crores Ninety-Nine Lacs Thirty-Six Thousand Six Hundred and Five). Such an amount is calculated after considering the original amount of the two Loan Agreements UL9/106 & 009/157, various settlement agreements and arbitral award. The Financial Creditor has also filed supportive documents for his claim. However, the Corporate Debtor disputed the claimed amount. In this regard, the Hon'ble National Company Law Tribunal (NCLAT) vide its judgment in ***Mr. Vineet Khosla Vs. M/s Edelweiss Asset Reconstruction Company Ltd. & Ors., Company Appeal (AT) (Ins) No.441 of 2019*** made it clear that quantum of debt cannot be a ground for rejection of insolvency petition. The Hon'ble NCLAT held that:

“With regard to the dispute raised by the Corporate Debtor that incorrect amount had been claimed, it has been held by Adjudicating Authority that dispute over the quantum of default cannot be a ground to reject the Application under Section 7 as determination of quantum of financial debt is not in the domain of Adjudicating Authority. It was also observed that the Corporate Debtor would be free to raise objection regarding mismatch of dues and excess before the Resolution Professional/Committee of Creditors. Adjudicating Authority also found that the transaction showed that loan was disbursed against consideration for time value of money with a clear commercial effect of borrowing. It has been found that the record shows that Corporate Debtor availed the loan facility and committed

default in repayment of huge outstanding financial debt. Consequently, Adjudicating Authority admitted the Application”.

11. It is also submitted that the Corporate debtor has committed default on several occasions and the final date of default is stated to be of 31.05.2020. Furthermore, the Corporate Debtor has made acknowledgement of debt on multiple occasions and on 24.09.2018. made express promise to pay the debt. On 29.09.2018, the Corporate Debtor made payment of Rs. 5,00,000 (Five Lacs) which again shows the acknowledgement of debt.
12. It is also submitted by the Corporate Debtor that the petition for enforcement of Arbitral Awards is pending for execution before the Hon'ble High Court of Delhi. In this regard, the judgment of Hon'ble NCLAT in ***Harkirat S. Bedi Versus Oriental Bank of Commerce. Company Appeal (AT)(Ins) No. 499 of 2019, 8th May 2019*** holds much relevance. The Hon'ble NCLAT hereunder held as:

“It is evident that even if a claim is disputed and if the amount payable is more than Rupees 1 lakh, the application u/s 7 of the I&B Code is maintainable. Mere pendency of the case before the DRT for adjudicating of such disputed amount cannot be a ground to reject the application u/s 7 of the I&B Code, if the Adjudicating Authority is satisfied that there is a ‘debt’ and ‘default’ and the application is complete. On the other hand, in view of Section 14 all such proceedings in respect of any debt will remain stayed and cannot proceed during the period of moratorium”.
13. It is also pertinent to mention that the present petition very well qualifies the 1 Crore threshold limit for initiating CIRP, as mentioned under Section 4 of the Code.
14. During the proceedings, an Interlocutory Application i.e., IA/2032/2022 was filed by the Applicant Financial Creditor for

change/replacement of present IRP. The Financial Creditor proposed to replace the earlier IRP Mr. Piyush Moona, whose name was originally identified by the Financial Creditor, with Mr. Gaurav Srivastava, having Registration No. IBBI/IPA-003/IP-N-00285/2020-2021/13253. This Hon'ble Tribunal vide its order dated 15.07.2022, has accepted the same.

15. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
16. In the light of the above facts and circumstances, it is, hereby ordered as follows :-
 - a. The application bearing **CP (IB) No. 1058/PB/2020** filed by, **Intec Capital Limited**, the Financial Creditor, under Section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **SRD Management Company Private Limited**, the Corporate Debtor, is **admitted**.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 of the IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, as the case may be.
 - d. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with regulation

6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. Mr. Gaurav Srivastava, Registration Number IBBI/IPA-003/IP-N-00285/2020-2021/13253, Email: Srivastava.law@gmail.com, having registered address Flat No. 908, Charms Solitaire, Ahinsa Khand 2, Indirapuram, Ghaziabad-201012, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of a valid Authorization of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever.

h. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

17. A certified copy of this order may be issued to the parties, if applied for, upon compliance with all requisite formalities.

Sd/-
Shri Rahul Bhatnagar
Member (Technical)

Sd/-
Shri P.S.N. Prasad
Member (Judicial)



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE