

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

IB-1804/(ND)/2019

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:

Easy Trip Planners Limited

Registered office at:

223, FIE,
Patparganj Industrial Area,
Delhi- 110092

...Applicant/Financial Creditor

Versus

M/s Kriarj Entertainment Pvt. Ltd.

Registered office at:

B-56H, Rajeev Colony,
Chawri Bazaar, New Delhi- 110006

... Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR Hon'ble Member (Technical)

Counsel for Applicant: Mr. Soayib Qureshi, Mr. Devansh Jain
(Advocates)

Counsel for Respondent: Mr. R. Sudhinder, Ms. Ekta Bhasin
(Advocates)

ORDER

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

Date: 11.02.2022

1. This is an application filed by M/s Easy Trip Planners Limited to initiate corporate insolvency resolution process ("CIRP") against M/s Kriarj Entertainment Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs 15,30,00,000/- (Rupees Fifteen Crore Thirty Lakhs Only) paid to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- a. That the applicant is in the business of investing monies in the production of various cinematograph films.
- b. The Corporate Debtor is engaged in the business of conceptualizing, conceiving and producing cinematograph

films in the Bollywood industry and is looking for investors. In order to induce the Financial Creditor to enter into an agreement and invest monies with the Corporate Debtor, they created certain security interests in favour of the Financial Creditor.

- c. Film investment agreement dated 23.02.2018 was executed between both the parties for the production, enjoyment and exploitation of one such Bollywood film. Corporate Debtor approached Financial Creditor in February 2018 in order to secure investment for the purpose of producing the film. Corporate Debtor mentioned that it was in requirement of a short investment on the guaranteed table profits.
- d. Corporate Debtor also represented that T-Series were 50% partners in the film and that they were willing to create an exclusive first charge lien in favor of the Financial Creditor on the revenue that would be collected from the said film and that further to secure the interest of the Financial Creditor, the said parties would mortgage the rights of the Corporate Debtor on the Copyright and other rights on the said film exclusively in favour of the Financial Creditor. On

the above said representations, the Financial Creditor agreed to invest its monies in the said film.

- e. Financial Creditor agreed to invest an interest-bearing refundable amount of Rs 10,00,000,00/- (Rupees Ten Crore Only) towards the production cost for producing the said film on the guarantee and undertaking made by Corporate Debtor that the said investment would be refunded along with interest @ 2% per month from the date of each disbursement until the actual date of repayment on the terms and conditions to be recorded in the said agreement.
- f. Financial Creditor advanced an amount of Rs 5,00,00,000/- (Rupees Five Crore Only) to Corporate Debtor by way of an advance even prior to the execution of the said agreement and they entered into an agreement and upon execution Financial Creditor also released the balance amounts of Rs 5,00,00,000/- to Corporate Debtor in furtherance of the agreed terms between the parties.
- g. It was further agreed between the parties that the invested amounts along with the interest accrued thereupon shall be refunded to the Financial Creditor by the Corporate Debtor

from the revenues receivable by and or accruing to the Corporate Debtor from the exploitation of the said film in the first position prior to recovery of any monies by the Corporate Debtor. Further it was agreed that the said amounts shall be refunded by the Corporate Debtor in any event on or before 15.12.2018.

h. Corporate Debtor did not adhere to the terms thereof and the above-mentioned film was on the verge of being abandoned in between due to the shortage of funds and then again Corporate Debtor approached Financial Creditor and after the request they further invested an amount of Rs 5,30,00,000/-. Thus, the Financial Creditor has invested a total amount of Rs 15,30,00,000/- towards the production costs of the said film. It is pertinent to mention that the said additional amount of Rs 5,30,00,000/- was to be repaid by the Corporate Debtor in the same manner as the initial investment of Rs 10,00,00,000/- and the same is duly reflected in the bank statements of the Financial Creditors well as the ledger account of the Corporate Debtor as

maintained in the books of account of the Financial Creditor.

- i. Further it was reiterated that in order to induce the Financial Creditor to enter into the said agreement, the Corporate Debtor had granted and assigned to the Financial Creditor a continuing first priority security interest in and copyright mortgage on all of Corporate Debtor's right, title and interest associated with the said film in favour of the Financial Creditor.
- j. The, Corporate Debtor had agreed not to execute any agreement with any third parties that would in any manner prejudicially affect the rights and interests of the Financial Creditor under the said agreement including but not limited to the right of the Financial Creditor to receive the invested amount along with the agreed rate of interest.
- k. Towards part repayment of the said invested amounts and interest, the Corporate Debtor issued two cheques to the Financial Creditor being cheque no. 638636 dated 24.03.2018 for an amount of Rs 3,50,00,000/- (Rupees Three Crore and Fifty Lakhs) and cheque no. 638638 dated

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26.03.2018 for an amount of Rs 50,00,000/- (Rupees Fifty Lakhs)

1. While handing over the cheques to the Financial Creditor, the Corporate Debtor had assured the Financial Creditor that the said cheques would not default. On the said assurance of Corporate Debtor, the Financial Creditor took the aforesaid cheques and when the Financial Creditor deposited the said cheques with its bank, the same got dishonored.
- m. Financial Creditor sent legal notice to Corporate Debtor to repay the amount of dishonored cheque but despite the notice no payments were made.
- n. That between period 14.12.2018 and 08.03.2019, T-Series and one M/s Panorama Studios approached the Financial Creditor and made payment to the tune of Rs 4,70,00,000/- on account of the debt due and payable by the Corporate Debtor. However, after 08.03.2019, even the said entities stopped making the payments to the Financial Creditor.
- o. Only an amount of Rs 6,25,00,000/- was received by the Financial Creditor. The, Corporate Debtor is yet to make the

payment of the balance principal amount due and payable to the Financial Creditor in terms of said agreement being Rs 9,50,00,000/- in respect of the amount invested along with interest accrued thereupon @2% per month.

p. Till now Corporate Debtor has committed a default of Rs 14,34,12,840/- as per the terms and conditions. The default on the part of the Corporate Debtor is recurring in nature as the monies invested with the Corporate Debtor are yet to be returned to the applicant.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- i. The Respondent submitted that Section 7 application is completely misconceived and has been filed to coerce and arm twist the Corporate Debtor to recover the dues of a third party i.e., Super Cassettes Private Limited by misusing the remedy.
- ii. The case filed in Section-7 is against the non-existent company and the amount claimed is disputed and the

said amount is not to be paid by the Corporate Debtor, it is due and payable by T-series as per the settlement agreement 14.06.2018.

- iii. It is mentioned that a Tripartite agreement dated 18.06.2018 was also entered between applicant, T-Series and Corporate Debtor wherein it was categorically stated that Rs 6,75,00,000/- will be paid by T-Series instead of Kriarj to the applicant. The said agreement also records that producer credit will be given to Mr. Nishant Pitti, who is the director of the applicant as one of the nominee of Kriarj.
- iv. It is pertinent to mention that Rs 6,75,00,000/- was to be paid by Super cassettes Industries Pvt. Ltd. and thus the major liability was on Super Cassettes Industries Pvt. Ltd. and not the Corporate Debtor. Further the Corporate Debtor had given his producer credit right in the film to the applicant as a partial adjustment towards the amount which was to be paid by the Corporate Debtor. It is also submitted that 50% of the Intellectual Property share in a film titled Pari was also given to the Financial

Creditor. The cost of the said IP share was worth Rs 2 crores and the said amount was also to be adjusted towards the repayment of the amount received from commercial exploitation of the IP rights sold in favour of the Financial Creditor.

- v. Thereafter another agreement was entered into between Super Cassettes Industries Pvt. Ltd. and the Financial Creditor wherein the parties had agreed to withdraw all complaints, suits and any other proceedings pending before any authorities including but not limited to the present legal proceedings.
- vi. It is therefore apparent that there are disputes qua the alleged amount between the parties which are required to be settled through a competent forum and therefore this authority has no jurisdiction to entertain this application.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent

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for the Loan amount of Rs. 15,30,00,000/- (Rupees Fifteen Crore Thirty Lakhs Only).

4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order 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. That while dealing with an application under section 7 the Adjudicating Authority is not required to consider the question of dispute between the parties as long as the 'debt' and 'default' is established.

5. The Corporate Debtor in his reply to the present petition has submitted that the present petition is not maintainable as the Corporate Debtor's name had been struck off from Register of Companies. The Corporate Debtor has also raised the objection that the alleged settlement dated 14.06.2018 which had been done by Corporate Debtor and T-Series has any bearing upon the transaction between

Financial Creditor and the Corporate Debtor in that the amount is not to be paid by the Corporate Debtor but is due and payable by T-Series. Another argument raised by the Corporate Debtor is that there being a tripartite agreement between the parties based upon the letter dated 18.06.2018. submitted by Corporate Debtor under which the Financial Creditor was to be paid by Super Cassette and not the Corporate Debtor. While dealing with the contentions made by Corporate Debtor, the tribunal is of the view that the averments have been made without placing on record any documentary evidence in support of the above said contentions. The letter which had been annexed with the reply only stated that T-Series was supposed to pay an amount of Rs 6,75,00,000/- to the Corporate Debtor and then Corporate Debtor particularly requested T-Series to pay the above-mentioned amount of Rs 6,75,00,000/- to Easy Trip Planners Pvt. Ltd. instead of to Kriarj Entertainment Pvt. Ltd. (Corporate Debtor). So it is mentioned that it is a part of any kind of Tripartite Agreement. Although the Corporate Debtor's name had

been struck off from the register of ROC but it is no longer res integra, IBC proceedings can still be initiated against the Corporate Debtor.

6. Corporate Debtor contention of making T-Series a party has failed as no settlement agreement has been placed on record and even if for the sake of argument, if it is considered, still the same is not binding upon the Financial Creditor.

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of loan amount.

8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal

admits this petition and initiates CIRP on the Corporate Debtor with immediate effect.

9. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Ms. Maya Gupta, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002/IP-N00363/2017-18/11061, with email - id- fcsmayagupta@gmail.com. Ms. Maya Gupta has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by her that no disciplinary proceedings are pending against her in Insolvency and Bankruptcy Board of India or elsewhere. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, as no disciplinary proceeding against the proposed IRP is pending.

11. It is pertinent to mention here that 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. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

12. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Ms. Maya Gupta, having registration number IBBI / IPA-003 / IP-N00363/2017-18/110061 with email - fcsmayagupta@gmail.com is appointed as an Interim Resolution Professional.

15. 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.

16. 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.*

17. 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.

18. 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 tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this 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.

19. 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)

Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (T) Sh. Rahul Bhatnagar, is not holding the Court today.

WPS
Court Officer
11.02.2022