

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 2422/IBC/NCLT/MB/MAH/2018

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

In the matter of

Augusta Consultants & Advisors Private Limited

..... Financial Creditor
(Petitioner/Applicant)

V.

Maitreyi Capital Advisors Private Limited.

..... Corporate Debtor
(Respondent)

Date: 27.09.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

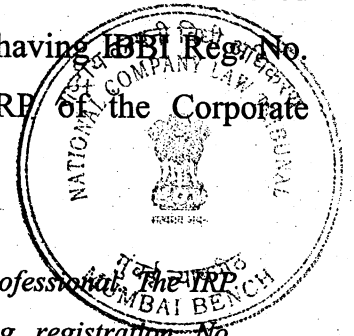
For the Petitioner :

Mr. Chandrakant Mhadeshwar

Per: Chandra Bhan Singh, Member (T)

CORRIGENDUM ORDER

1. The CIRP proceedings against 'Maitreyi Capital Advisors Private Limited' (hereinafter as 'Corporate Debtor') were initiated vide order dated 11.09.2019. The Petitioner 'Augusta Consultants & Advisors Private Limited' in the said application had annexed the consent form of Mr. T Sathisan to act as IRP for conducting CIRP proceedings of the Corporate Debtor.
2. However, on 25.06.2019 i.e. before admission of this petition, the Petitioner furnished the consent form of another IRP Mr. Ritesh Prakash Adatiya having IBBI Reg. No. IBBI/PA-001/IP-P01334/2018-19/12013, for conducting CIRP of the Corporate Debtor.
3. Para 23 of the said order states that:
"The Financial Creditor has proposed the name of Insolvency Professional proposed by the Financial Creditor, Mr. T. Sathisan, having registration No. B3B1/PA-0021/2-P00105/2017-18/10212, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process."
4. In view of the proposed change of IRP, the said paragraph in the order is replaced with the paragraph as reproduced below:



"The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Ritesh Prakash Adatiya, having registration No. B3B1/IPA-0021/2-P00105/2017-18/10212, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process."

5. The order dated 11.09.2019 stands modified accordingly.

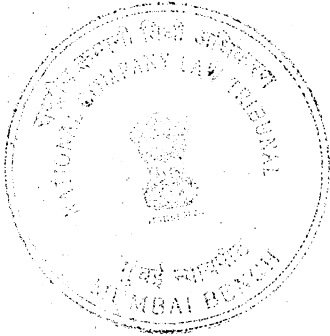
SD/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Dated : 27.09.2018

SD/-

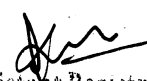
**M.K. SHRAWAT
MEMBER (JUDICIAL)**



Certified True Copy

Copy Issued "free of cost"

On 03/10/19


Assistant Registrar

National Company Law Tribunal Mumbai Bench

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 2422/IBC/NCLT/MB/MAH/2018

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

In the matter of

Augusta Consultants & Advisors Private Limited

..... Financial Creditor
(Petitioner/Applicant)

V.

Maitreyi Capital Advisors Private Limited.

..... Corporate Debtor
(Respondent)

Heard on: 28.08.2019

Pronounced on: 11.09.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

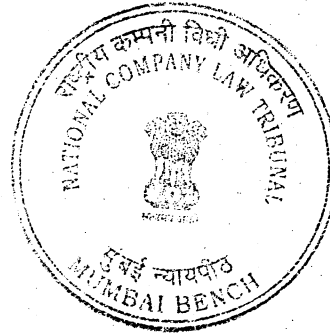
For the Petitioner :

Mr. Chandrakant Mhadeshwar

For the Respondent :

Mr. Keanan Nagporwala

Per: Chandra Bhan Singh, Member (T)



ORDER

6. The Petitioner/Applicant viz. 'Augusta Consultants & Advisors Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 22.06.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Maitreyi Capital Advisors Private Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be B-604/605, 6th Floor, Leo Building, Kohinoor CHS Plot.
7. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹6,00,00,000/-, and the amount claimed to be in default is ₹5,56,29,110/- as on 27.03.2018. The date of default is stated to be 05.01.2017.

BRIEF HISTORY OF THE CASE

8. The Financial Creditor has given a loan of ₹6,00,00,000/- vide the Loan Agreement dated 04.07.2016 to the Corporate Debtor. The Loan amount was disbursed in three instalments in July 2016. The Corporate Debtor had taken a one time extension for repayment of loan and the loan was repayable on 05.01.2017. The Corporate Debtor defaulted in repayment of loan. Hence this petition.

SUBMISSIONS BY THE FINANCIAL CREDITOR

9. The Financial Creditor submits that the loan was duly granted and disbursed pursuant to the loan Agreement dated 04.07.2016 executed between the Financial Creditor and the Corporate Debtor. The relevant loan documents are produced on record.

10. Thereafter, an extension was sought by the Corporate Debtor till 05.01.2017 to repay the debt amount. The Corporate Debtor issued a cheque being Cheque No. 000354 dated 28.02.2017, for an amount of ₹2,00,00,000/-, but the same was returned unpaid with remarks "Funds Insufficient".

11. The Financial Creditor filed a Section 7 petition under the I&B Code on 30.06.2017 but the parties entered into an amicable settlement to pay off the debt. Consequent to the Order dated 05.10.2017 in CP 1144/I&BC/NCLT/MB/MAH/2017, this Bench while allowing amicable settlement had granted liberty to file a fresh petition in case the Corporate Debtor defaults in complying with the settlement terms. As per the settlement terms, the Corporate Debtor was to pledge 20% of the equity shares held by the Corporate Debtor in Motif Politik Pvt. Ltd. in favour of the Petitioner. The pledge agreement was not executed between the parties. Hence, the Financial Creditor has again approached this Bench for non-compliance of the Consent terms by the Corporate Debtor.

12. The Financial Creditor has produced on record its bank statement of HDFC Bank which corroborates to the amount disbursed and claimed by the Financial Creditor. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

SUBMISSIONS BY THE CORPORATE DEBTOR

13. The Corporate Debtor submits that the payment schedule of consent terms was not adhered by the petitioner, which resulted in breach of the order dated 05.10.2017 passed by this Hon'ble Tribunal. The respondent submits that it was agreeable to furnish a security of 20% equity shares of its total stake in Motif Politik Pvt. Ltd.,

however, the financial creditor refused to accept security of the shares. The security would have amounted to ₹10,00,00,000/- which is more than the claim of the Petitioner in the present Company Petition.

REJOINDER BY THE PETITIONER

14. The Petitioner submits that the Corporate Debtor itself has defaulted in payment as per consent terms. Non-acceptance of security of shares by the petitioner is no ground to reject this petition. The Corporate Debtor has defaulted in repayment and hence the petition deserves admission.

FINDINGS

15. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt even after entering into a settlement. The Corporate Debtor has acknowledged the disbursement of loan and its liability to repay on several occasions. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.

16. Further, by pressing the contention regarding non-acceptance of pledge of shares as agreed to in the Consent Terms, the Corporate Debtor demonstrates that there does not exist any valid defence to the merits of the petition. The Corporate Debtor has defaulted in repayment of debt and also breached the consent terms.

17. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.

18. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.

19. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves 'Admission'.

20. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

21. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.
22. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. T. Sathisan, having registration No. B3B1/IPA-0021/2-P00105/2017-18/10212, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
23. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
24. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
25. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18 and Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
26. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
27. Ordered Accordingly.

SD/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

SD/-

M.K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 11.09.2018



Certified True Copy
Copy Issued "free of cost"
On 09/10/19
[Signature]
Assistant Registrar
National Company Law Tribunal Mumbai Bench