

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-1671(ND)2019

IN THE MATTER OF:

Northern Arc Capital Limited

10th Floor, Phase-I, IIT Madras Research Park

Kanagam Village, Taramani

Chennai-600113

Tamil Nadu

...Financial Creditor

VERSUS

Five Core Electronics Limited

WZ-15B, Ground Floor, Uggarsain Market

Ashok Nagar, Delhi-110018

... Corporate Debtor

Section: 7 of IBC, 2016

Judgement Delivered on: 23.01.2019

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Abhishek Nag, Advocate

For the Respondent : None



JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 7 of the 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 M/s Northern Arc Capital Limited, through its Authorized Representative Dr. Kshama Fernandes, who is authorized vide Board Resolution dated 10.06.2019 (for brevity 'Financial Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against Five Core Electronics Limited. (for brevity 'Corporate Debtor').

2. The Financial Creditor namely, M/s. Northern Arc Capital Limited is a Company incorporated on 09.03.1989 under the provisions of the Companies Act, 1956 with CIN No. U65910TN1989PLC017021, having its registered office at No. 1, Kanagam Village, 10th Floor, Phase-I, IIT Madras Research Park, Taramani, Chennai-600113 Tamil Nadu, India.

3. The Corporate Debtor namely, M/s. Five Core Electronics Limited is a Company incorporated on 11.04.2002 under the Provisions of Companies Act, 1956 with CIN No. L32109DL2002PLC148250, having its registered Office at WZ-15B, Ground Floor, Uggarsain Market, Ashok Nagar, Delhi-110018.



4. The Authorized Share Capital of the Corporate Debtor is Rs.13,00,00,000 Paid-up Share Capital of the Company is Rs.12,62,06,220 as per the Master Data of the Company annexed.

5. It is submitted by the Financial Creditor that it had sanctioned a Credit facility amounting to Rs.2,50,00,000 along with an interest @ 16% per annum to the Corporate Debtor vide its Letter dated 13.03.2019. It is added that as per the Sanction Letter, the interest rate for any default would be interest rate +6% i.e., 22% per annum.

6. It is stated by the Financial Creditor that it had executed a Facility Agreement dated 13.03.2019, which contains detailed terms of the Financial debt availed by Corporate Debtor. The Financial Creditor had relied upon the Clause 9 of the aforesaid Agreement, which contains the events/circumstances pertaining to "Event of Default". It is added by the Financial Creditor that the repayment of the said loan facility was agreed to commence from 25.04.2019, which was duly intimated to the Corporate Debtor vide its email dated 20.03.2019. The Financial Creditor have also annexed the Schedule of repayment as mentioned in the email dated 20.03.2019.

7. It is further submitted by the Financial Creditor that in addition to the Facility Agreement, it had also executed a separate Deed of Guarantees dated 13.03.2019 with the Promoters and Directors of the Corporate Debtor.



8. It is further stated that the Corporate Debtor had also executed a Promissory Note on 13.03.2019, which is sent by the Corporate Debtor to the Financial Creditor after due signature of its Directors and affixing Company's seal.

9. It is submitted that on 14.04.2019, the Corporate Debtor issued a letter to the Financial Creditor, asking them to disburse the sum of Rs.2,50,00,000. It is submitted by the Financial Creditor that the disbursement of Rs.2,50,00,000 was done through NEFT from its account with SBI Ind Financial Branch, Chennai on the same day to the Corporate Debtor.

10. It is averred by the Financial Creditor that :

"7. The first installment for the repayment of loan was on 25.04.2019 according to the schedule shared with the Corporate Debtor by the Financial Creditor. However, the amount was not paid by the Corporate Debtor on time. Therefore, the Financial Creditor addressed an email on 02.05.2019 to the Corporate Debtor stating that the first installment of loan of Rs.4,14,247/- was overdue on 02.05.2019, however, the said amount was not paid and called upon the Corporate Debtor to remit the same immediately. However, there was no response from Corporate Debtor. A similar letter was addressed to the guarantors as well on 03.05.2019. However, the guarantors have also not responded."



11. The Financial Creditor submitted that though initially the Notice sent via courier remained unserved, the Notice was duly effected on the Corporate Debtor at their Email id registered with MCA. This Bench, however, directed the Financial Creditor to effect service on the Corporate Debtor vide substituted means. The Financial Creditor filed an Affidavit of Service on 13.12.2019 deposing that the Corporate Debtor has been duly served vide Publications in the Daily Newspapers namely, Hindu and Rashtriya Sahara on 09.12.2019.

12. As none appeared on behalf of the Corporate Debtor during the proceedings, the Corporate Debtor was proceeded ex-parte vide Order dated 02.01.2019 passed by this Tribunal.

13. In the light of above facts and circumstances, the Financial Creditor has been successful in establishing the 'default' of above Rs.1 Lakh against the Corporate Debtor. This Bench is, therefore, inclined to initiate CIR Process against the Corporate Debtor.

14. In the given facts and circumstances, the present Petition being complete and having established the default in payment of the Financial debt being above Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :



- “(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.”

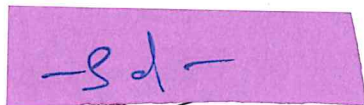
15. As proposed by the Financial Creditor, this Bench appoints Ms. Veena Sharma, as an IRP having Registration No. IBBI-/IPA-001/IP-P001164/2018-19/11835 (Email: veenayash@outlook.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by her within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors

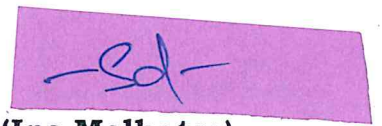


as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)