



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.07.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/197/CHE/2021
NAME OF THE PETITIONER(S) : J Mohan Babu
NAME OF THE RESPONDENTS : Ramya Outsourcing Solutions Pvt Ltd
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Present: Ld. Counsel Shri. Ashlin Christo for the Petitioner.

None for the Respondent.

Vide separate order pronounced in open court, the petition is allowed.

Ramya Outsourcing Solutions Pvt Ltd is admitted into CIRP.

Mr. R.Thamodaran is appointed as IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/197(CHE)2021

*(filed 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 **RAMYA OUTSOURCING SOLUTIONS PRIVATE LIMITED**

**MR.J.MOHAN BABU,
PROPRIETOR OF M/S. ANNAI AUDIT FIRM,
DOOR NO.614, THIRUNAGAR, 87,
VEEPAMPATTU, THIRUVALLURE – 602 024**

... Financial Creditor

-Vs-

**RAMYA OUTSOURCING SOLUTIONS PRIVATE LIMITED
NO.13, SANTHOSH NAGAR, PATTUNOOLCHATHIRAM,
SRIPERUMBUDUR – 602 105**

...Corporate Debtor

Order Pronounced on 26th July 2024

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Financial Creditor : Rohan Rajasekaran, Advocate
For Corporate Debtor : Sankar Varadharajan, Advocate*

ORDER

(Heard through hybrid mode)

This Application has been filed by one **MR. J. MOHAN BABU,**
PROPRIETOR OF M/S. ANNAI AUDIT FIRM (hereinafter referred to as



‘Financial Creditor’) on 14.08.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **RAMYA OUTSOURCING SOLUTIONS PRIVATE LIMITED** (hereinafter referred to as ‘Corporate Debtor’). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. This Tribunal vide its order dated 21.07.2022 had dismissed the Application filed under Section 7 of IBC, 2016 *inter alia* stating that the name of the Financial Creditor is not shown under Long Term Borrowings in Financial Statement for the period 2020 – 2021.

3. Aggrieved by the said decision, the Respondent filed an Appeal before Hon’ble NCLAT in Company Appeal (AT)(Ch)(Ins) No.333/2022. The Hon’ble NCLAT vide its order dated 27.07.2023 allowed the appeal. The operative portion of the said Judgment is extracted hereunder;

6. Once the amount in question has been shown by the Respondent in his balance sheet as on 31.03.2022 in the long terms borrowings in the name of the Appellant and liability is also admitted in their reply, the impugned order which has been passed by the Adjudicating Authority dismissing the



application filed under Section 7 of the Code by the Appellant on the ground that the amount advanced as loan by the Appellant does not reflect in the balance sheet of the Respondent does not survive.

7. In view of the aforesaid discussion, the present appeal succeeds and the impugned order is hereby set aside. However, the matter is remanded back to the Adjudicating Authority to proceed further in this case in accordance with law.

4. Based upon the said observation made by Hon'ble NCLAT, the Applicant Company filed a Petition under Section 131 of the Companies Act, 2013 in CP(CA)/91(CHE)/2023 for voluntary revision of the financial statements for the Financial Year 2020 – 2021. The same was allowed by this Tribunal vide order dated 26.07.2024

5. It is averred in the application that the Corporate Debtor had approached the Financial Creditor seeking for short terms loans in order to meet its financial commitments and working capital requirement. That vide minutes of meeting dated 18.07.2019, the Applicant agreed to disburse short term loans to the Corporate Debtor repayable at 12% on the following dates;

S. No.	DATE OF DISBURSEMENT	AMOUNT DISBURSED
1	30.07.2019	20,00,000/-
2	31.07.2019	15,00,000/-
3	03.08.2019	15,00,000/-



4	23.03.2021	15,00,000/-
5	24.03.2021	27,00,000/-
6	30.03.2021	10,30,000/-

6. Pursuant to the disbursement requests of the Corporate Debtor, the Applicant initially disbursed a sum of Rs.50,00,000/- in the month of July and August of 2019, however instead of repaying the said amounts, the Corporate Debtor approached the Applicant seeking further loans.

7. It is submitted that owing to good relationship maintained between the parties on 22.03.2021 an MOU was entered into whereby the Corporate Debtor acknowledged the old dues of Rs.59,53,424/- and the Applicant agreed to disburse further loan not exceeding Rs.55,00,000/-, repayable with interest @ 12% p.a. The Corporate Debtor also agreed to repay the entire dues fully with interest on or before 15.04.2021 and on failure to make the payment, they agreed that additional penal interest @ 9% could be levied.

8. Accordingly, a sum of Rs.52,30,000/- was disbursed by the Applicant to the Corporate Debtor in the month of March, 2021 but the Corporate Debtor severely defaulted in the repayment in terms of the MOU dated 22.03.2021.



9. It is stated that the Corporate Debtor also acknowledged the receipt of Rs.1,02,30,000/- from the Applicant on several occasions but has failed to make any payment in discharge of the said admitted liability.

10. It is stated that after several reminders, legal notice dated 05.07.2021 was issued on behalf of the Applicant, calling upon the Corporate Debtor to repay the financial debt within 10 days but even after receipt of the said notice, no payments were made. It is stated that, it is reliably learnt that the substratum of the Corporate Debtor has eroded being severely indebted.

11. The Corporate Debtor has filed a one-page counter wherein the Corporate Debtor has admitted the debt amount which is due to be paid to the Financial Creditor.

12. From the counter / reply filed by the Respondent, it is seen that the Corporate Debtor was unable to service the loan and as such the Financial Creditor has proved that there is a 'financial debt' and consequent 'default' committed on the part of the Corporate Debtor. Further, the said default does not fall within the period stipulated under Section 10A of IBC, 2016.



13. In this connection, we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of *Innoventive Industries Limited v. ICICI Bank Limited*, 2018 1 SCC 407 which is as follows;

27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be



satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

14. Thus, the moment the Corporate Debtor has committed default in repayment of the ‘financial debt’ and the debt is more than Rs.1 Crore then the Code gets triggered and it is of no matter that the debt is disputed so long the debt is “due” and payable. Hence, in all respects the Application filed by the Financial Creditor is complete and as such in terms of Section 7(5) of IBC, 2016 the present Application filed by the Financial Creditor is required to be admitted. We therefore **admit** this application and order for



initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

15. The Financial Creditor has proposed the name of Mr. Asir Raja Selvan, having Reg. No. *IBBI/IPA-002/IP-N00498/2017-2018/11554*; Email ID: asir.cs@gmail.com as the Interim Resolution Professional (“IRP”) who has also filed his consent in Form – 2. However, upon verification from the IBBI website, it is seen that Authorization for Assignment (AFA) has expired on 01.03.2024 and as such the said IRP does not hold a valid AFA. Thus from the latest list provided from IBBI, we hereby appoint **R. THAMODHARAN**, having Reg. No. *IBBI/IPA001/IP-P02292/2021-2022/13592*; Email id: - **thamodharansubi@gmail.com** as the IRP and he is directed to take charge of the Corporate Debtor’s management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



16. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other



law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

17. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such



supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
 - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

18. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.



19. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

21. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated



under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

22. The IRP shall take custody of the records of information relating to the assets, finances and operations of the Corporate Debtor referred in clause (a) of section 18 and such other information required under regulation 36; and also the assets recorded in the balance sheet of the Corporate Debtor or in any other records referred in clause (f) of section 18 of IBC, 2016 and the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall provide to the IRP, the list of assets in terms of Regulation 3A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

23. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as



required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

26. Accordingly, CP/IB/197/CHE/2021 stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond