HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 2507/2022

Vishnu Oil Mill Private Ltd.,

Through Its Authorised Representative Mr Hemant Nihalani,

----Petitioner

Versus

1. Union Of India, Through Secretary, Ministry Of Corporate Affairs, Having Office At A Wing, Shastri Bhawan, Rajendra Prasad Road, New Delhi 110001
2. Union Of India, Through Secretary, Ministry Of Finance, North Block, New Delhi 110001
3. Insolvency And Bankruptcy Board Of India, Through Its Chairperson Having Office At 7Th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi 110001
4. Mr. Dilip Bafna HUF, Through Its Karta Dilip Bafna, R/o 47 Vikas Colony Paota C Road, Jodhpur (Raj.) 342006
5. Mrs. Meena Bafna, 47 Vikas Colony Paota C Road, Jodhpur (Raj.) 342006
6. Mr. Yash Bafna, 47 Vikas Colony Paota C Road, Jodhpur (Raj.) 342006
7. Mr. Moolchand Hundia, Prop Of Moolchand And Company, G-Ii/13, Main Mandi, Mandore Road, Jodhpur 342007

----Respondents

For Petitioner(s)	:	Mr. Hemant Kothari Mr. Praveen Vyas
For Respondent(s)	:	Mr. Mukesh Rajpurohit, ASG Mr. Anuroop Singhi, through VC Mr. Prasthant Tatia on behalf of Mr. Sheetal Kumbhat Mr. Mahesh Thanvi

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HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR

J U D G M E N T

Judgment pronounced on ::: 25/07/2022

Judgment reserved on ::: 07/07/2022

BY THE COURT : (PER HON'BLE MEHTA, J.)

The petitioner Vishnu Oil Mill Pvt. Ltd. has approached this Court through this writ petition seeking to assail the validity of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') and so also the order dated 22.12.2021 passed by the National Company Law Tribunal, Jaipur Bench (hereinafter referred to as 'NCLT') against the petitioner. Section 7, the validity whereof assailed in the instant writ petition reads thus:-

Section.7 Initiation of corporate insolvency resolution process by financial creditor.

"7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

(Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of total number of such creditors in the same class, whichever is less;

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall

be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent of the total number of such allottees under the same real estate project, whichever is less.

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating authority before the commencement of the insolvency and bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first and second provisos within 30 days of the first commencement of the said Act failing which the application shall be deemed to be withdrawn before its admission.)

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under

sub section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

Shri Hemant Kothari, learned counsel representing the petitioner vehemently and fervently contended that previously, the threshold limit for triggering Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") qua the private financial creditors was Rs.1 lakh only. However, because of the serious financial distress brought around by the Covid-19 pandemic, the Government of India increased the minimum amount of default to Rs. 1 crore from the existing threshold of Rs.

1 lakh. He referred to the Press Release dated 24.03.2021 issued by the Government of India in this regard which reads as below:-

"Due to the emerging financial distress faced by most companies on account of the large-scale economic distress caused by COVID 19, it has been decided to raise the threshold of default under section 4 of the IBC 2016 to Rs 1 crore (from the existing threshold of Rs 1 lakh). This will by and large prevent triggering of insolvency proceedings against MSMEs. If the current situation continues beyond 30th of April 2020, we may consider suspending section 7, 9 and 10 of the IBC 2016 for a period of 6 months so as to stop companies at large from being forced into insolvency proceedings in such force majeure causes of default."

(Emphasis Added)

Shri Kothari urged that in order to offset the adverse impact of Covid-19 pandemic on the MSMEs, the IBC was further amended vide Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 promulgated on 05.06.2020 and Section 10A was inserted therein whereby, the default period for initiation of CIRP was extended.

He submitted that CIRP may be triggered under the IBC against a corporate debtor in three ways;-

(i) Section 7: By financial creditor, either by itself or jointly with other financial creditors;
(ii) Section 9: By operational creditors and

(iii) Section 10: By corporate debtor itself.

He contended that while increasing the threshold limit for initiation of CIRP by a financial creditor either by himself or jointly with other financial creditors from Rs.1 lakh to Rs.1 crore, the clear intent of the legislature was that a joint application could be entertained but the individual liability towards every financial creditor should not be less than Rs.1 crore. He urged that in the present case, the private respondents Nos.4 to 7 do not claim individual debt or default of Rs.1 crore against the petitioner but despite that, by unjustly invoking the clause of joint application by financial creditors under Section 7 of the IBC, CIRP has been initiated against the petitioner which is an MSME. As per Shri Kothari, the provision needs to be read in a purposive manner so as to lay down a principle that where financial creditors file a joint application under Section 7 of the IBC, the minimum default of Rs.1 crore should be qua every individual creditor and the CIRP cannot be triggered on the basis of joint liability towards multiple financial creditors.

He urged that in the case of **Swiss Ribbons Private Ltd. & Anr. vs. Union of India & Ors. reported in (2019) 4 SCC 17**, Hon'ble the Supreme Court examined and upheld the validity of Section 7 but there was no occasion for Hon'ble the Supreme Court to comment upon the aspect of threshold liability of the corporate debtor towards multiple applicants. On these submissions, Shri Kothari implored the Court to interpret the provision in terms of the prayer made in the writ petition and as a

consequence, drop the CIRP proceedings initiated against the petitioner.

Per contra, Shri Mukesh Rajpurohit, ASG representing the Union of India, Shri Anuroop Singhi, Advocate (through VC), Shri Mahesh Thanvi and Shri Prashant Tatia for Shri Sheetal Kumbhat, Advocate representing the private respondents vehemently opposed the submissions advanced by Shri Kothari. They urged that the language of Section 7 of the IBC is unambiguous. The remedy to trigger CIRP has been provided to financial creditors in their individual capacity and also through a joint application with the total minimum threshold for initiation of CIRP being fixed at Rs.1 crore. They urged that if an interpretation is made that the threshold of Rs.1 crore would be for every individual financial creditor, the letter and spirit of Section 7 would be diluted and such an interpretation cannot be envisaged by any stretch of imagination.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record. We have carefully perused the language of Section 7 of the IBC and the corresponding amendments.

At the outset, we may state here that validity of Section 7 of the IBC was examined by Hon'ble the Supreme Court in the case of **Swiss Ribbons Pvt. Ltd.** (*supra*) and the same was found to be compliant to the Constitution of India and the challenge to the validity of the statute was repelled by Hon'ble the Supreme Court in unequivocal terms. Despite that, the petitioner has ventured

into questioning the validity of Section 7 of the IBC claiming that the challenge so laid is on a totally different proposition i.e., permissibility of a group of financial creditors jointly triggering CIRP without adhering to the requirement of default threshold of Rs.1 crore in individual capacity.

On a plain reading of Section 7, it becomes clear that there is no ambiguity in the provision which requires any interpretation other than what is conveyed in its literary sense. The section clearly stipulates that the application for triggering CIRP may be initiated by a financial creditor either individually or jointly with other financial creditors. Previously the threshold default limit for filing the CIRP application was only Rs.1 lakh and it has been drastically increased to Rs.1 crore vide Gazette Notification dated 24.03.2020. It can easily be envisaged that in cases of MSMEs, there may not exist financial creditors whose individual debt is Rs.1 crore or above. If the threshold limit was to be fixed at Rs.1 crore qua each individual financial creditor, then there was no reason whatsoever for allowing joint applications by financial creditors. The statute and the amendment made therein makes it clear that the same was formulated in such a manner so as to provide a means of efficacious redressal to the smaller financial creditors and to give them an opportunity of availing the speedy remedy under the IBC rather than being relegated to other onerous proceedings for securing their money.

Having considered the entirety of the facts and circumstances as available on record and after appreciating the arguments advanced at bar, we are of the firm view that the

statute i.e., Section 7 of the IBC as amended vide Gazette Notification dated 05.06.2020, admits no other interpretation except that a group of financial creditors can converge and join hands to touch the financial limit of Rs.1 crore stipulated under Section 7 so as to initiate a CIRP under the IBC.

Consequently, we find no merit in this writ petition which is dismissed as such. Needless to say that the petitioner shall be at liberty to avail appropriate lawful remedy against the order dated 22.12.2021 passed by the NCLT.

The writ petition is dismissed with the above observations.

(KULDEEP MATHUR),J **(SANDEEP MEHTA),J**

Sudhir Asopa/-