

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

IB-1018/ND/2020 filed under Section 7 of the IBC, 2016
r/w Rule 4 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016.

In the matter of M/s. CMYK PRINTECH LIMITED

AMIT GOEL

... Financial Creditor

Versus

CMYK PRINTECH LIMITED

....Corporate Debtor

Order Delivered on 19th of January 2021

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For FC: Mr. Anannya Nayyar, Mr. Manish Kaushik,
Mr. Dipesh Sharma, Mr. Mishal Johrai,
Mr. Mani Bhandra Jain, Mr. Ankit Batra (Advocates)

For CD: Ms. Deepa Mala, Ms, Raksha Kishore,
Ms. Sonia Sharma (Advocates)

ORDER

(Through Video Conferencing)

1. Ld. Counsels for both sides are present. Under consideration is an Application IB-1018/ND/2020 filed by the Financial Creditor viz., *Amit Goel* (hereinafter referred as "Applicant/Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayers made are to initiate

the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor viz., *CMYK Printech Limited*, declare moratorium and appoint Interim Resolution Process (hereinafter referred as "IRP").

2. It is submitted by the Ld. Counsel for the Applicant/Financial Creditor that applicant is the director in the Corporate Debtor since 2003. The Applicant/Financial Creditor had granted unsecured loan to the tune of approximately Rs. 1.56 Cr (hereinafter referred as "Unsecured Loan") by the end of August, 2018 out of which an amount of Rs. 1, 35, 73, 400/- was transferred to the Corporate Debtor through bank transfers and the remaining loan amount of Rs. 20, 53,396 was adjusted from the Applicant's outstanding salary to the tune of Rs. 23, 40,000/- as on 31st August, 2018.
3. Further, it is submitted that vide Special Resolution dated 25.08.2018 passed in the Extra Ordinary General Meeting, it was resolved to offer, issue and allot 26,00,566 equity shares of the CD by way of conversion of unsecured loan given by the Applicant/Financial Creditor in such terms and conditions as the Board may deem fit and it was also resolved to approve the Private Placement Letter in PAS-4 and PAS-5. The unsecured loan was converted to shares vide Board Resolution dated 11.09.2018 and the money/unsecured loan was considered as Share Application money for the allotment 26,00,566 equity shares of Rs.5/-each at premium of Rs. 1 per equity share through Private Placement offer dated 08.09.2018. Thereafter, the Corporate Debtor vide Board Resolution dated 10.05.2019 revoked the allotment of shares made in favour of the applicant/FC.
4. The Ld. Counsel for the Applicant/Financial Creditor submits that the Corporate Debtor after passing the Board Resolution dated 10.05.2019 by which allotment of shares was revoked has defaulted and not returned the share application money amounting to Rs.1, 56, 03, 396/- alongwith 12% interest P.A. to the Applicant as provided under Section 42 (6) of the Companies Act, 2013. The Applicant in Part IV of the application has claimed that as on 17.08.2020 an amount of Rs. 189, 17, 300/- including interest @12% P.A. is outstanding against the CD.

5. The contention of the Applicant/ Financial Creditor is also supported by the report of the Independent Auditor as is recorded under Para 7 & 8 of the Reply filed by the Corporate Debtor i.e., Clause XIV of Annexure-I of the Independent Auditor's Report provides that during the year 2018 the Corporate Debtor has made preferential allotment of 26, 00,566 Shares to its Director, Mr. Amit Goel /Financial Creditor. Further, it is stated that the Corporate Debtor has allotted those shares in lieu of the outstanding loan of Rs.79.68 lakhs and after booking and reversal entry in the name of "Prior period expenses" for recognizing the claim of the expenses borne by the Director in the earlier year for a total of Rs.76.35 Lakhs and against this claim, the Corporate Debtor has allotted the Preferential and Equity Shares to the Director (Applicant) during the year.

6. The Applicant has placed on file Form No. PAS-3, which was filed by the Corporate Debtor with the Registrar of Companies (hereinafter referred as "RoC") wherein it is stated that the date of allotment is 11.09.2018 and the date of passing shareholders' resolution is 25.08.2018. The FORM PAS-3 also provides that there was no agreement or contract executed in writing for allotting securities for consideration other than cash. It also reflects from the Notes to Financial Statement at point 2 (i) for the year ending 31st March, 2019 that the Board of Directors, in the meeting convened on 10.05.2019 passed Resolutions declaring the allotment made to the Applicant/ Financial Creditor as invalid and void *ab initio* and authorized jointly/ severally the directors Mr. Chandan Mitra and Mr. Kushan Mitra to approach the RoC for cancellation of the PAS-3 .

7. It is worthwhile to mention that one of the Directors Mr. Kushan Mitra filed a complaint with the ROC, who (RoC) vide E-Mail dated 08.01.2020 communicated that the matter stands closed. Under Section 42 of the Companies Act, 2013, a complete procedure is provided for allotment of Shares against the Application Money and in case during time period as prescribed, the allotment is not done, the money has to be returned along with the interest to the Investors. Herein is the Financial Creditor whose

money amounting to Rs.79.68 Lakhs was recognized as a loan described as “prior period expenses”.

8. The Ld. Counsel for the Corporate Debtor submits that the allotment of Equity Shares has been made in the name of the Applicant/Financial Creditor and he is a Shareholder. Further, it is submitted that the Petition filed by the Applicant/Financial Creditor under Section 7 of IBC, 2016 is not maintained because he does not come under the category of a Financial Creditor. However, contrary to this, it is recorded in Paras 13, 14 & 15 of the Reply filed on behalf of the CD that the allotment in question, is doubtful and the CD did not confirm that any allotment is continuing in favour of the Applicant/Financial Creditor, as claimed by the Counsel for the CD.

9. It is worthwhile to note that the Board Resolution that came to be passed on 11.09.2018 by which the allotment of shares was revoked, is still in existence and has not been superseded by any of the Board Resolutions. Therefore, the submissions of the Ld. Counsel for the Corporate Debtor are contrary to the record maintained by the Corporate Debtor and cannot be relied upon. However, the documents placed on record by the applicant clearly demonstrate that an amount of Rs.79.35 Lakhs is the outstanding as loan against the CD, which the Corporate Debtor failed to pay. In the circumstances, the defence that has been projected by the Ld. Counsel for the Corporate Debtor is nothing but moonshine and a mere bluster. Therefore, the arguments of the CD stand rejected.

10. The Applicant/Financial Creditor has placed on record sufficient documentary evidence, based on which it is ascertained that the Corporate Debtor has committed default in making payment to the Applicant/Financial Creditor. The Applicant/Financial Creditor has fulfilled all the requirements under law and proposed the name of IRP after seeking his consent in Form-2, which is placed on record. Therefore, Application is **admitted** and the commencement of the CIRP is ordered, which ordinarily shall be completed within 180 days, reckoning from the day this Order is passed.

11. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:-

- (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 (54 of 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.

12. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

13. Mr. Ranjeet Kumar Verma is hereby appointed as IRP, as has been proposed by the Applicant/Financial Creditor. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the Corporate Director's management immediately including the bank accounts. The IRP is also directed to cause public announcement as prescribed under Section 15 of 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.

14. 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 shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

15. The Applicant/ Financial Creditor and his counsel are directed to send the copy of this Order to the CD and IRP with immediate effect, so that he (IRP) could take charge of the Corporate Debtor's assets including bank accounts, etc., and make compliance

with this Order as per the provisions of IBC, 2016. The e-mail and other details of the IRP are as follows: -

Name: Mr. Ranjeet Kumar Verma

Registration Number: IBBI/IPA-002/IP-N00301/2017-18/10859

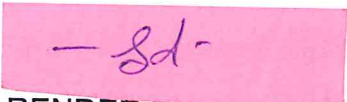
Address: CS-53, 1st Floor, Ansal Plaza, Sector-1, Vaishali, Gaziabad -201010.

E-mail: ranjeet@ranjeetcs.com

Contact No.: 9999678009

16. The applicant is also directed to communicate this Order to the concerned Registrar of Companies.

17. The Order is dictated and pronounced in the court through Video Conferencing.



- Sd -

NARENDER KUMAR BHOLA
Member (Technical)



- Sd -

CH. MOHD SHARIEF TARIQ
Member (Judicial)