

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No.515/ALD/2019
(Under Section 7 of Insolvency and Bankruptcy
Code,2016 read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority)
Rule, 2016)

IN THE MATTER OF

M/S HDB FINANCIAL SERVICES LTD.

.....*Applicant/Financial Creditor*

VERSUS

M/S HINT PUBLICATION PRIVATE LIMITED

.....*Respondent/Corporate Debtor*

ORDER RESERVED ON : 26.02.2020
ORDER DELIVERED ON :27.02.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial
Hon'ble Smt. Ina Malhotra, Member, Judicial

For the Applicant/ Financial Creditor : Sh. Abhinav Gaur, Advocate

For the Respondent/ Corporate Debtor : Sh. Ashok Nath Tripathi, Advocate

Per se : Smt. Ina Malhotra, Member, Judicial

ORDER

1. The present petition has been filed by the petitioner in the capacity of Financial Creditor. Based on an unpaid liability of Rs.8,49,58,980.30/-, a prayer has been made by the petitioner for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor i.e "M/S HINT PUBLICATION PRIVATE LIMITED".

2. As per the averments made in the petition, the corporate debtor had approached the financial creditor a Non-Banking Financial Company for availing a term loan of Rs.4.75 Crores. Pursuant to a letter of sanction and execution of the loan agreement dated 29.04.2017, the loan was disbursed

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in two tranches of Rs.3.4 Crores and Rs.1.35 Crores on 16.10.2014 and 17.10.2014 respectively. To secure the repayment of the aforesaid loan, the Corporate Debtor had created equitable mortgage over their property being Hint House 18-A, Raj Nagar, Ghaziabad, U.P. and a charge over the same was recorded with the ROC. It is submitted that the Corporate Debtor did not adhere to the financial discipline and had defaulted in repaying several instalments. The said loan was recalled vide notices dated 16.10.2015 and 16.11.2015 respectively and in terms of the guidelines issued by the RBI was declared a Non-Performing Asset on 02.02.2016. The financial creditor has also submitted that they had invoked arbitration as per their agreement and two Awards were passed in their favour on 20.05.2016 and 27.06.2016 for recovery of Rs.1,50,04,860/- and Rs.3,89,43,724.86/- alongwith 18% interest from the date of award till realization thereof.

3. It is further submitted that the Corporate Debtor had shown its willingness to settle the amount amicably. A Memorandum of Understanding was executed on 18.08.2017, agreeing to repay the outstanding amounts under the two loan accounts as follows :-

(In loan account no.760149)

Sr. No.	Date of Payment	Amount (in Rs.)	Mode of Payment
1.	20.08.2017	5,00,000	Demand Draft
2.	30.08.2017	5,00,000	Demand Draft
3.	30.11.2017	37,41,341.2	Demand Draft
4.	28.02.2018	37,41,341.2	Demand Draft
5.	30.05.2018	74,82,682.5	Demand Draft
6.	30.08.2018	37,41,341.2	Demand Draft
7.	30.10.2018	74,82,682.5	Demand Draft
8.	30.12.2018	1,12,24,024	Demand Draft
TOTAL		3,84,13,412.4	

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(In loan account no.784203)

Sr. No.	Date of Payment	Amount (in Rs.)	Mode of Payment
1.	20.08.2017	5,00,000	Demand Draft
2.	30.08.2017	5,00,000	Demand Draft
3.	30.11.2017	14,12,517.36	Demand Draft
4.	28.02.2018	14,12,517.36	Demand Draft
5.	30.05.2018	28,25,034.72	Demand Draft
6.	30.08.2018	14,12,517.36	Demand Draft
7.	30.10.2018	28,25,034.72	Demand Draft
8.	30.12.2018	42,37,552.08	Demand Draft
TOTAL		1,51,25,173.6	

4. Ld. Counsel appearing for financial creditor submits that the corporate debtor has failed to adhere to the repayment schedule as per the terms of the MOU. Accordingly, the MOU stood terminated. It is submitted that a sum of Rs.6,21,21,601.98/- is recoverable in the first loan account and Rs.2,28,37,378.32/- in the second loan account.
5. The Corporate Debtor on being served has put in appearance and has filed its reply. Though it is admitted that the Financial Creditor is a Non-Banking Financial Company, objection raised is that the interest levied is in contravention with the provisions of Uttar Pradesh Money Lending Act.
6. Mr. Ashok Nath Tripathi, Ld. Counsel appearing for the Corporate Debtor has argued at length. His main defence is that the claim is time barred. It is submitted that the MOU stands terminated and cannot be looked into. This Bench fails to appreciate the arguments advanced by the learned counsel for the corporate debtor. The MOU at 18.08.2017 was terminated on account of non-adherence to the time schedule for payment of instalments but the Corporate Debtor cannot resile from the acknowledgment of liability made thereunder. In view of the categorical admission to repay the debt as noted in the Memorandum of

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Understanding between the parties, which is also settled by an Award in favour of the Financial Creditor, the submissions made by the learned counsel for the corporate debtor are unfounded. Equally meritless are the other grounds raised by the Ld. Counsel for the Corporate Debtor that the consent of the proposed IRP/ his declaration is not proper, or that the petition has not been instituted by a duly authorized person.

7. The objection raised on behalf of the Corporate Debtor being frivolous, are therefore rejected. The prayer of the petitioner merits consideration is allowed. Petition stands Admitted. Moratorium in terms of Section 14 of the Code comes into force forthwith stating :

(1) (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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 Securitisation 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.

8. The Financial Creditor has proposed the name of **Mr. Gautam Singhal**, **Registration Number IBBI/IPA-001/IP/P01437/2018-19/12240** as the Interim Resolution Professional (IRP). His consent and declaration in Form 2 affirming that he is a registered insolvency professional and has no disciplinary proceeding pending against him, is on record. We accordingly confirm his appointment as the IRP. He is directed to take such other and further steps as are required under the statute, more

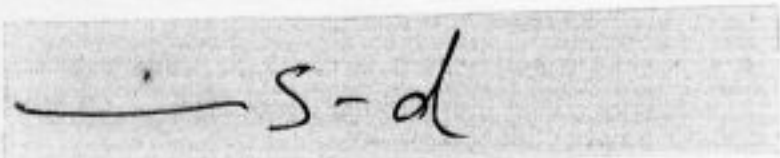
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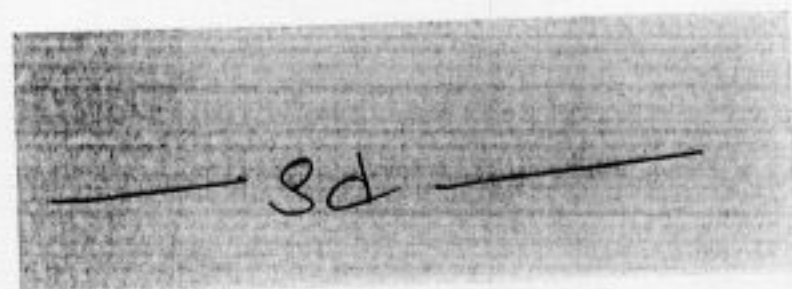
specifically in terms of Sec 15, 17, 18, 20 & 21 of the Code and file his report before this Bench.

9. The registry is directed to communicate this Order to Financial Creditor, Corporate Debtor as well as to the IRP.
10. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
11. List on 13th April, 2020 for the filing of the progress report.

Date: 27.02.2020



INA MALHOTRA
MEMBER (J)



JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Allahabad Bench

CP No.(IB)515/ALD/2019

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.02.2020

NAME OF THE COMPANY: M/s HDB Financial Services Ltd V/s M/s Hint Publication Pvt Ltd & Ors

SECTION OF I & B CODE: 7 IBC

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
<u>1.</u>				
<u>2.</u>				

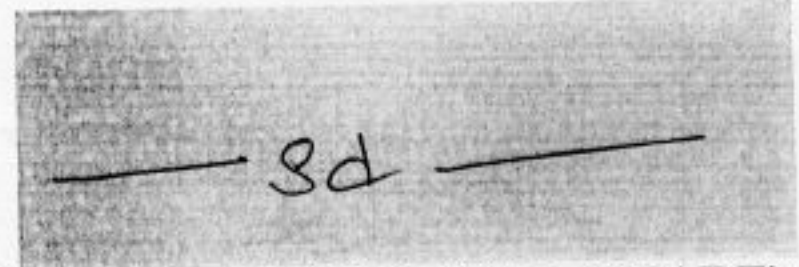
CP NO.(IB)515/ALD/2019

Order pronounced in the open Court.

Petition allowed. Moratorium granted. IRP appointed, vide separate order sheet.

Accordingly, put up on 13th April, 2020 for filing progress report.

Dated: 27.02.2020



(JUSTICE RAJESH DAYAL KHARE)
MEMBER (J)

Typed by :
Kavya Prakash Srivastava
(Stenographer)