

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : Shri Jinan K.R.,
Hon'ble Member(J)
&
Shri Madan B. Gosavi
Hon'ble Member(J)

C.P. (I.B.) No.756/KB/2017

In the matter of:

The Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Asset Reconstruction Co. (India) Limited, company registered under the Companies act, 1956 and having its registered office at The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West), City and District Mumbai-400028, Maharashtra and regional office at Room No A-11, 8th Floor, Chatterjee International Centre, 33 A, Jawaharlal Nehru Road, Kolkata-700 071 within the jurisdiction aforesaid;

...**Applicant/Financial Creditor**

-And-

In the matter of:

M/s. Ramsarup Vyapaar Limited, a company incorporated under the Companies Act, 1956 and having its Registered office at 7C, Kiran Shankar Roy Road, Hastings Chamber, Kolkata-700001, West Bengal;

...**Respondent/Corporate Debtor**

Counsels on Record:

1. Mr. Vikram Wadehra, Advocate] For the Financial Creditor
2. Ms. Vidushi Chokhani, Advocate]

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Date of Pronouncing the order: 17th May, 2018

ORDER

Per Shri Jinan K.R., Member(J):

The Applicant/Financial Creditor, Asset Reconstruction Company (India) Limited has filed this petition under section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter to be referred as the I.B. Code), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor, M/s Ramsarup Vyapar Limited. The Financial Creditor has stated that the Corporate Debtor has committed default in making payment of Rs.113,52,81,457/- (Rupees one thirteen crores fifty two lakhs eighty one thousand four hundred fifty seven) only as on 15.10.2017.

2. The Financial Creditor, Asset Reconstruction Company India Ltd., was incorporated on 11th February, 2002 and having its registered office situated at The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West) Mumbai-400028, Maharashtra, India. The Identification Number of the Financial Creditor is U65999MH2002PLC134994.

3. The Corporate Debtor, M/s. Ramsarup Vyapaar Limited, having Identification No. U51109WB1992PLC055382 is a company incorporated on 8th May, 1992. The registered office of the Company is situated at 7C, Kiran Shankar Roy Road, Hasting Chamber, Kolkata- 700 001. The authorized share capital of the company is Rs.2,35,00,000/- and paid up share capital of the company is Rs.2,21,00,000/-. Both the figures are as on 31st March, 2015.

4. Brief facts arising out of the petition are stated below.

(i) On 1st June, 2015, an assignment agreement of debt for immovable property was entered upon between the State Bank of India as Assignor

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and Asset Reconstruction Company (India) Limited (also in its capacity as Trustee of the "Arcil-CPS-001-VII Trust") as the Assignee.

(ii) The applicant in course of its business of lending had extended financial assistance of Rs.40,60,00,000 (forty crore) in the form of loan to the Corporate Debtor on executing Loan-cum Hypothecation Agreement dated 23.09.2009. Complete details of the loan sanctioned in different accounts and date of disbursement of loan is given in **Annexure 'H' at page 160 to 178** of the petition.

(iii) According to the petition filed by the applicant, there is a total outstanding exposure (with the principal amounts, accrued interest and penal interest), which is given in the Computation sheet. The Corporate Debtor has committed total default of Rs.113,52,81,457/- including interest as on 15th October 2017. Details of total outstanding amount and accrued interest are mentioned at page 49 in **Annexure 'D'**.

(iv) The petition filed by the applicant shows that the Corporate Debtor has been declared as NPA with effect from 28th January, 2012.

5. The applicant in support of its claim has filed copy of statement of account showing interest calculation of the cash credit relating to the aforesaid loan of corporate Debtor for period from 31st December 2014 (**Annexure 'N'**), annexed Loan cum Hypothecation agreement dated 23rd September 2009 in **Annexure 'H' (page 160-178)**; Copy of the Deed of Guarantee for overall limit dated 23rd September, 2009 for Rs. 40,60,00,000 in **Annexure 'I' (page 179-192)**; a copy of the Consent Letter executed by the Borrower dated 23rd September, 2009 marked as **Annexure 'J'**; Statement of Account dated 31st December 2014 as **Annexure 'N' (page 202-204)** and Certificate under IT Act, 2000 marked as **Annexure-'O'**.

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6. The applicant has also filed the copies of Charge by way of Equitable Mortgage created on 24th September, 2009 on some assets, i.e., First Charge on the entire fixed assets, charge by way of Hypothecation created on 23rd September, 2009 on the entire current assets of the company, copy of personal guarantor, Mr. Ashish Jhunjhunwala, Corporate Guarantor M/s. Naresh Engineers Limited and also a copy of the Certificate of Registration of Charge issued by the Registrar of Companies marked as **Annexure "E"** to the petition.

7. The Financial Creditor has proposed the name of the interim resolution professional as Mr. Jitendra Lohia, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having Registration No. IBBI/IPA-001/P00170/2017-2018/10339 of 2, Lal Bazar Street, 2nd floor, Room No.204 and 205, Kolkata- 700001, E-mail: jitulohia@knjainco.com. A written communication dated 4th December, 2017 in terms of Rule 9(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and consent in Form 2 have been filed before this Tribunal along with the petition and annexed as **Annexure "A" at pages 14 to 17**. A declaration has also been made to the effect that no disciplinary proceedings is pending against him. Other disclosures and eligibility under rule 9(2) as required have also been made by him.

8. The Applicant has also affirmed in the petition that Mr. Adil Rashid, working in the capacity of Chief Manager Legal has been authorized, whose address is Room No. A-11, 8th floor, Chatterjee International Centre, 33A, J.L. Nehru Road, Kolkata-700 001. The applicant has also filed the Authorisation letter/ Power of attorney dated 8th December 2017 issued by the Asset Reconstruction Company (India) Limited showing that Mr. Adil Rashid is appointed as the lawful attorney for the initiation of the Corporate Insolvency Process before National Company Law Tribunal on behalf of the Asset

Reconstruction Co (I) Limited. The Copies of the same have been submitted and annexed with the petition as **Annexure-A**, which is the copy of the Power of Attorney dated 8th December, 2017 along with a copy of the Board Resolution dated 24th July, 2004 read with a copy of the Board Resolution dated 21st April, 2015, whereby Mr. Adil Rashid has been authorised to be the true and lawful Attorney to do and execute and perform all and every of the deeds as provided for in the Power of Attorney including but not limited to commence, institute, file, carry out, continue, prosecute, defend, answer or oppose all actions, suits, writ petitions or other legal proceedings.

9. The Financial Creditor has also submitted copy of the Revival Letter in Form C.6 dated 31st day of December, 2011 executed by the borrower, Shri Ashish Jhunjunwala and M/s. Naresh Engineers Ltd. addressed to the Deputy General Manager, State Bank of India, Kolkata. The copy of the said letter has been annexed with the petition as **Annexure M at pages 200 and 201**.

10. Pursuant to an order by this Tribunal dated 15th March, 2018, the Financial Creditor vide supplementary dated 18th April, 2018 has filed the Independent Auditor's report along with the balance-sheet of the Corporate Debtor for the year ending 31st March, 2015.

11. The applicant has stated that O.A. No.180 of 2014 before the Ld. Debts Recovery Tribunal-I, Kolkata is pending. The applicant has further stated that a reference was made to BIFR for sickness and the State Bank of India, being the erstwhile bank, has submitted a miscellaneous application before BIFR for abatement after taking possession of assets.

12. One of the directors of the Corporate Debtor entered appearance in person and not opposed the application, however, not filed any reply affidavit.

13. Heard the Counsel for the applicant. Perused the documents.
14. Upon hearing the argument and consideration of the averments in its application, the point for determination is whether a default has occurred and the application under sub-section (2) of section 7 of I&B Code, 2016 is complete?
15. Based on documents submitted by the applicant, it appears that the Corporate Debtor, Ramsarup Vyapar Limited has committed default in making payment of Rs.113,52,81,457/- (Rupees one thirteen crores fifty two lakhs eighty one thousand four hundred fifty seven only), date of default is 28.01.2012 with number of days 2086 and total default as on 15.10.2017 is Rs.113,52,81,457/-. A Copy of the same has been annexed and marked as **Annexure-D**).
16. The applicant being able to prove the existence of debt/default of the loan facilitated by him, a petition of this nature under section 7 is perfectly maintainable. The petitioner has succeeded in establishing existence of default as contended in the petition. So also, applicant produced record proving default as provided under section 7 (3) (a). None of the documents are challenged by the respondent.
17. Section 7(5) of the I.&B Code, 2016 provides where the Adjudicating Authority is satisfied that-
- a default has occurred and the application is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

- default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

18. This is an application filed under section 7 of I&B Code by an assignee on the strength of assignment agreement executed by State Bank of India dated 1st June, 2015. Ld. Counsel for the applicant submits that the claim is not barred by limitation. To strengthen the said submission, Ld. Counsel referred to the financial statement for the year 2014-2015. A reference to the balance-sheets strengthen the submission of the Ld. Counsel for the applicant that the respondent admitted balance outstanding due to the applicant in the balance-sheet for the year 2014-15. It amounts to revival of the loan outstanding in the account of Corporate Debtor as on 31.03.2015. Therefore, the claim is not barred by limitation. The financial creditor also proves its authority to file an application of this nature. The petition was signed and filed by Mr. Adil Rashid, Chief Manager Legal of the financial creditor. **Annexure-A** is the Letter of Authorisation proving his authority to sign and present an application of this nature for filing before this adjudicating authority.

19. It is here important to point out that in case of **Innoventive Industries Ltd. vs. ICICI Bank & Anr.** the Hon'ble NCLAT has laid down that-

".....for initiation of corporate resolution process by financial creditor under sub Sec.(4) of Sec.7 of Insolvency and Bankruptcy Code, 2016 the adjudicating authority on receipt of the application under sub Sec. (2) is required to ascertain existence of the default from the records of information utility or on the basis of other evidence furnished, the financial creditor under sub-section (3), under sub-section (5) of Sec.7 adjudicating authority is required to satisfy where a default has occurred, whether an application is complete and whether any disciplinary proceeding against the proposed Insolvency Resolution Process. Once it is satisfied it is required to admit the case.

20. In this case, the financial creditor has fully proved that corporate debtor has committed default in making payment of matured principal of Rs.41,45,02,159/- plus interest and penal interest and the above information is also proved by the account statement filed by the Financial Creditor.

21. The Financial Creditor has succeeded in proving that the Corporate Debtor has committed default in making repayment of the loan amount evidently received by the Corporate Debtor plus interest and penal interest and the total default comes to Rs. 113,52,81,457.00. It is thus clear that the application filed by the Applicant, i.e. Asset Reconstruction Co (I) Limited under section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor, Ramsarup Vyapar Limited is complete in all respects. Existence of default stands proved from the records above-referred. So also, Page 14-17 shows that no disciplinary proceedings are pending against the proposed Resolution Professional, Shri Jitendra Lohia. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is liable to be admitted.

ORDER

The application for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor, M/s. Ramsarup Vyapar Limited is hereby admitted.

We declare a moratorium and public announcement in accordance with Sec.13 and 15 of the IBC, 2016.

Moratorium is declared for the purposes referred to in Sec.14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement

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referred to in clause (b) of sub-section (1) of Sec.15 Insolvency & Bankruptcy Code, 2016 shall be made immediately.

Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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.

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The order of moratorium shall have effect from the date of admission 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

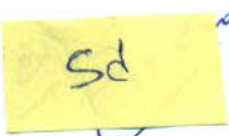
Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.

Mr. Jitendra Lohia, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having Registration No. IBBI/IPA-001/P00170/2017-2018/10339 of 2, Lal Bazar Street, 2nd floor, Room No.204 and 205, Kolkata- 700001, E-mail: jitulohia@knjainco.com, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

Copy of the order may immediately be issued to the Financial Creditor, Corporate Debtor and IRP by Speed Post as well as by e-mail.

List the matter on 18th June, 2018 for submission of progress report by IRP.


(Madan B. Gosavi)
Member(J)


(Jinan K.R.)
Member(J)

Signed on this the 17th day of May, 2018