

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH,  
KOLKATA**

**C.P No.1689/KB/2019**

**In the matter of**

An application under 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:**

**M/s Dhiraj Enterprises Private Limited**, registered under the provisions of the Companies Act, 1956, bearing CIN: U51109WB1997PTC082999 and having its registered office at 16A, Everest House, 46C,J.L.Nehru Road, Kolkata-700071, West Bengal.

*... Financial Creditor*

Versus

**In the matter of:**

**M/s Janpragti Commodities Private Limited**, registered under the provisions of the Companies Act, 1956 bearing CIN: U51109WB1995PTC068406 and having its registered office at 235/2A A.J.C. Bose Road, Kolkata-700020, West Bengal .

*...Corporate Debtor*

Date of hearing : 09/07/2021

Order Pronounced on : 15/07/2021

**Coram:**

***Mr. Rajasekhar V.K., Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

- |                                     |                              |
|-------------------------------------|------------------------------|
| 1. Mr. Shaunak Mitra, Advocate      | } For the Financial Creditor |
| 2. Mr. Urmila Chakraborty, Advocate | }                            |
| 3. Mr. Sanjib Dawn, Advocate        | }                            |
|                                     |                              |
| 1. Mr. Rahul Auddy, Advocate        | } For the Corporate Debtor   |
| 2. Mr. Shaleen Dubey, Advocate      | }                            |

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. By way of this application filed 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, **M/s Dhiraj Enterprises Private Limited**, a corporate entity, bearing CIN: U51109WB1997PTC082999 and having its registered office at 16A, Everest House, 46C, J.L.Nehru Road, Kolkata-700071, West Bengal (hereinafter referred as Financial Creditor), through one of its Directors Mr. Arnab Dasgupta, seeks initiation of Corporate Insolvency Resolution Process in respect of **M/s Janpragti Commodities Private Limited**, another corporate entity having CIN: U51109WB1995PTC068406 and having its registered office at 235/2A A.J.C. Bose Road, Kolkata-700020, West Bengal ( hereinafter referred as the Corporate Debtor).
3. The application is found complete and in order in all respects.
4. It is submitted in the application that a sum of Rs.74,97,874/- ( Rupees Seventy Four Lac Ninety Seven Thousand Eight Hundred Seventy Four only) alongwith interest @ 12% is due from the Corporate Debtor to the Financial Creditor and the default in payment of the debt occurred on 1<sup>st</sup> April, 2019. The Financial Creditor has submitted a statement of account due, in default and date on which the default occurred (Annexure-C), which reveals that the Principal Amount outstanding at

the beginning of the year,2019-20 was Rs.71,61,200/- (Rupees Seventy One Lac Sixty One Thousand Two Hundred only), interest segment computed @ 12% comes to Rs.3,36,674/-(Rupees Three Lac Thirty Six Thousand Six Hundred Seventy Four only) till 21<sup>st</sup> August,2019, which makes the total outstanding of Rs.74,97,874/-( Rupees Seventy Four Lac Ninety Seven Thousand Eight Hundred Seventy Four only).

5. It is submitted that the Corporate Debtor has admitted and confirmed the amount outstanding as on 1<sup>st</sup> April, 2019 being Rs.71,61,200/- (Rupees Seventy One Lac Sixty One Thousand Two Hundred only), by putting their signature by one of its Directors alongwith seal of the Company, thereby making it as an admitted debt due from the Corporate Debtor to the Financial Creditor.
6. The Corporate Debtor in its Reply-Affidavit dated 23<sup>rd</sup> October, 2019 affirmed by Mr. Ramsankar Bisal, one of its Directors, duly authorized by its Board Resolution dated 11<sup>th</sup> October, 2019, submitted that the allegations in the said application are incorrect, denied and disputed. It is further submitted by the deponent that the loan availed by the Corporate Debtor was deployed and invested in its business activities and due to economic recession and losses in the investment made, the said loan could not be repaid. He submitted that the condition of the economy has deteriorated for past several years, which have halted and hampered the progress of the business of the Corporate Debtor and the companies, in which Corporate Debtor had made investments, unfortunately the Corporate Debtor has not been able to meet its commitments and liabilities. It is submitted that the Corporate Debtor is not a willful defaulter but victim of circumstances.
7. The Rejoinder filed by the Financial Creditor mentions that the defence taken by the Corporate Debtor is vague and contrary to their admission of the claim in Paragraphs 5 to 8 of the Affidavit-in-Reply. The Financial

Creditor has reiterated the facts stated in Part I,II,III,IV and V of the form 1 and since the Corporate Debtor has acknowledged the outstanding debts by signing the confirmation of accounts for the year from 01/04/2018 to 31/03/2019, there is a clear cut admission of the outstanding debt by the Corporate Debtor and orders for initiation of CIRP are prayed for by the Financial Creditor.

8. Going back to the facts of the case, it would be seen that the Financial Creditor has placed on record all the documents executed on behalf of the Corporate Debtor and other documents like notices, reminders sent to the Corporate Debtor, to prove its claim. All these documents form part of the Annexures to the supplementary affidavit of the Financial Creditor filed on 24<sup>th</sup> December, 2019. The loan was recalled by the Financial Creditor vide its notice dated 28<sup>th</sup> March, 2017 followed by reminders dated 15/12/2017, 20/03/2018 and 01/03/2019.
9. Since the disbursement of the loan is proved vide Bank's statement of the Financial Creditor for the period 18/04/2016 to 29/03/2019, issued by the Bank of Maharashtra showing the disbursement of loan to the Corporate Debtor and the amount outstanding has been admitted by the Corporate Debtor vide its confirmation letter duly signed and sealed mentioned above, and since the admitted default of non payment of the outstanding amount is proved on the basis of documents placed on record by the Financial Creditor including various notices and reminders recalling the outstanding debt, the application of the Financial Creditor deserves to be admitted.
10. The Financial Creditor has proposed the name of **Mr. Kailash Kumar Rathi**, Insolvency Resolution Professional, who has filed Form-2, whereby he has agreed to act as the Insolvency Resolution Professional in case CIRP is initiated in respect of the Corporate Debtor. He has further submitted that he is qualified to practise as Insolvency

Professional and is serving as the IRP in one proceeding only and there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals.

11. Having gone through the petition, reply affidavit, rejoinder and all Annexures attached to the respective pleadings of the parties and after hearing Ld. Counsel for both sides, we are of the considered view that the case for initiation of CIRP in respect of the Corporate Debtor is made out and we have no hesitation to order that the CIRP in respect of the Corporate Debtor be initiated.
12. In view of the observations and directions, we hereby admit the petition and pass the following Orders:-

**O R D E R S**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **M/s Janpragti Commodities Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 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 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.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.

- ix) **Mr. Kailash Kumar Rathi**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI /IPA-001/IP-P00547/ 2017-19/10997]** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs. 3,00,000/- (Rupees Three Lacs only )** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 27/10/2021 for the filing of the progress report.

xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rajasekhar V.K.)**  
**Member (Judicial)**

Order signed on, this 15<sup>th</sup> day of July, 2021

Pj