

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

**C.P. (IB) No. 155/KB/2019**

**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:**

**UNITED BANK OF INDIA**, a body Corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at 11, Hemanta Basu Sarani, Kolkata 700001 and also having its numerous branches including one at 17, Anukul Mukherjee Road, Police Station: Jorasanko, Kolkata 700006, commonly known as United Bank of India, Posta Branch, within the jurisdiction as aforesaid.

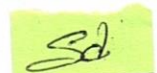
**... Applicant**

**-Versus-**

**IN THE MATTER OF:**

**M/S. JOTISRIRAM HIMGHAR PRIVATE LIMITED**, having Corporate Identity Number U01403WB2013PTC195017, a Company incorporated under the Companies Act, 1956 and having its registered office at P-3/5, Metropolitan Co-operative Society Housing Complex, Sector – 1, Kolkata 700105, within the aforesaid jurisdiction.

**... Corporate Debtor**



**Coram: Shri Jinan K.R., Hon'ble Member (Judicial)**

**Counsel on Record:**

1. MR. SUDEEP PAL CHOUDHURI, Advocate ]  
2. MS. SASWATI SIKDER, Advocate ] For Financial Creditor

1. MR. SAUNAK SENGUPTA, Advocate ]  
2. MS. MITUL CHAKRABORTY, Advocate ] For Corporate Debtor

**Date of pronouncement of Order: 13/03/2020**

**ORDER**

**Per Jinan K.R., Member (Judicial).**

1. **United Bank of India/the Financial Creditor** has filed this application under Section 7 of the Insolvency & Bankruptcy Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor **M/s. Jotisiram Himghar Private Limited**, on the allegation that the Corporate Debtor who availed various loans to the tune of Rs.988.75 lakh by executing various documents inclusive of Demand Promissory Notes, Agreement of Term Loan, Agreement of hypothecation etc., of which particulars are given in Form I, Part IV, committed default in repayment and thereby the Financial Creditor classified the accounts of the Corporate Debtor as Non Performing Assets with effect from 30.06.2016 and thereby committed default in repayment and accordingly filed this application for initiating Corporate Insolvency Resolution Process.





2. To add strength to the said contentions, the Loan Agreement and other related documents executed by the Corporate Debtor in favour of the Financial Creditor has been narrated in Part V of Form I and thereby not detailed at length here. As a proof of record of default, the Financial Creditor attached copy of demand notice dated 12.07.2016 issued by the Financial Creditor to the Corporate Debtor and produced records of default issued by the NeSL (National E-Governance Services Limited) by way of a Supplementary Affidavit. Upon the above said contentions the Financial Creditor further would submits that the Corporate Debtor despite demand failed to repay and therefore committed default and, therefore, this application is liable to be admitted by passing an order of CIRP as against the Corporate Debtor.
  
3. The Respondent Corporate Debtor entered appearance and objected this application mainly contending that the debt as claimed by the Financial Creditor is not a debt due and payable and that there was no default as alleged by the Financial Creditor. It is further would submits that the claim of interest @ 13.5% p.a. on the monthly rest on and from 1<sup>st</sup> January, 2019 is illegal and against the terms of the loan agreement. It is incorrect to say that the Corporate Debtor committed default in repayment on 30.06.2016 as alleged. It is incorrect to say that the Corporate Debtor has executed the Demand Promissory Note, Letter of continuity, Letter of Lien and Agreement for Term Loan dated 27.03.2015, as alleged. The application is not maintainable and ought to be dismissed with cost.

Sd.

4. The Financial Creditor has filed rejoinder denying the averments in the reply affidavit of the Corporate Debtor and reiterated the particulars mentioned in the Form No. I and further would submits that the Corporate Debtor from time to time had acknowledged the debt by executing letter confirming the balances under the credit facility availed by them and also submitted the audited report dated 05.09.2016 and in the said balance sheet they also acknowledged and admitted the bank dues and the said documents were annexed with the application and therefore this application is liable to be admitted.
5. Heard both sides. Perused the documents and the citations referred to on the side of the Corporate Debtor.
6. It is an application filed by the Financial Creditor, United Bank of India, under Section 7 for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor( In short CD) alleging that the Corporate Debtor has committed default in repayment of the loan availed by the CD. Availing of loan as alleged by the Corporate Debtor has not at all in dispute though in the reply affidavit there is a bear denial of non execution of Demand Promissory Note, Letter of Continuity etc. Nothing was argued on the side of the Corporate Debtor so as to discard evidences led in on the side of the Financial Creditor regarding availing of loan by the Corporate Debtor. On the other hand Annexure A-6 attached with the application is a Loan Sanction Letter dated 27.12.2013 wherein the Corporate Debtor has been given a Term Loan of Rs.600.00 Lakh, Working Capital of Rs.55.00 Lakh, Cash Credit (Seasonal) to the tune of Rs.320.00 Lakh and Bank Guarantee of Rs.13.75 Lakh, totaling to Rs.988.75 Lakh.

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7. As per the terms of Sanction, the above said loan availed by the Corporate Debtor shall be repayable in 18 half yearly unequal installments commencing from September, 2014 and ending in March, 2023. That being so, the evidence let in on the side of the Financial Creditor is sufficient to prove that the Corporate Debtor has availed the loan. Nothing on the side of the Corporate Debtor to show that the loan availed by the Corporate Debtor is repaid as per the repayment schedule mentioned in the Sanction letter referred to above. It is in this background the Financial Creditor has issued demand notice on 12.07.2016 recalling the entire loan amount aggregating to Rs.9,98,83,000/- (Rupees Nine Crore Ninety Eight Lakh Eighty Three Thousand Only) classifying the account stand in the name of the Corporate Debtor as Non Performing Assets with effect from 30.06.2016.
8. Despite the demand, the Corporate Debtor has not paid the amount. So according to the Ld. Counsel for the Financial Creditor the default has been committed by the Corporate Debtor as on 30.06.2016 and therefore filing of this application on 25.01.2019 is well within the period of limitation and accordingly this application is liable to be admitted. He further would submits that there is an acknowledgement of debt by the Corporate Debtor in the Balance Sheet for the Financial Year 2015-16. The relevant note in the Financial Statement read as follows:-

"Short-term Borrowings

*Term Loan from United Bank of India (Posta Branch) Rs. 7,000,000.00  
A/c No. 0556305613155  
CC Loan from United Bank of India (Posta Branch) Rs. 28,904,022.00  
A/c No. 0556250021030*

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*Working Capital Loan from United Bank of India*  
*(Posta Branch) Rs. 5,545,450.00*  
*A/c. No. 0556250021021*  
**Rs.41,449,472.00**

The above said entry in the Balance Sheet no doubt is an acknowledgement admitting the liability owed by the Corporate Debtor to the Financial Creditor. Even otherwise the default being occurred on 30.06.2016 filing of this application on 25.01.2019 is within the period of limitation. The allegation in this regard is found devoid of any merit.

9. At this juncture the Ld. Counsel for the Corporate Debtor referring to two judgments of the Hon'ble Supreme Court, I.e **B.K. Educational Services Private Limited vs. Parag Gupta and Associates reported in (2019) 11 Supreme Court Cases 633** and **Jignesh Shah and Another vs. Union of India and Another reported in (2019) 10 Supreme Court Cases 750** attempted to argue that the date of default as per the loan sanctioned on 27.12.2013 was in the year 2015. According to him the last loan document as per the particulars given in Part V in Form I was executed on 27.03.2015 and therefore, the date of default would be on 27.03.2015 and not on 30.06.2016. If it is so, filing of this application on 25.01.2019 is barred by limitation.
10. Referring to **B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates, MANU/SC/1160/2018** the Ld.counsel for the CD submits that Article 137 of Limitation Act is applicable to the applications filed under section 7 of the Code, and if the period of limitation is counted from 27.03.2015 the filing of this application is barred by limitation. He further would take me to Para 27 which read as under:-





*“27. The Limitation Act is applicable to applications filed Under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred Under Article 137 of the Limitation Act...”*

11. To strengthen the above said submissions, no evidence is produced by the Ld. Counsel for the Corporate Debtor. On the other hand, the Ld. Counsel for the Financial Creditor has taken me to the report issued by the NeSL to the Financial Creditor dated 06.03.2020. Truly, the Financial Creditor has delayed in cause producing the above said document. The above said report has been submitted by the Ld. Counsel for the Financial Creditor only at the time of hearing. The receipt of this report has been objected on the side of the Corporate Debtor. However, even without the report, the evidence let in on the side of the Financial Creditor is sufficient enough to prove that the Corporate Debtor has committed default as on 30.06.2016 as alleged by the Financial Creditor. On the other hand the Report dated 06.03.2020 issued by the NeSL added strength to the submission on the side of the Ld. Counsel for the Financial Creditor that the date of default occurred in the case in hand was on 30.06.2016. Therefore, the Financial Creditor has succeeded in proving that the debt is due and payable and the Corporate Debtor has failed to prove that the debt claimed by the Financial Creditor is not due and payable under any law or under any facts. Accordingly, I do not find any merit in the submission on the side of the CD.

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12. The application is otherwise complete. All the requirements to be meted out under Section 7(3) of the Code seen produced in the case in hand. The Financial Creditor has proposed the name of Shri Shyamal Kumar Bhattacharjee, as the Insolvency Professional to be appointed for initiating the CIRP. The Form 2 and written communication dated 08.11.2018 produced along with the application by Shri Shyamal Kumar Bhattacharjee proves that no disciplinary proceeding is pending against him and he is eligible to be appointed as an IRP.
13. The Financial Creditor being succeeded in proving that all the requirements to be meted out under Section 7 (3) of the Insolvency & Bankruptcy Code, 2016 has been meted out and that the claim of the Financial Creditor is not barred by law of limitation and that the debt is due and payable by the Corporate Debtor not been paid by the Corporate Debtor, this application is liable to be admitted. In the result the application is admitted upon the following orders:-

**ORDERS**

- 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. Jotisriram Himghar Private Limited** is hereby **admitted**.
- ii) Moratorium is declared for the purposes referred to in Section 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 Section 15.



- iii) 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 judgement, 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.
- iv) 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.
- v) 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.

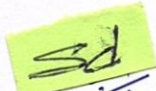



- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under 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.
- viii) **Mr. Shyamal Kumar Bhattacharjee**, of 27/1 B.T. Road, Green View Apartment, Kamarhati, kolkata 700058, Block-I, Flat 001, having Registration No. **IBBI/IPA-003/IP-N00092/2017-2018/10892**, Email ID: [shy\\_bhatta1990@yahoo.co.in](mailto:shy_bhatta1990@yahoo.co.in) an Insolvency professional is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) 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.
- x) The Registry is hereby directed under section 7(7) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

Sd



- xi) The matter be listed on 28.04.2020 for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
  
**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 13<sup>th</sup> day of March, 2020.

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