

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

I.ANo.86/KB/2020

In

CP No.2149/KB/2019

In the matter of:

An application under 7 read with Section 14& 33 and other applicable Provisions of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

Hempragati Vyapaar Private Limited, having its registered office at 1/1, Raja Rajendra Lal Mitra Road, Flat No. 405, Gokul Apartment, Kolkata- 700085, West Bengal.

... Financial Creditor

Versus

In the matter of:

JPM Exports Private Limited, having its registered office at Infinity Bench Mark, 12th Floor, Office No.1202, Block -GP, Sector-V, Salt Lake, Kolkata- 70091, West Bengal.

.....Corporate Debtor

Date of hearing : 13/01/2021

Order Pronounced on :

Coram:

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

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

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|----------------------------------|------------------------------|
| 1. Mr. Noelle Banerjee, Advocate | } For the Financial Creditor |
| 2. Mr. Mohan Ram Goenka,CS | } |

3. Mr. Sneha Khaitan, CS }

ORDER

Per: Harish Chander Suri, Member (T)

1. The Court convened by video conference on 13/01/2021.
2. This application being CP (IB) No. 2149/KB/2019 has been filed by Hempragati Vyapaar Private Limited (hereinafter referred as the Financial Creditor), a Corporate person having its registered office at Kolkata through Mr. Ram Gopal Agarwal, one of its Directors, who has been authorised vide Board Resolution dated 1st October, 2019 to submit the present application, against the JPM Exports Private Limited, another corporate person, having its registered office at Kolkata (hereinafter referred as the Corporate debtor) for initiation of Corporate Insolvency Resolution Process, against the Corporate Debtor. The Financial Creditor has proposed the name of one Mr. Pinaki Sircar, email- pinakisircar@hotmail.com, registration no. IBBI/IPA-002/IP-N00063/ 2017-18/10141 to act as IRP, who in turn, has given Form-2 duly signed by him and agreeing to accept the appointment and to act as the RP in the present matter alongwith other mandatory clauses as regards, his appointment as Resolution Professional or Liquidator.
3. The Financial Creditor has submitted in Part-IV of the application that a loan of Rs.25,000,00/- (Rupees Twenty Five Lakhs only) had been granted to the Corporate Debtor vide Inter-Corporate Deposit Agreement dated 19th August,2015, and the disbursement of the loan also took place on 20th August,2015. Copy of the Inter-Corporate Deposit Agreement dated 19th August, 2015 is enclosed with the application as **Annexure 'P-5'**.
4. It is further stated that pursuant to the aforesaid agreement dated 19th August, 2015 defaults in repayment of Principal Amount and interest were committed by the Corporate Debtor and in view of the same, a corrigendum to the original Inter-Corporate Deposit Agreement dated

19th August, 2015, was executed on 20th August, 2017 between the parties (**Annexure-‘P-7’**), wherein, the term of the loan was extended subject to the condition that Rs.15,00,000/- (Rs. Fifteen Lakhs only) out of the total outstanding principal amount of Rs.25,00,000/- (Rs. Twenty Five Lakhs only) would be paid within 45 days from 20.08.2017 and a penalty @ 18% p.a. on the remaining principal amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) would be paid by the Corporate Debtor at the end of the 12 months i.e. on 20.08.2018 in lieu of the extension provided. The Corporate Debtor made the payment of Rs. 15,00,000/- (Rs. Fifteen Lakhs only) within the stipulated time but again failed to comply with the other terms and conditions laid down in the Corrigendum Inter-Corporate Deposit Agreement dated 20.08.2017.

5. It is submitted by the Financial Creditor that as on 2nd August, 2019, a total sum of debt due to the Financial Creditor is Rs.7,00,384/- (Rs. Seven Lakhs Three Hundred Eighty Four only), which debt the Corporate Debtor has not cleared in spite of several notices sent to the Corporate Debtor.
6. It is further submitted that the Corporate Debtor had admitted the liability of Rs.5,00,000/- (Rs. Five Lakhs only) alongwith the interest and 18% of Rs.10,00,000/- (Rs. Ten Lakhs only) penalty charges and had assured the Financial Creditor to pay the entire outstanding debt within two months but it had failed to do so.
7. The Financial Creditor has claimed for future interest that would be accruing on day today basis till the liability is fully discharged.
8. The recall notice was issued by the Financial Creditor on 4th February, 2019 (**Annexure-‘P-8’**) followed by another similar notice on 16th March, 2019 (**Annexure- P-‘9’**) calling upon the Corporate Debtor to repay the amount of Rs.7,00,384/- (Rs. Seven Lakh three Hundred Eight Four only) alongwith interest calculated @11% p.a. within a period of 15 days from the date of the said notice but in spite of the notices having been duly received, the amount was not paid by the Corporate Debtor. Even though, the Corporate Debtor had agreed to repay the amount vide

corrigendum dated 20th August, 2017 executed between the parties.

9. The Corporate Debtor in this matter was duly served and sought time to file reply but in spite of three opportunities afforded to the Corporate Debtor, reply has not been filed. Nobody appeared on behalf of the Corporate Debtor on two consecutive dates i.e. 3rd November, 2020 and 26th November, 2020. The non-filing of the reply and non-appearance in the Court shows that the Corporate Debtor is intentionally avoiding the proceedings and has no defence in the matter.
10. The matter was listed on 13th January, 2021, the Ld. Counsel for the Financial Creditor took us through each of the documents filed along with the application and explained that the amount of Rs.7,00,384/- (Rs. Seven Lakh three Hundred Eight Four only) along with interest is due from the Corporate Debtor, which the Corporate Debtor has committed default in making payment, in spite of notices of recalling.
11. In these circumstances, we have no hesitation in admitting the application and in ordering initiation of CIRP against the Corporate Debtor.
12. In view of the observations and directions, we hereby admit the petition and passed 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 **JPM Exports 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. Avishek Gupta**, registered with Insolvency and Bankruptcy Board of India, having Registration No. [**Reg. No. IBBI /IPA-003/IP-N000135/2017-18/11499**] 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.50,000/-(Rs. Fifty Thousand 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 16/04/2021 for the filing of the progress report.
- xiv) I.A. No. 86/KB/2020 in CP (IB) No.2149/KB/2019, is an application for early hearing of CP (IB) No.2149/KB/2019. The same is hereby disposed of.
- xv) 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 27/01/2021

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