

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

CP (IB) No. 267/KB/2020

IN THE MATTER OF :

Application by Financial Creditor to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 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 :

Hytone Merchants Private Limited, a Private Non-Government Company, limited by shares, registered under the provisions of the Companies Act, 1956, bearing CIN : U51109WB1994PTC063994 and having its registered office at 87, Diamond Harbor Road, Kolkata – 700038, West Bengal

...Financial Creditor/Applicant

Versus

IN THE MATTER OF :

Indradev Goods Private Limited, a Private Non-Government company, limited by shares, registered under the provisions of the Companies Act, 1956, bearing CIN : U51909WB2008PTC121985 and

**having its registered office at 235/2A, AJC Bose Road, 3rd Floor,
Kolkata – 700020, West Bengal**

...Corporate Debtor/Respondent

CORAM :

Mr. Rajasekhar VK, Member (Judicial)

Mr. Harish Chander Suri, Member(Technical)

For the Financial Creditor :

1) Mr. Sanjib Dawn, Advocate

2) Mr. Rishav Banerjee, Advocate

For the Corporate Debtor :

1. Ms. Urmila Chakraborty, Advocate

1) Mr. Karan Daga, Advocate

Date of hearing : 11th December, 2020

Date of pronouncement of the Order : 8th January, 2021

ORDER

Per Harish Chander Suri, Member (Technical) :

The Court convened via video conferencing :

1. This Petition has been filed by **Hytone Merchants Private Limited**, Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, "I&B Code") to initiate Corporate Insolvency Resolution Process against **Indradev Goods Private Limited**, the Respondent/Corporate Debtor.
2. It is stated by the Ld. Counsel of the Applicant that the Financial Creditor, Hytone Merchants Private Limited, a company limited by share, having paid up capital of Rs. 3,43,70,740/-, had extended financial help to the Corporate Debtor, namely, Indradev Goods Private Limited.
3. It is further stated by the Ld. Counsel for the Applicant that in terms of the request made by the Corporate Debtor to the Financial Creditor, a sum of Rs. 4 lacs was remitted through RTGS from United Bank of India, Kolkata on 15.02.2019, on condition that the Corporate Debtor will repay the loan within six months from the date of disbursement, bearing interest @15% per annum. Such disbursement is reflected in the Bank statement on page 51 of Company Petition.
4. The correspondence exchanged between the parties on page 13 and 14 of the Company Petition, is quite relevant to be considered.
5. It is stated by the Ld. Counsel of the Applicant that the Corporate Debtor, by letter dated February 15, 2019, had confirmed the payment. The Corporate Debtor also issued a demand promissory note on February 15, 2019.
6. The tabular statement of amount due, in default and date on which the default occurred, are annexed to the Company Petition at page 16.

7. It is stated by the Ld. Counsel of the Applicant that as the Corporate Debtor had failed to repay the amount, together with interest, the Financial Creditor issued a demand notice on December 16, 2019, annexed with the Company Petition.

8. Despite service of such demand notice, there was no payment made by the Corporate Debtor to discharge their liability. The Bank statements of the Financial Creditor are attached with the Company Petition, which goes to show that the Financial Creditor has not received any amount from the Corporate Debtor, after service of the demand notice.

9. In its Affidavit in opposition/reply to the Application, the Respondent/Corporate Debtor has submitted that the unsecured loan availed by the Corporate Debtor was deployed and/or invested in its business activities and due to economic recession and losses suffered in the business, the said loan taken from the Financial Creditor, could not be repaid and that the Corporate Debtor is not a wilful defaulter but victim of the circumstances and as such denied the allegations of non payment of the loan to the Financial Creditor.

10. In rejoinder to the reply, the Applicant submitted that the Corporate Debtor had acknowledged the receipt of debt by signing a debt receipt dated 15th February, 2019 and issued a letter dated 12th August, 2019 for repayment of loan within 30th September, 2019 and there was no denial of admission in their affidavit in reply.

11. Heard the Ld. Counsels, appearing for the Financial Creditor and also for the Corporate Debtor. Perused the documents.

12. From the above, it is clear that the debt and liabilities have been acknowledged by the Respondent/Corporate Debtor and it is clear from the Reply, filed by the Respondent/Corporate Debtor, that the debt is admitted.

13. The present Application has been filed in proper form. The Petitioner has produced several documents including loan sanction letter, final recall notice,

CIBIL report, etc. The Applicant has also proposed the name of interim resolution professional and filed the original written communication by the said professional. It seems that all the compliance under section 7 of the I&B Code has been made. The Application is thus complete in all respects.

14. In the light of the above said discussions, the Petition, bearing CP(IB) No. 267/KB/2020, is hereby admitted under section 7 of the I&B Code upon the following directions:

- i. The Petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of Indradev Goods Pvt. Ltd.
- ii. We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. The 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. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the 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 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 possession of the Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor, as may be specified, shall not be terminated or 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 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.
- ix. Necessary public announcement, as per Section 15 of the IBC, 2016, may be made.

x. Mr. Uday Narayan Mitra, Resident of 72/1, Dewnagazi Road, Bally, Howrah – 711201, having registration no. IBBI/IPA-001/IP-P00793/2017-2018/11360 and e-mail: udaynarayanmitra@yahoo.co.uk, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a Resolution Plan.

xi. 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.

xii. Registry is hereby directed under Section 7(7)(a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

15. List the matter on 10.02.2021 for filing the progress report.

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

(Harish Chander Suri)
Member(Technical)

(Rajasekhar VK)
Member(Judicial)

Signed on this the, 8th day of January, 2021

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