

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

C.P. (IB) No. 764 /KB/2020

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:

1. **Bank of Baroda**, having its Head Office at “Baroda Bhavan, R. C. Dutt road, Alkapuri, Baroda – 390007 and Branch Office at Stressed Asset Recovery Branch, 21A, Sadananda Road, 2nd Floor, Kolkata 700026;
2. **State Bank of India**, having its Corporate Centre at State Bank Bhavan, Corporate Centre, Madame Cama road, Mumbai 400021 and Branch Office at Stressed Asset Management Brancyh, Kolkata Branch – I, 8th Floor, Nagaland House, 11 & 13, Shakespeare Sarani, Kolkata 700071;

...Applicants/Financial Creditors

And

M/s. Kilburn Chemicals Limited, a company incorporated under the provisions of the Companies Act, 2013, having its Registered Office at “Shantiniketan” 16th Floor, 8 Camac Street, Kolkata 700017.

...Respondent/Corporate Debtor

Counsels appeared through Video Conference:

- | | |
|------------------------------------|--------------------------------------|
| 1. Ms. Rituparna Sanyal, Advocate |] For the Financial Creditors |
| 2. Mr. Santosh Kumar Ray, Advocate |] |
| | |
| 1. Mr. Saurav Jain Advocate |] For the Corporate Debtor |

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

Date of hearing: 10th August, 2020.

Order pronounced on 10th August, 2020.

ORDER

Per Shri Jinan K.R., Hon'ble Member (J)

1. As mentioned by the Ld. Counsel for the applicants on 29/07/2020 that this case is to be heard urgently due to deterioration of the value of the corporate debtor (in short CD) which is not in operation and raw materials kept in the factory is chemical, was listed on today for hearing through video conference, since the work of the Tribunal is disrupted due to Covid -19 pandemic and consequential lockdown by serving notice to the CD directing to submit written notes of defence if any.

2. Today, when this case came up for consideration, both parties represented through lawyers. The CD has filed written notes of defence fairly admitting the default. Both parties were heard. Perused the documents and written notes of defence.

3. This is a petition filed jointly by Bank of Baroda and State Bank of India, Financial Creditors u/s. 7 of the Insolvency and Bankruptcy Code, 2016 (in short, 'I & B Code') for initiation of Corporate Insolvency Resolution Process (in short, 'CIRP') against M/s. Kilburn Chemicals Limited, Corporate Debtor for a total default in payment of a sum of Rs.208,89,62,561.80 (Rupees Two hundred eight crores eighty nine lakhs sixty two thousand five hundred sixty one and paise eighty only) as on 04/06/2020, details of which are stated below (Annexures "K" and "L" respectively):-

For Applicant No. 1 : Bank of Baroda

Principal Outstanding as on 04/06/2020	
i) Term Loan	Rs. 83,00,00,000.00
ii) Working Capital	Rs. 2,01,61,659.79

Overdue Interest Receivable	
i) Term Loan	Rs. 17,32,15,207.39
ii) Working Capital	Rs. 22,80,389.17
2 Nos. Bank Guarantees	Rs. 90,28,370.00
Legal Charges	Rs. 5,00,000.00
Total Due payable to the Applicant No.1	Rs.103,51,85,626.35

For Applicant No. 2 : State Bank of India

Principal Outstanding as on 04/06/2020	
i) Term Loan	Rs. 83,00,00,000.00
ii) Cash Credit (Working Capital)	Rs. 1,98,26,549.45
Accrued Interest	
i) Term Loan	Rs. 17,76,34,274.00
ii) Cash Credit (Working Capital)	Rs. 50,44,105.00
Penal Interest	
i) Term Loan	Rs. 1,93,45,199.00
ii) Cash Credit (Working Capital)	Rs. 19,26,808.00
Total Due payable to the Applicant No.2	Rs.105,37,76,935.45

4. It is submitted by the petitioners that the Corporate Debtor had approached and requested the Financial Creditors to provide various credit facilities and after due consideration the Applicant No. 1 sanctioned the credit facilities on 19/09/2015 and the Applicant No. 2 sanctioned the credit facilities on 04/01/2016 for the purpose of part finance for setting up of Rutile Grade Titanium Dioxide manufacturing plant. Thereafter, under a consortium banking arrangement, a term loan consortium agreement was executed by and between the Corporate Debtor and the Financial Creditors on 14/01/2016 , which was further amended on 05/11/2016. However, at the request of the Corporate Debtor, the Financial Creditors extended additional credit facilities by way of working capital cash credit and accordingly, a Working Capital Consortium Agreement was

entered between the Applicants (Financial Creditors) and the Corporate Debtor on 27/04/2018 (to be hereinafter referred as “the said agreements”). The said credit facilities were enhanced, modified and renewed from time to time as per the request of the Corporate Debtor. The Financial Creditors have sanctioned credit facilities to the tune of Rs.206,00,00,000/- (Rupees Two hundred and six crores only), details of which have been availed by the Corporate Debtor are mentioned below:

Sl. No.	Particulars of the Facility for Applicant No.1	Limit (in Crores)
1.	Term Loan	Rs. 83.00
2.	Working Capital by way of Cash Credit	Rs.20.00
3.	BG	Rs. 0.90
	TOTAL	Rs.103.90

Sl. No.	Particulars of the Facility for Applicant No.2	Limit (in Crores)
1.	Term Loan	Rs. 83.00
2.	Working Capital by way of Cash Credit	Rs.20.00
	TOTAL	Rs.103.00

Copies of the sanction letters issued by the Financial Creditors along with terms loan consortium agreement dated 14/01/2016, which was further amended on 05/11/2016 and Working Capital Cash Credit Consortium agreement dated 27/04/2018 are collectively annexed as Annexure “D”. In order to avail of the aforesaid credit facilities the Corporate Debtor has executed the Personal Guarantee of Mr. Sandeep Kumar Jalan, Corporate Guarantee of M/s. Shree Durga Agencies Limited (Collectively annexed as Annexure “E”) and security documents, e.g., primary security, collateral security, etc. in favour of Financial Creditors (Annexure “F”).

5. It is further submitted that as per the agreements the Corporate Debtor was mandated to repay the outstanding sums for Term Loan facility and Cash Credit facility and Bank Guarantee. However, the Corporate Debtor has failed and/or neglected to make payment

as per terms envisaged in the said agreements and thereby committed breach of terms and conditions of the said agreements. As such the Applicant No. 1 and the Applicant No. 2 were constrained to declare the Corporate Debtor account as a Non-Performing Asset (in short, "NPA") on 31/12/2018 and 28/12/2018 respectively as per RBI guidelines. The Corporate Debtor also acknowledged their debt from time to time by confirming their dues by signing Letters of Acknowledgement of debt dated 01/01/2019 & 11/02/2019 and revival letter dated 11/02/2019 respectively (Collectively marked Annexure "G"). The Financial Creditors had issued jointly a notice dated 13/03/2019 to the Corporate Debtor and the guarantors u/s. 13(2) of the SARFAESI Act, 2002 calling upon them to make payment of the total sum of Rs.177,36,27,868.23 (Rupees One hundred seventy seven crores thirty six lakhs twenty seven thousand eight hundred sixty eight and paise twenty three only) with further interest and incidental expenses, costs, etc. (Annexure "H"). Thereafter, the Applicant No. 1 through its advocate issued a letter dated 29/07/2019 calling upon the Corporate Debtor to make payment of Rs.89,18,27,560.23 (Rupees Eighty nine crores eighteen lakhs twenty seven thousand five hundred sixty and twenty three paise only) together with further interest thereon at the contractual rate of 2.50% over 1 year MLCR + SP & penal interest @ 2.00% from 01/01/2019 till actual payment or realization of the said amount and in default the applicant shall have no other option but to initiate appropriate legal actions against the Corporate Debtor. The Corporate Debtor and the guarantors had replied to the said notice dated 29/07/2019 by their letters dated 06/08/2019, (collectively marked Annexure "I"). It is stated by the applicants that the contents of the letters dated 06/08/2019 issued by the Corporate Debtor are not true and correct and are not tenable in the eye of law.

6. The Ld.Counsel for the petitioners Ms. Rituparna Sanyal submitted that due to breach of terms and conditions of the agreements and due to critical nature of the Corporate Debtor's Loan Account, the Applicant No. 1 had to transfer the Loan Account to Zonal Stressed Asset Recovery Branch from Corporate Financial Services Branch, 4, India Exchange Place, Kolkata 700001. Similarly, the Applicant No. 2 had to transfer the Loan Account to the Stressed Assets Management Branch, Kolkata – I from Commercial Branch,

Jeevandeep Building, 1, Middleton Street, Kolkata 700071. She also submitted that the application is complete and that copy of a certificate of Registration of Charge recorded with the Office of the Registrar of Companies, West Bengal being Charge I.D.No. 10612740 for Rs.206,00,00,000/- (Annexure "M") as well as the Information Utility Certificate (Annexure "O") to prove Record of Default. A copy of CIBIL report is also annexed (Annexure "P") to the application are annexed with the application. She also submits that the applicants have proposed the name of Mr. Partha Pratim Ghosh, Insolvency Professional, CB-108, Salt Lake, Sector, Kolkata 700 0064 having Registration No. IBBI/IPA-001/IP-P00554/2017-2018/10984 for appointment as Interim Resolution Professional and has enclosed Written Communication dated 04/06/2020 given by Mr. Partha Pratim Ghosh in Form 2 also.

7. Ld. Counsel for the Corporate Debtor Mr. Saurav Jain has submitted 'written notes of defence' stating therein the reasons for default and in fact admitting the default in repayment of loan. According to him the only point they have raised in the 'written notes of defence' is that the principal amount outstanding is Rs.171.00 Crores and that Corporate Debtor is not having any clarification relating to the calculation of interest and other penal charges, as mentioned in the application, without which it is not possible for them to comment on those amounts.

8. Having heard both sides and perusal of the documents and written notes on defence, it is certain that other than the alleged clarity regarding the total amount of claim due from the CD there is no other objections seen raised from the CD. Availing loan exceeding one crore rupees as per amended proviso to section 4 of the Code as well as default of the loan amount within the period of limitation and before the declaration of lockdown i.e before, 25.03.2020 is an admitted fact. The application has been filed in proper form. The applicants have produced several documents including loan sanction letter, agreements, final recall notice, Information Utility Certificate, CIBIL Report, etc. The applicants have also proposed the name of Interim Resolution Professional and filed the Written Communication dated 04/06/2020 given by the said Insolvency Professional. It seems that all the compliance u/s. 7 of the I & B Code has been made. Being satisfied that the CD has

committed default, that default occurred prior to declaration of lockdown, that the application is complete and there is no disciplinary proceedings against the proposed resolution professional, this application is fit for admission. The default admittedly committed being falls under the exhalation to section 10-A inserted by notification dated 5th June, 2020, this application is also maintainable and liable to be admitted.

9. In the light of the above facts and circumstances, the Petition is hereby admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016 upon the following directions:

i. The application filed by the Financial Creditors under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of M/s. Kilburn Chemicals Limited.

ii. I hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the Insolvency & Bankruptcy Code, 2016.

iii. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional 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. Partha Pratim Ghosh, Insolvency Professional, CB-108, Salt Lake, Sector, Kolkata 700 0064 having Registration No. IBBI/IPA-001/IP-P00554/2017-2018/10984 and e-mail: cappghosh@gmail.com 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/Resolution Professional to conduct CIRP of the Corporate Debtor as per timeline prescribed under Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

xii. 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.

xiii. Registry is hereby directed under Section 7(7)(a) of the Insolvency and Bankruptcy 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 email.

xiv. List the matter on 10/09/2020 for filing of Progress Report in case the lockdown is lifted. If not, submit progress reports periodically by e filing.

10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and to the IRP.

11. 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 (Judicial)

Signed on this, the 10th day of August, 2020.

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