

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

CP(IB) No.658/KB/2020

In the matter of:

An application under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

Apundarik Merchants Private Limited, CIN No. U51109WB1995 PTC069662, a Company incorporated under the provision of the Companies Act, 1956 having its registered office at 9, Weston Street, Room No. 127, 1st Floor, Kolkata-700013;

...Financial Creditor

Versus

Citylife Retail Private Limited, CIN No. U52100WB2006PTC111555, a company incorporated under the provisions of Companies Act, 1956, having its Registered Office at Express Tower, 42A, Shakespeare Sarani, 3rd Floor, Kolkata-700017.

...Corporate Debtor

Date of hearing : 19/05/2021

Order Pronounced on : 31/05/2021

Coram:

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

Mr. Harish Chander Suri, Member (Technical)

Counsel appeared through Video Conference

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| 1. Mrs. Manju Bhuteria, Advocate | } For the Financial Creditor |
| 2. Ms. Suparna Sardar, Advocate | } |

1. Mr. Ratul Das, Advocate } For the Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court convened by video conference today.
2. This application under section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Apundarik Merchants Private Limited** (hereinafter referred to as the Financial Creditor), through one of its Directors Mr. Abhishek Saraf, who was authorised to file this Petition before this Adjudicating Authority vide Board Resolution dated 27/01/2020, thereby seeking initiation of Corporate Insolvency Resolution Process in respect of **Citylife Retail Private Limited**, a corporate entity having its Registered Office at Express Tower, 42A, Shakespeare Sarani, 3rd Floor, Kolkata-700017, CIN No. U52100WB2006PTC111555 (hereinafter referred as the Corporate Debtor).
3. It is submitted in the Petition Part IV, that Financial Creditor was approached by the Corporate Debtor for the purpose of Loan as 'Inter Corporate Deposit' of an amount of Rs.25,00,000/- (Rs. Twenty-Five Lakhs only). The Financial Creditor on being approached by the Corporate Debtor agreed to extend the loan, repayable on 30th September, 2019 and /or on demand. Both the parties agreed that the said 'Inter Corporate Deposit' would be disbursed by way of RTGS to the Corporate Debtor. The said 'Inter Corporate Deposit' would carry an interest of 15% per annum. It was agreed upon the parties that the said 'Inter Corporate Deposit' would be repayable on 30.09.2019.
4. It is stated in the petition that the Corporate Debtor in discharge of its liability issued the following documents:-

- a. Demand Promissory Note dated 10.04.2019, confirming to repay on demand;
 - b. Letter of Undertaking dated 17.04.2019 for honouring its issued three cheques- one cheque for repayment on Loan and two cheques for payment of interest on Loan Amount;
 - c. Money Receipt, dated 10.04.2019, acknowledging the receipt of Loan Amount of R. 25,00,000/-; (**Annexures- C,D & E** respectively to the petition).
5. It is further stated in the petition that the Corporate Debtor in assurance to the repayment of loan given to it, provided the Financial Creditor, three cheques, being Cheque No. 064671 dated 01.10.2019 for Rs. 25,00,000/- Cheque No. 064669 dated 30.06.2019 for Rs. 75,822 and Cheque No. 064670 dated 30.09.2019 for Rs. 85,068/-
6. It is stated in the petition that Cheque of Rs. 25,00,000/- which was given to the Financial Creditor was dishonoured upon presentation by the banker of the Corporate Debtor with Remarks that the signature appearing in the said cheque is not as per mandate recorded with it by the Corporate Debtor. This clearly shows that the intention of Corporate Debtor is not to repay the amount that was given to them as Loan. (**Annexure-F** to the petition).
7. It is stated in the petition that thereafter, the Financial Creditor recalled the loan amount of Rs. 25,00,000/- by its Recalling Notice dated 18.01.2020, which was duly served upon the Corporate Debtor. Copy of the Recalling Notice dated 18.01.2020 with postal receipts and article tracking reports annexed as (**Annexure-G** to the petition).
8. It is further stated that the Corporate Debtor is in default of a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) along with accrued interest, @ 15% per annum, due calculated from 01.10.2019 till 06.02.2020, amounting to Rs. 1,32,534/- which is described in the Computation Sheet (**Annexure-H** to the petition).
9. The Financial Creditor has also placed on record various documents
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annexed with the petition **Annexure-I** to **Annexure-J** to the petition. The Ledger Statement for the transactions of Corporate Debtor in the books of Financial Creditor along with Form 26AS of Financial Creditor showing the TDS Deduction Details by Corporate Debtor for payment of interest for the period up to 30.09.2019 (**Annexure-I** to the petition). The Bank Statements showing the disbursement of loan of Rs. 25,00,000/- to the Corporate Debtor (**Annexure-J** to the petition). It is stated that the Corporate Debtor failed to discharge its liability thereby compelling the Financial Creditor to file these proceedings.

10. The Corporate Debtor was duly served with notice and was afforded opportunity to file reply.
11. The Corporate Debtor has filed its reply affidavit through one of its Directors, Mr. Subrata Dutta.
12. In its reply affidavit, the Corporate Debtor submitted that instant application suffers from incurable and material deficiencies and that the instant application is frivolous and misconceived. The application filed by the Financial Creditor is not at all maintainable under the provisions of Insolvency and Bankruptcy Code, 2016 and its regulations. The instant application is absolutely baseless, harrassing in nature and has been wrongly filed by the Financial Creditor. The instant application has not been properly framed and filed as per the formats and procedures prescribed by the Insolvency and Bankruptcy Code, 2016 and the rules framed thereunder and as such is liable to be dismissed at the very outset. The Financial Creditor has misled several facts and calculated the outstanding due without taking into consideration the entire facts. It is filed just to take undue advantage of the provision of the IBC,2016. The claim of the Financial Creditor is mala fide, vexatious and lacking in requisite details and particulars and even the 'NCLT Form 1' is not complete in all respect which itself clarifies that the petition has not been made as per the provision prescribed under the IBC 2016. The petition

does not contain the written communication by the proposed interim resolution professional as set out in 'Form 2' which is mandatory requirement under Rule 7 of the IBC Code, 2016. It is denied that any such amount is due to be repaid back by the corporate debtor as alleged or at all.

13. It is further stated in the reply affidavit that the Financial Creditor has concealed the true nature of transaction agreed with the corporate debtor and has sought to falsely depict an alleged loan transaction. It is further stated that the applicant has not disclosed whether it has a valid Certificate of Registration issued by the Reserve Bank of India to transact the business as a Non-Banking Financial Company and/or not even mentioned whether the financial creditor is permitted under the provision of the Companies Act to provide loan to anybody corporate. It is stated that cheque for repayment of loan was dated 01.10.2019 and the same has been deposited in the month of December, 2019 i.e. after two months. The Financial Creditor has not even informed the respondent before depositing the cheque into the bank. It is stated that the corporate debtor company is facing financial crisis due to the current market scenario because of the impact of Covid-19 pandemic in the textile market.
14. However, in paragraph 9 of the reply affidavit, the Corporate Debtor has stated that *"The respondent is trying to resolve its financial problem and clear the dues of the applicant as soon as possible. The corporate debtor is unable to repay the alleged amount claimed by the financial creditor. It is humbly stated that the corporate debtor is not in a good condition to pay any amount at present"*.
15. We have carefully gone through the pleadings filed by the parties. The reply submitted by the Corporate Debtor has no substance at all. It does not give any valid or plausible ground or reason for not making the payment. On the other hand, in paragraph 9 of the reply affidavit, the

corporate debtor has admitted default in payment of the dues of the petitioner (financial creditor).

16. We have also been gone through the contents of the Petition and each and every relevant portion of the pleadings filed by the Financial Creditor along with Annexures, and the reply of the Corporate Debtor. We are fully convinced that the loan amount was duly disbursed to the Corporate Debtor. The requisites of an application under section 7 of IBC are available on record and duly proved.
17. The Financial Creditor has filed Supplementary Affidavit on 10th May, 2021, stating therein that at the time of filing of petition, the Financial Creditor has taken consent from **Ms. Rachna Jhunjunwala** to become Interim Resolution Professional (IRP) of the corporate debtor, however, subsequently at the later stage the IRP raised some difficulty and thereafter the financial creditor has taken consent from **Mr. Anneel Saraogi** an Insolvency Professional to become Interim Resolution Professional (IRP) of the corporate debtor in Form-2 and that no disciplinary proceedings are pending against him with the Board or IIPICA.
18. We, therefore, consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
19. In view of the aforesaid observations, we hereby admit the petition and pass 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 **Citylife Retail 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 of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period, otherwise than in accordance with section 14 of the Code.
- 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. Anneel Saraogi**, registered with Insolvency and Bankruptcy Board of India, having Registration No. [**Reg. No. IBBI/IPA-001/IP-P01320/2018-19/12009**] Email Id: anneelsaraogi@gmail.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a 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 Financial Creditor/Applicant is directed to deposit **Rs.2,00,000/- (Rupees two lakh 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.

- xi) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xii) List the matter on 22.07.2021 for filing of **Progress Report**.
- xiii) The Registry is directed to send e-mail copies of the order forthwith to IRP as well as all the parties and their Counsel for information and for taking necessary steps.
- 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)

Signed this, the 31st day of May, 2021

Pj - Steno