

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

CP (IB) No.142/KB/2019

(An Application for initiation of Corporate Insolvency Resolution Process by the under section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Monotrone Leasing Private Limited, Oriental House, 6C, Elgin Road,
Kolkata- 700020.

... Financial Creditor

Versus

In the matter of:

P.M. Cold Storage Private Limited, 1A, Madan Mohan Burman Street,
Kolkata-700007.

.....Corporate Debtor

Date of hearing : 25/03/2021

Order Pronounced on :25/03/2021

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

1. Mr. Nilay Sengupta ,Advocate	} For the Financial Creditor
2. Ms. Swati Agarwal, Advocate	

1. Mr. Jishnu Chowdhury, Advocate	} For the Corporate Debtor
2. Mr. Chayan Gupta, Advocate	
3. Mr. Anujit Mookherji, Advocate	

ORDER

Per: Harish Chander Suri, Member (T)

1. This petition being **CP (IB) No.142/KB/2019** had been filed by the **Monotrone Leasing Private Limited**, the Financial Creditor against the **P.M. Cold Storage Private Limited**. This Adjudicating Authority vide order dated 11th December, 2019 had observed that the Corporate Debtor had filed interpleader suit disclosing the nature of alleged transaction and that the competent Civil Court had found existence of prima facie case in favour of the Corporate Debtor, and had issued interim prohibitory order against the Financial Creditor stating that the Financial Creditor could not recover the amount claimed therein. This Adjudicating Authority had thus rejected the application filed under section 7 of the IBC by the Financial Creditor.
2. On being challenged before the Hon'ble NCLAT, vide judgment dated 16th July, 2020, the Appeal of the Financial Creditor was allowed and the order passed by this Adjudicating Authority dated 11th December, 2019 was set aside, directing this Adjudicating Authority to pass the order of Admission within Seven days from the date of this order.
3. The Corporate Debtor then challenged the order of Hon'ble NCLAT before the Hon'ble Supreme Court of India and the Hon'ble Apex Court vide its orders dated 11th August 2020 was pleased to dismiss the Civil Appeal being Civil Appeal No. 2906/2020. The Corporate Debtor/ appellant, however did not stop there and availed of his right to file a Review Petition being R.P.(C) No. 1857/2020 in Civil Appeal No. 2906/2020 but the same was also rejected by the Hon'ble Supreme Court of India on 8th December, 2020 with the observation that “ *the order of which review has been sought does not suffer from any error apparent warranting its reconsideration. The Review Petition is, accordingly, dismissed*”.

4. This matter was taken up by this Adjudicating Authority on 25/03/2021, when Ld. Counsel for both parties appeared and made their respective submissions in the light of the orders of the Hon'ble NCLAT and the Hon'ble Supreme Court of India.
5. Since the orders dated 11th December, 2019 passed by this Adjudicating Authority has already been set aside and this Adjudicating Authority has to pass the order of Admission in terms of order dated 16.07.2020, we hereby pass the order of admission of the petition being **CP (IB) No.142/KB/2019** initiating CIRP in respect of **P.M. Cold Storage Private Limited**, the Corporate Debtor herein, with immediate effect.
6. In view of the observations and directions passed in the orders of Hon'ble Appellate Tribunal and Hon'ble Supreme Court, we hereby admit the petition and pass 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 **P.M. Cold Storage 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. Bimal Kanti Choudhury**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-P01028/2017-2018/11682** 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.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.
- 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 03/05/2021 for filing of **progress report**.
- 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)

Order signed on the 25th day of March,2021

Pj