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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : **(1) Shri Madan B. Gosavi, Hon'ble Member (J)**

(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)

CP (IB) No. 972/KB/2018

In the matter of:
An application for initiation of Corporate Insolvency Resolution Process 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:
Bell Finvest (India) Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1107, Maker Chambers V, Nariman Point, Mumbai- 400 021
U32200MH1994PL080907

...**Petitioner/Financial Creditor**

-Versus-

In the matter of:
Duckbill Drugs Private Ltd., having its registered office at D/660, Lake Gardens, Kolkata, West Bengal- 700 045,
CINU24232WB1994PTC063258

...**Respondent/Corporate Debtor**

Counsel appeared:
1. Mr. Aniruth Purusathanan, Advocate]
2. Lokenath Chatterjee, Advocate,] For the Petitioner
3, Shri Soumik Chakraborty, Advocate]

1. Ms. Sangita Banerjee, Advocate] For Financial Creditor

Date of Pronouncement of Order: 17.12.2019

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ORDER

Per Shri M. B. Gosavi, Member(J):

Bell Finvest (India) Limited - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Skipper Homes Private Ltd.** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.3,98,37,175/-.

2. The following facts are not in dispute.

3. At the request of the corporate debtor, financial creditor granted and disbursed total loan of Rs. 2,06,55,000/-. The amount was disbursed in between 29.05.2013 to 30.05.2013. Corporate Debtor executed loan agreement dated 04.05.2013. As per term of the said loan agreement, it is mentioned that "the lender hereby sanctioned to borrower, the working capital term loan of Rs.2,06,55,000/-which was to be paid within seven months. It was also agreed in between the parties the loan was to be repaid within 1080 days.

4. According to the financial creditor, since corporate debtor committed default in paying the debt agreed, it called upon the corporate debtor to clear the dues. Since the corporate debtor committed default in paying the loan, this application is filed to initiate corporate insolvency resolution process of the corporate debtor.

5. Financial Creditor suggested name of Mr. Bhupendra Singh Narayan Singh Rajput (Mob. 9426014155) of 309, ATMA House , Opp. Old DRBL

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ASHRAM Road, Ahmedabad 380009 having registration no. IBBI/IPA-001/IP-P00397/2017-2018/10715 and email ID:cabsrajput309@gmail.com for appointment as the IRP. Proposed IRP has submitted written communication in Form-2 dated 04.05.2018, wherein he has declared that there is no disciplinary enquiry pending against him.

6. The corporate debtor was served with the notice of this application. It appeared through Mr. Arjun Mukherjee, authorised signatory of the corporate debtor. He filed affidavit-in-reply.

7. We have gone through the affidavit-in-reply. We find that the corporate debtor raised two contentious defences:- (i) that person filing the application is not duly authorised and (ii) the claim is barred by limitation.

8. We heard the Ld. Counsel, Mr. Aniruth Purusathanan for the Financial Creditor and Ld. Counsel Ms. Sangita Banerjee for the Corporate Debtor at length. This application to initiate CIRP of the corporate debtor is filed on behalf of the financial creditor by one Mr. Sunil Sudam Sawant, Senior Assistant Legal Manager of the Financial Creditor. He was authorised to file this application on the basis of power of attorney. The Board of Director has also authorised him to file this application. We find no merit in this defence of the corporate debtor. On the basis of evidence on record, we hold that the application to initiate the CIRP of the corporate debtor has been filed by authorised person of the financial creditor.

9. Corporate Debtor contended that it is a time-barred claim. It is not in dispute that the corporate debtor received last instalment of loan amount of Rs.69,55,000/- on 30.05.2013. As per the loan agreement, loan was to be repaid by daily instalment of Rs.19,125/- within 1080 days, i.e. within a period of three

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years from the date of last disbursement. The date of last disbursement was 30.05.2013. It is seen from evidence on record that the corporate debtor was required to clear outstanding dues within three years thereafter, i.e. on or before 30.05.2016. This application is filed on 20.05.2018, It is filed within a period of three years from the date of which the right to sue was accrued to the financial creditor. Moreover, in the balance-sheet for the year ending 31.03.2016, the corporate debtor admitted and acknowledged about the debt. On the basis of above, we hold that this application is filed well within limitation.

10. We have also observed that IRP, whose name is suggested by the financial creditor, has declared that no DE is pending against him. The application is defect free. The financial creditor proved both the facts that there is debt due and payable by the corporate debtor and the corporate debtor committed default, we admit the corporate debtor in CIRP. Hence, we pass the following order.

ORDER

(i) The application 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 **Duckbill Drugs Private Ltd** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

(ii) 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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(iii) Moratorium under Sec.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.

iv) 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.

v) 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.

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vi) The order of moratorium shall affect 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 Sec.31 or passes an order for liquidation of 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) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(ix) As per proposal given by the Financial Creditor, Mr. Bhupendra Singh Narayan Singh Rajput (Mob. 9426014155) of 309, ATMA House , Opp. Old DRBL ASHRAM Road, Ahmedabad 380009 having registration no. IBBI/IPA-001/IP-P00397/2017-2018/10715 and email ID:cabsrajput309@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

x) The Financial Creditor to pay to IRP a sum of Rs.1,00,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

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xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **30.01.2020** for filing progress report.

Sd 17/12/2019

(Virendra Kumar Gupta)
Member (T)

Sd 17/12/2019

(Madan B. Gosavi)
Member (J)

Signed on this, the 17st day of December, 2019.