IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram: Shri Madan B. Gosavi, Hon'ble Member [Judicial]

Shri Virendra Kumar Gupta, Hon'ble Member [Technical]

C.P. (IB) No. 1426/KB/2018

In the matter of:

An application U/S. 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:

Dena Bank, having its Registered office at Dena Corporate Center, C-10, G-Block, Bandra Kurla Complex, Bandra [E], Mumbai-400051;

... **Financial Creditor**

-Versus-

M/S Anurag Multipurpose Cold Storage Private Limited, having CIN: U74900WB2013PTC195337, having its registered office at Bagharpur Ramma, P.O. Gangadaspara, Murshidabad-742303 in the state of West Bengal, within the aforesaid jurisdiction;

... **Corporate Debtor**

Counsel appeared:

1. Mr. Gopal Pahari]
2. Miss Mandeep Kaur] for the Financial Creditor

3. Mr. Sharanya Chatterjee]
4. Mr. Spriyo Singh] for the Corporate Debtor

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Date of hearing 02/08/2019

Order pronounced on /08/2019

ORDER

Per Shri Virendra Kumar Gupta, Hon'ble Member [Technical]

1. This application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as I & B Code] by **Dena Bank**/Financial Creditor for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against the Respondent/Corporate Debtor, **M/s. Anurag Multipurpose Cold Storage Pvt. Ltd**. alleging that the Corporate Debtor defaulted in repaying the loan availed by it from the Financial Creditor and that the amount claimed to be in default including interest is **Rs. 5,74,89,404.43p/- [Rupees Five Crore Seventy-Four Lakhs Eighty-Nine Thousand, Four Hundred Four and Forty-Three paisa only]** in terms of the aggregate loan availed under Sanction Letters dated 07.10.2015 and 30.12.2016.

2. The facts, in brief, are that the Financial Creditor sanctioned and disbursed loan in terms of sanction letter as mentioned above to the Corporate Debtor and various other documents / agreements were executed, copy of which have been placed on record. The Financial Creditor has also placed CIBIL Report dated 28.09.2018 to establish the fact of default.

3. The Ld. Counsel appearing for the Financial Creditor submitted that initial loan which was granted on 07.10.2015 and was further enhanced on 30.12.2016. On failure on the part of the Corporate Debtor to repay the loans, the account of Corporate Debtor was classified as NPA on 31.03.2018. The Financial Creditor sent a Demand Notice on 13.09.2018 demanding the payment of outstanding amount due and payable. The Financial Creditor put in further efforts to get the accounts settled; however, the efforts did not materialise which led to filing of the present petition before us.

4. The Ld. Counsel, appearing on behalf of the Corporate Debtor, contended that M/s. Climate Keepers was selected by Corporate Debtor to supply the requisite material

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/ machinery to enable the Corporate Debtor to install the plant, who failed to supply the requisite items. However, the payment had been made by the Financial Creditor to the said party. The Corporate Debtor has also initiated legal proceedings against the Financial Creditor to pay compensation to the Corporate Debtor. Based upon these arguments, the Ld. Counsel contended that there was a genuine dispute between the Financial Creditor and the Corporate Debtor and hence the amount was not payable.

5. The Ld. Counsel for the Financial Creditor, in the rejoinder submitted that the Corporate Debtor, had purportedly made baseless allegations as the supplier had been chosen by the Corporate Debtor only and payments were released by Financial Creditor in accordance with the terms and conditions of the sanction letter. The Ld. Counsel further contended that the application filed by the Financial Creditor was maintainable under Section 7 of I & B Code, 2016 as for an application to be admitted, the aspect of dispute as such was not relevant. The Ld. Counsel further pointed out that an application for settlement with the bank had been filed by the Corporate Debtor which by itself shows that such allegations were made for the sake of making allegations and were without any substance. It was also prayed that settlement appears to be on the table, hence order may be reserved, but may be pronounced after 10 days to avoid hardship which may be caused to the Corporate Debtor for admission of the application.

6. The Financial Creditor has also produced Form 2 and written communication proposing the name of the Interim Resolution Professional, **Mr. Sanjai Kumar Gupta** of 153 A, A.P.C. Road, Kolkata- 700006, email- **casanjaigupta@gmail.com**, having **Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045**.

7. We have heard both the parties. Admittedly, the Corporate Debtor is liable to pay the financial debt to the Financial Creditor. The application filed under Section 7 of the I & B Code, 2016 is complete in all aspects. We find no faults in the plea of the Corporate Debtor that there exists a dispute as regard to the conduct / negligence on the part of Financial Creditor which is not a relevant condition for deciding the fate of an application under section 7 I & B Code, hence, we reject the same.

8. The matter was heard on 02.08.2019 and reserved for order with the stipulation that the order will be pronounced only after at least 10 days since the parties were engaged

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in the process of settlement. Hence, this order has been pronounced today, and we are of the view that it is a fit and proper case for admission and accordingly we order the following:-

ORDERED

a. This application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s Anurag Multipurpose Cold Storage Pvt. Ltd. is hereby **admitted.**

b. I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

c. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency and 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 Insolvency & Bankruptcy Code, 2016 shall be made immediately.

d. Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 prohibits the following:

   i. 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;

   ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

   iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

f. 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.

g. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

h. 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 Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

i. Necessary public announcement as per Section 15 of the I & B Code, 2016 may be made.

j. **Mr. Sanjai Kumar Gupta** of 153 A, A.P.C. Road, Kolkata- 700006, email- **casanjaigupta@gmail.com,** an Insolvency Resolution Professional having **Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and constituting Committee of Creditors for evolving a resolution plan.

k. The Financial Creditor/Applicant to pay Rs. 50,000/- [Rupees Fifty Thousand only] to the I.R.P. as payment of his fees as advance, as per Regulation 33 [3] of the IBBI [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, which shall be adjusted towards total fees payable.

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l. The Interim Resolution professional should convene a meeting of the Committee of Creditors and submit the resolution passed by 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.

m. The registry is hereby directed under Section 7(4) 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.

8. List the matter on 27.09.2019 for the filing of the progress report.

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

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[Virendra Kumar Gupta]
Member [T]

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[Madan B. Gosavi]
Member [J]

Signed on this, the 26th day of August, 2019.

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