In the National Company Law Tribunal
Kolkata Bench
Kolkata

Coram : 1. Shri Madan B. Gosavi, Member (Judicial)
&
2. Shri Virendra Kumar Gupta, Member (Technical)

CP(IB)No.1496/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:

Phoenix ARC Private Limited, a company incorporated under the Companies Act, 1956 and incorporated under the Companies Act,1956 and incorporated as an Asset Reconstruction Company pursuant to Section 3 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SURFAESI Act) having its registered office at 5th Floor, Dani Corporate Park, 158, C.S.T. Road, Kalina, Santacruz (E), Mumbai-400098 acting in its capacity as trustee for Phoenix Trust FY17-18, hereinafter referred to as "Phoenix ARC".

........Financial Creditor

In the Matter of:

M/s. Limtex Agri Udyog Limited, a company having its registered office at The Legacy, 25A, Shakespeare Sarani, Kolkata-700017, West Bengal, India.

.... Corporate Debtor

Sd

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Counsels appeared:

For Financial Creditor

1. Mr. Vidushi Chokhani, Advocate
2. Mr. Vikram Wadehra, Advocate
3. Mr. Soumava Ghosh, Advocate

For the Corporate Debtor

1. Mr. Ashok Kr. Dhandhaniya, Advocate
2. Mr. Tapas Kr. Das, Advocate

Date of hearing: 21st February, 2020
Date of pronouncement of order: 26th February, 2020.
Date of amendment of order: 3rd March, 2020.

ORDER (AMENDED)

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

1. **Phoenix ARC Pvt. Ltd.,** the Financial Creditor filed this application under Section 7 of Insolvency and Bankruptcy Code, 2016 against **M/s Limtex Agri Udyog Private Limited** (Corporate Debtor) to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying Financial debt of Rs. 43,01,53,989/- (Rupees Forty-Three Crore One Lakh Fifty-Three Thousand Nine Hundred and Eighty-Nine Only).

2. The following facts are not in dispute: -

2.1 The Financial Creditor is the assignee of the debt from original creditor of the Corporate Debtor i.e. **The South Indian Bank Limited**. The Bank granted and disbursed in favour of the Corporate Debtor term loan and cash credit facility to the extent of Rs. 25 Crore vide sanction letter dated 25.09.2015 (Annexure L, page no. 146). The loan account was declared NPA on 31.12.2016. On 17.03.2017, the Bank executed

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deed of assignment in favour of the Financial Creditor and transferred the right to recover the debt from the Corporate Debtor along with interest.

2.2 The Financial Creditor states that upon getting right to recover above debt from the Corporate Debtor, it has called upon the Corporate Debtor to clear outstanding amount but the Corporate Debtor did not pay the same. As the Corporate Debtor committed default in paying the debt as above, this application is filed to start CIRP of the Corporate Debtor.

3. Notice of this application was duly served on the Corporate Debtor. The Corporate Debtor appeared in this proceeding through its one of the directors Mr. Gopal Poddar. He filed affidavit in reply.

4. We have gone through the contents of the affidavit in reply. The Corporate Debtor raised only one defence that deed of assignment dated 17.03.2017 is not legal and valid. It has contended that there is a difference in consideration amount mentioned in the deed. It has not been properly stamped, no consideration is passed to the assignor Bank. Hence, it is bad in law. The Financial Creditor does not get right to recover the debt on the basis of such illegal instrument. The application is not maintainable and hence the same may be rejected.

5. We have heard Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length.

6. It is not in dispute that the original creditor of the Corporate Debtor i.e. The South Indian Bank Limited granted and disbursed loan amount of Rs. 25 Crore in favour of the Corporate Debtor. It is also not in dispute that the Corporate Debtor did not clear the outstanding debt and thereby committed default in paying the financial debt. Hence, on

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the basis of above admitted facts, the Corporate Debtor has to be admitted in CIRP. However, the Corporate Debtor took defence that debt has been illegally assigned in favour of the Financial Creditor.

7. At the outset, we put on record that such defence is not available to the Corporate Debtor in this proceeding under the Insolvency and Bankruptcy Code. In the Ruling of Hon'ble Apex Court in case of Innoventive Industries Limited Vs. ICICI Bank- (2018) 1 SCC 407, it has been held – **"On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no mater that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.."**

8. Moreover, the Hon'ble NCLAT in case of Lalan Kumar Singh, Executive Director & shareholder of GPI Textile Ltd. Vs. Phoenix ARC Pvt. Ltd. & Anr. clearly held on similar set of facts that, "**In present case we find that the appellant has sought declaration that the assignment made by HSBC to 'Phoenix' as illegal, which can be raised only in a civil suit. The appellant is trying to convert the proceedings under the 'I & B Code' as civil proceedings akin to a trial which is not the legislative intent."**

9. We hold that above pronouncement explains in clear terms the law set out under Section 7 of I & B Code. This Authority has only to see

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whether the financial debt more than Rs. 1 Lakh is due and payable by the Corporate Debtor to the Financial Creditor and the Corporate Debtor committed default in paying the debt. So also, the proceeding is filed within period of limitation. We hold that both facts are proved from the evidence on record. The application is filed within period of limitation.

10. The Financial Creditor suggested name of one Mr. Jitendra Lohia having registration no. IBBI/IPA-001/IP-P00170/2017-18/10339 for appointment of Interim Resolution professional (in short "IRP"). It appears from record that no disciplinary proceeding is pending against the IRP. This application is well within time. It is defect free. Hence, we admit the Corporate Debtor in CIRP with following orders: -

ORDER

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, **M/s Limtex Agri Udyog Limited** is hereby admitted.

ii) We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) 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 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:

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

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ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Mr. Jitendra Lohia having registration no. IBBI/IPA-001/IP-P00170/2017-18/10339, of 2, Lal Bazaar Street, Room No. 204 & 205, 2nd Floor, Kolkata-700001 having e mail ID: jitulohia@knjainco.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

xi) The Financial Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

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

xiii) Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **16.04.2020** for the filing of the progress report.

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

Sd/- 3/3/2020
(Virendra Kumar Gupta)
Member(T)

Sd/- 3/3/2020
(Madan B. Gosavi)
Member(J)

Signed on this, the 3rd day of March, 2020.

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10. The Financial Creditor suggested name of one Mr. K.G. Somani having registration no. IBBI/IPA-001/IP-P00300/2017-18/10544 for appointment of Interim Resolution professional (in short "IRP"). It appears from record that no disciplinary proceeding is pending against the IRP. This application is well within time. It is defect free. Hence, we admit the Corporate Debtor in CIRP with following orders: -

ORDER

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x) Mr. K.G. Somani having registration no. IBBI/IPA-001/IP-P00300/2017-18/10544, of 4th Floor, 3/15 Asaf Ali Road, New Delhi, National Capital Territory of Delhi, 110002 having e mail ID: kgsomani@gmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

xi) The Financial Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

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List the matter on **16.04.2020** for the filing of the progress report.

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

Sd 26/2/2020

(Virendra Kumar Gupta)
Member(T)

Sd 26/2/2020

(Madan.B. Gosavi)
Member(J)

Signed on this, the 26th day of February, 2020.

Deeksha(steno)