

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

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

Shri Virendra Kumar Gupta, Member [Technical]

C.P. (IB) No. 146/KB/2019

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:

Reliance Commercial Finance Limited, having CIN U66010MH2000PLC128301, having its Registered office at Reliance Centre, 6th Floor, South Wing, Off Western Express, Santacruz [East], Mumbai- 400055 and having its regional office at A.C. Market, 6th Floor, 1 Shakespeare Sarani, Kolkata- 700071;

... Financial Creditor

-Versus-

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M/S Vista Mining Private Limited, having CIN U27310WB2011PTC161584, having its registered office at 1/1, Camac Street, 5th Floor, Suite No. 503, Kolkata, 700016;

... **Corporate Debtor**

Counsel appeared:

1. Mr. Arnab Basu Mullick] for the Financial Creditor
2. Mr. Jayanta Samanta] for the Corporate Debtor

Date of hearing 19/02/2020

Order pronounced on 25/02/2020

ORDER

Per Virendra Kumar Gupta, Member [Technical]

This petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as I & B Code] by **Reliance Commercial Finance Limited**-Financial Creditor for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against **Vista Mining Private Limited**- Corporate Debtor 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. 3,49,50,697/- in terms of the twelve loan agreements between Reliance Capital Limited and the Corporate Debtor.

2. Reliance Capital Limited gave financial assistance to the Corporate Debtor through 12 loan agreements, by a Scheme of Arrangement





approved by the Bombay High Court, the debt due of Reliance Capital Limited transferred to the present Financial Creditor. The Financial Creditor sent a recall notice bearing no. ABMAssoc/Apr/06 dated 16.04.2018 and the Corporate Debtor replied to the said recall notice through their advocate bearing no. PKJ/109/2018-2019 dated 23.04.2018. Thereafter, a Settlement Agreement dated 29.08.2018 was executed but the Corporate Debtor failed to comply with the terms and conditions of the Settlement Agreement.

3. On failure on the part of the Corporate Debtor to abide by the terms and conditions of the Settlement Agreement, the Financial Creditor sent a letter bearing no. ABMAssoc/Oct/08 dated 29.10.2018 terminating the settlement agreement and invoking the default clause, the Financial Creditor sent a recall notice 04.12.2018, 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. In the reply filed by the Corporate Debtor, the Corporate Debtor raised the following contentions that no debt is due and payable and that the Corporate Debtor had repaid the entire dues of the Financial Creditor as agreed between the Financial Creditor and the Corporate Debtor, that arbitration proceedings are pending and that the Corporate Debtor has a counter-claim against the Financial Creditor.
5. On perusal of the records, it is seen that the first loan agreement date was 30.06.2016 and the last agreement date was 30.11.2016, the Financial Creditor sent a recall notice on 16.04.2018 and the Corporate Debtor replied on 23.04.2018 wherein the Corporate Debtor has acknowledged the debt after which a settlement agreement was

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signed on 29.08.2018, pursuant to the said settlement agreement the Corporate Debtor made few part payments and thereafter defaulted in making further payments. Thereafter, the Financial Creditor sent a recall notice on 04.12.2018 and filed this petition on 21.01.2019, hence the petition has been filed within the period of limitation.

6. The Financial Creditor has also produced Form 2 and written communication proposing the name of the Interim Resolution Professional, **Mr. Kanchan Dutta** of 1Chatterjee International Centre, 14th Floor, Flat No. 13A, 33A, J.L. Nehru Road, Kolkata 700071, email- kanchan@kgrs.in, having **Registration No. IBBI/IPA-001/IP-P00202/2017-18/10391**.
7. We have heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor. The Corporate Debtor has made various contentions but has not filed any documents to substantiate its contentions whereas the Financial Creditor proved that there is a debt and that a default has occurred on the part of the Corporate Debtor. hence, we are of the view that the Corporate Debtor is liable to be admitted. The application filed under Section 7 of the I & B Code, 2016 is complete in all aspects. :-

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 Vista Mining Private Limited. is hereby **admitted**.
- b. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

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- 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);
 - 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.

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- 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. Kanchan Dutta** of 1Chatterjee International Centre, 14th Floor, Flat No. 13A, 33A, J.L. Nehru Road, Kolkata 700071, email- kanchan@kgrs.in, having **Registration No. IBBI/IPA-001/IP-P00202/2017-18/10391** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and constituting Committee of Creditors for evolving a resolution plan.

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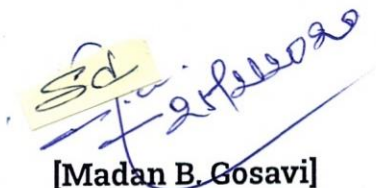
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- k. The Financial Creditor/Applicant to pay Rs. 3,00,000/- [Rupees Three Lakhs only] to the I.R.P. as payment of his fees as advance, as per Regulation 33 [3] of the IBBI [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, which shall be adjusted towards total fees payable
- 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 13.04.2020 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.

Sd/
25/2/2020

[Virendra Kumar Gupta]

Member [T]

Sd/
Madan B. Gosavi

[Madan B. Gosavi]

Member [J]

Signed on this, the 25th day of February, 2020.