IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

C.P (IB) No.470/KB/2019

In the matter of

An application 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:

The Karnataka Bank Limited, having its registered & Head Office at P.B.No.599, Mahaveera Circle Kankanady Mangalore, Karnataka-575002(India) having Branch Office at A.J.C. Road Branch, Office No. 003,Gr.Floor, Diamond Prestige 41A, AJC Road, Kolkata-700017, West Bengal.

… Financial Creditor

Versus

In the matter of:

Ecotech Enterprise Private Limited, (CIN: U22219WB2006PTC109049) having its Registered office at 5A, Robinson Street, Kolkata, West Bengal-700017.

…Corporate Debtor

Date of hearing : 22/03/2022

Order Pronounced on :01 /04/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Arnab Dutta, Adv. } For the Financial Creditor
2. Ms.Prerana Choudhary, Adv.
3. Mr. Ajay Kumar Agarwal, Adv.

1. Mr. Nirmalya Dasgupta,Adv. } For the Corporate Debtor

2. Mr.R.L.Mitra, Adv.

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition 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 has been filed by **The Karnataka Bank Limited,** having its registered & Head Office at P.B.No.599, Mahaveera Circle Kankanady Mangalore, Karnataka- 575002(India) having Branch Office at A.J.C. Road Branch, Office No. 003,Gr.Floor, Diamond Prestige 41A, AJC Road, Kolkata-700017, West Bengal, through Ms. Sweety Panigrahi , its authorised representative vide Authority Letter of the Financial Creditor dt. 07/03/2019 (Annexure-2) (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **Ecotech Enterprise Private Limited, (CIN: U22219WB2006PTC109049)** having its Registered office at 5A, Robinson Street, Kolkata, West Bengal-700017(hereinafter referred to as the Corporate Debtor.

3. It is submitted by the Financial Creditor that in January, 2008, the Corporate Debtor through its Director approached the Financial Creditor with a request to avail a loan and other fund based and non-fund based credit facilities and the Financial Creditor vide its letter dated 22/01/2008 sanctioned a credit facility and issued credit sanction intimation to Corporate Debtor and the said loan and credit facilities renewed from time to time on the request of the Corporate Debtor.

4. It is submitted that on 19/10/2012, the Financial Creditor has created charge on the assets of the Company against the Credit Facility provided to the Financial Creditor for over all limit for Rs.1350 Lakhs, which was further modified on dated 30/12/2016 and the Corporate Debtor vide its Board Resolution dated 30/12/2016 duly acknowledged such sanction of Financial

Creditor and accepted the terms and conditions thereof.

5. It is further submitted that on the aforesaid representation, the Financial Creditor sanctioned overdraft and Bank Guarantee Facility for Rs.1330 Lakhs and Rs.20 Lakhs respectively vide its sanction letter dated 30/12/2016. The DPN Loan (Fresh) for working Capital Requirement of Rs.60,00,000/- was also sanctioned vide Letter sanction Ref No. CGMS/CRB/001/946/2017-18/04-08-2017 dated 04/08/2017 DPN Loan (Fresh) for Working Capital Requirement of Rs.1,00,00,000/- and Non Fund Based Inland Letter of Credit of Rs.1,00,00,000/- sanctioned vide Letter Sanction Ref No. CGMS/CRB/001/2226/2017-18/25-01-2018 dated 25/01/2018. The Corporate Debtor in pursuance of such sanction Letters of Financial Creditor dated 30/01/2018,04/08/2017 and 25/01/2018, passed its resolution of the Board of Directors dated 30/12/2016, 08/08/2017 and 25/01/2018 and from time to time, executed several agreement and documents.

6. It is further stated that in the matter of M/s Tulyan Flexsys Private Limited, and M/s Rio Sales Enterprises Private Limited, CP No. 228 of 2016, Hon'ble High Court of Calcutta, pronounced orders on 31.01.2018 for winding up of M/s Tulsyan Flexsys Private Limited, under the Companies Act, 1956. Further on an application C.A. No. 84 of 2018 with CP No. 228 of 2016, the Hon'ble High Court, Calcutta in its Order dated 18/05/2018 has permanently stayed the order of the winding up of the Company Tulsyan Flexsys Pvt. Ltd. Corporate Debtor (In Liquidation) dated 31/01/2018.

7. It is further submitted that on 17/05/2018, the Financial Creditor issued the Recall Notice after repeated requests, reminders and personal follow-ups, due to the Corporate Debtor having failed to regularize / clear the overdue liabilities resulting into the account being classified as "Non Performing Assets". On 10/09/2018, the Financial Creditor issued Demand

Notice under Section 13(2) read with Section 13(3) of the SARFAESI Act,2002, in which liability of the Corporate Debtor towards Financial Creditor as on 05/09/2018 was due for Rs.15,62,45,277.40.

8. In these circumstances, the Financial Creditor has filed the present petition specifically pleading that the Corporate Debtor has defaulted in repayment of the dues of the Financial Creditor and therefore, has sought CIRP in respect of the Corporate Debtor.

9. When the Notice was issued to the Corporate Debtor by this Adjudicating Authority, the Corporate Debtor did not file affidavit in reply in spite of repeated opportunities given and thereafter it was submitted that one proposal of the Corporate Debtor has been accepted by the Financial Creditor and in term of the said settlement out of the total amount of Rs.10.40 Crores, agreed to be paid by the Corporate Debtor, a sum of Rs.8.65 Crores has been deposited with the Financial Creditor and this fact is recorded in the order dated 4th August, 2021. The Corporate Debtor sought further time to arrange funds for the remaining dues. Even thereafter, the Corporate Debtor sought three opportunities to make the payment of the remaining amount of One Time Settlement, but in spite of time having been granted, no payment has been made so far. The Ld. Counsel for the Corporate Debtor sought further time to file a supplementary affidavit on 22nd February, 2022.

10. In the Supplementary affidavit sworn by Mr. Upen Tulsyan, the Principal Officer/ Director of the Corporate Debtor, it is submitted in paragraphs 3,4 and 5, which are as under:-

> *" 3. Subsequently by letter dated 31st December, 2019 the financial creditor accepted the One Time Settlement (OTS) given by the Corporate Debtor for an aggregate sum of Rs.10,40,00,000/-*
> *4. Out of the entire sum of Rs.10,40,00,000/- the Corporate Debtor arranged for a sum of Rs.8,65,44,000/- which was repaid to the financial creditor and a sum of Rs.1,74,56,000/- was due and payable.*

The financial creditor, by its supplementary affidavit dated 23rd February, 2021 has accepted the instant stand of the Corporate Debtor. A copy of the said Supplementary Affidavit dated 23rd February, 2021 affirmed on behalf of the Financial Creditor is hereto annexed and marked with the letter-"A".
5. I say that in spite of my best efforts on behalf of the Corporate Debtor, I am unable to liquidate the remainder sum of Rs.1,74,56,000/- as per the OTS proposal".

11. In view of the fact that the Corporate Debtor has accepted this liability and has committed default in repayment of Rs.1,74,56,000/- as remaining part of the outstanding financial debt in terms of the OTS proposal accepted by the Financial Creditor, this Adjudicating Authority has no option but to admit the petition because the Corporate Debtor has failed and defaulted in making the repayment of the admitted financial debt due to the Financial Creditor.

12. The Financial Creditor proposed the name of **Mr. Chhedi Rajbhar** to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00129/2017-18/10271,** who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

13. The petition is otherwise complete in all respects.

14. We, therefore, 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 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 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 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. Chhedi Rajbhar ,** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00129/2017-18/10271**, Email crajbharco.ca@gmail.com 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.3,00,000/- (Rupees Lacs 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 Financial 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 20/05/2022 for the filing of the 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)

(*Rohit Kapoor.*)
Member (Judicial)

Order signed on, this 1st day of April, 2022

Pj