

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

CP (IB) No. 932/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:

State Bank of India, having registered office at SBI- State Bank Bhavan, Corporate Centre, Madam Cama Road, Mumbai- 400 021;

... **Applicant/ Financial Creditor**

-Versus-

In the matter of:

Madhusala Drinks Private Limited, having its registered office at The Millennium, 235/2A, A.J.C. Bose Road, Kolkata- 700 020
CIN: U15220WB1991PTC052155

.... **Respondent/Corporate Debtor**

Counsel appeared:

1. Mr. Debasish Chakrabarti, Advocate] For the Financial Creditor
2. Mr. Trisha Saha, Advocate]

1. CS. Deepak Kr. Khaitan, F.C.S.] For the Corporate Debtor
1. Ms. Ruby Adak, Advocate]

Date of Pronouncement of Order: 26.08.2019

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ORDER

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

State Bank of India - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Madhusala Drinks Limited-** 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.46,28,11,852/-.

2. The following facts are not in dispute.
3. By loan sanction proposal dated 21.07.2009, State Bank of India granted and disbursed various loan amount and cash credit facilities in favour of the corporate debtor. Initially corporate debtor was to repay loan within 18 months but the term of repayment of loan extended from time to time. The corporate debtor was supposed to clear entire outstanding by June, 2015.
4. The Bank stated that on 31.12.2015, the loan account of the corporate debtor was classified as NPA. On 16.01.2018, the bank served on the corporate debtor notice under section 13(2) of SARFAESI Act and filed recovery proceeding in DRT, Kolkata.
5. Since the corporate debtor committed default in paying the financial debt, this application is filed under section 7 to start CIRP of the corporate debtor. The bank has suggested the name of Shri Jitendra Lohia having registration no.IBBI/IPA-001/P00170/2017-18/10339 for appointment as Interim

Resolution Professional. He gave consent thereto. No disciplinary enquiry appears to be initiated against the said proposed IRP.

6. The corporate debtor filed affidavit-in-reply through Director Mr. Sabarjit Singh Johal and contended that this application is not maintainable as it is not filed by the authorised officer. It is also submitted that time-barred debt is sought to be recovered by the bank. Application is premature. The bank has already filed proceeding for recovery of debt vide O.A. No.185/2017 in D.R.T., Kolkata. Hence, this application is not maintainable. According to him, corporate debtor is solvent and commercially stable company cannot go to CIRP.

7. We heard the Ld. Counsel for the Financial Creditor, Mr. Debasish Chakraborti and Ld. Pr. CS, Mr. Deepak Kumar Khaitan for the Corporate Debtor. We perused the records.

8. It is not in dispute that the financial creditor granted and disbursed various term loan and cash credit facility in favour of the corporate debtor. It is also not in dispute that the corporate debtor did not pay loan amount as agreed and committed default. Its account is classified as NPA on 31.12.2015. On 16.01.2016, financial creditor issued notice under section 13(2) of SARFAESI Act and called upon the corporate debtor to pay the entire outstanding dues which is admittedly not cleared.

9. Above admitted position proves two facts conclusively (i) there is a financial debt due and payable by the corporate debtor to the financial creditor more than permissible ^{limit} under section 4 of IBC and (ii) corporate debtor committed default in paying the debt. These are only two facts financial creditor has to establish for initiating CIRP of the corporate debtor under section 7 of IBC.

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10. Corporate Debtor raised number of defences to defend this proceeding but according to us, they are not tenable at all. We find that this application is filed by properly authorised officer of the bank. It is filed within a period of three years from the date of default. Financial Creditor filed recovery proceedings in DRT, Kolkata cannot be ground to reject this application. The application is defect-free. Hence, we admit the same by 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 Resolution Process in respect of Madhusala Drinks Private Limited. 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.
- (iii) Moratorium under Sec.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 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.
- 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

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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 the Financial Creditor has proposed the name for the appointment of Interim Resolution Professional (IRP). Mr. Jitendra Lohia of 2, Lal Bazar Street, 2nd floor, Room no.204 & 205, Kolkata- 700 001, having Email id: ip.sumitbinani@gmail.com and Registration no. IBBI/IPA-001/P-00170/2017-2018/10339 is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. IRP has submitted his consent along with written Communication dated 2nd April, 2018 in Form-2.

x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as advance fees, which amount shall be adjusted at the time of final payment.

xi) As per the amended provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.

xii) Registry is hereby directed 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

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List the matter on **04.10.2019** for filing progress report.

Sd/- 26/8/2019
(Virendra Kumar Gupta)
Member (T)

Sd/- 26/8/2019
(Madan Joshi)
Member (J)

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