

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 107/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:

ORIENTAL BANK OF COMMERCE, Banking Company incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, having their registered office at E-Block, Harsha Bhawan, Connaught Place, New Delhi – 110001

Applicant/Financial Creditor

VERSUS

In the matter of:

M/S. GEORGE DISTRIBUTORS PRIVATE LIMITED, a Private Limited Company Registered under the Companies Act, having its Registered Office at 5, Fancy Lane, 8th Floor, Kolkata 700001.

Corporate Debtor

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Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record:

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|-------------------------------------|---|-------------------|
| 1. Mr. Ranjan Kumar Ghosh, Advocate |] | |
| For Md. Nasiruddin, Advocate |] | For the Applicant |
| 2. Mr. Tanweer Ahmed Khan, Advocate |] | |
| For Md. Nasiruddin, Advocate |] | |

Order pronounced on: 05/09/ 2019.

ORDER

Per Harish Chander Suri, Member (T).

1. This Petition has been filed by Oriental Bank of Commerce, hereinafter referred to as the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. George Distributors Private Limited, a Corporate Entity having its registered office at Kolkata, hereinafter referred to as the Corporate Debtor.
2. It is submitted in the application that the Financial Creditor had granted loan and various credit facilities to the Corporate Debtor from

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time to time which were lastly approved on 28th May, 2014 by approving the Liquidation of the claim of the Financial Creditor, to the said loan account of the Corporate Debtor. However, the Corporate Debtor failed to repay the principal amount along with interest to the Financial Creditor. The Financial Creditor sent a demand notice dated 12th August, 2017 to the Corporate Debtor demanding the payment of default amount along with interest. The Corporate Debtor failed to repay the default amount to the Financial Creditor. Thereafter the Financial Creditor filed this application for initiation of the Corporate Insolvency Resolution Professional against the Corporate Debtor under Section 7 of the Code.

3. It is submitted that the Financial Creditor had sanctioned cash credit of Rs. 3.50 crores on 31st March, 2011, Term Loan of Rs. 6.00 Crores on 7th October, 2006 and another Term Loan of Rs.3.60 Crores on 12th April, 2008 aggregating to Rs. 13.10 Crores. The Financial Creditor further mentions in the petition that the Corporate Debtor has committed default on 30th September, 2018 in respect of cash credit of Rs. 5,84,69,693.26 (Rupees Five Crore Eighty Four Lacs Sixty Nine Thousand Six Hundred Ninety Three and Paise Twenty Six Only), Term Loan (I) of Rs. 3,62,28,956/- (Rupees Three Crore Sixty Two Lacs Twenty Eight Thousand Nine Hundred Fifty Six Only) & Term Loan (II) of Rs. 5,79,95,182/- (Rupees Five Crore Seventy Nine Lacs Ninety Five Thousand One Hundred Eighty Two Only), totalling upto Rs.

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15,26,93,831.26p. (Rupees Fifteen Crore Twenty Six Lacs Ninety Three Thousand Eight Hundred Thirty One and Paise Twenty Six Only).

4. It is submitted in the application that the amount of default as on the date of classifying the debt as an NPA on 29th September, 2012, is towards (1) Cash Credit of Rs. 2,13,60,338.26, (2) Term Loan I of Rs. 1,50,28,487/- and (3) Term Loan II of Rs. 2,23,29,662/-.
5. It is submitted that the Financial Creditor had also filed case O.A. No. 339 of 2017 before the Debt Recovery Tribunal at Kolkata, which is stated to be pending till date.
6. The Financial Creditor has filed the Bank Statement from 29th September, 2012 to 29th September, 2018 along with a Certificate under Section 2A of Banker's Books Evidence Act, 1891 certifying the statement of Accounts pertaining to the following cash credit and term loan account of M/s. George Distributors Private Limited, which are as under:-

Sl. No.	A/c No.	Name of the Borrower	Outstanding as on 30.09.2018	Interest applied upto
1	05444011000300	George Distributors Pvt. Ltd.	5,84,69,693.26	30.09.2018
2.	05447021000391	-do-	5,79,95,182.00	30.09.2018
3.	05447021000100	-do-	3,62,28,956.00	30.09.2018

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7. When the matter was placed before this Tribunal on 22nd January, 2019, notice was directed to be issued to the Corporate Debtor and when the matter was next listed on 13th March, 2019, it was reported that the addressee Corporate Debtor had moved from the place i.e. office registered with the ROC, West Bengal and so repeat notice was ordered along with e-mail service to the Corporate Debtor. The matter was again listed on 14th May, 2019 when the Chief Manager of the Financial Creditor appeared in person and filed affidavit of service. The matter was again listed on 26th July, 2019 when it was recorded that notice appears to have been served to the Corporate Debtor but no one appeared for the Corporate Debtor, thus the matter was proceeded ex parte against the Corporate Debtor.
8. Since the Corporate Debtor, though duly served with the notice of this Tribunal, but failed to appear before this Tribunal, the Corporate Debtor was directed to be proceeded ex parte. Due to the prioritization of the matters in which pleadings are already complete, the matter was taken up on 30th August, 2019 and after hearing the Financial Creditor, it was decided that the matter is to be disposed of on the basis of the documents placed on record and its merits.
9. The Financial Creditor has placed on record all the relevant documents including the letter of sanction dated 17th August, 2006, agreement of hypothecation of assets dated 17th August, 2006,

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agreement of term loan dated 17th August, 2006, Common agreement being known as document -38 dated 17th August, 2006, all executed by the Corporate Debtor. The Financial Creditor has also filed agreement for sale of assets entered into between the Industrial Development Corporation Limited and the Corporate Debtor along with all relevant documents and agreements executed by the Corporate Debtor. The Financial Creditor has also submitted that the default has been committed by the Corporate Debtor on 29th June, 2012 and the date of classifying the account of the Corporate Debtor as NPA is on 29th September, 2012. The Financial Creditor has also filed copy of the demand notice served by the Financial Creditor through its advocates which was duly received by the Corporate Debtor. The statement of accounts duly certified under the Banker's Books Evidence Act, 1891 has also been filed by the Financial Creditor.

10. The Ld. Counsel for the Financial Creditor has taken us through all the documents and has been able to successfully prove its case. We are satisfied that the loan and other facilities as described in the petition were actually disbursed to and availed by the Corporate Debtor and the Corporate Debtor has defaulted in adhering to the terms and conditions agreed to between the parties and thus committed default.

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11. The Financial Creditor has proposed the name of **Mr. Hiralal Prasad**, a Resolution Professional, having Registration No. IBBI/IPA-033/IPN000134/2017-2018/11498 registered with the Indian Institute of Insolvency Professional of ICAI , to act as Interim Resolution Professional. Vide Form 2 Shri Hiralal Prasad certified that he is duly qualified and agrees to accept the appointment as the IRP if an order of admission is passed in the case of the present application. He has further mentioned that he is currently not serving in any other proceedings and there are no disciplinary proceedings pending against him with the Board of Insolvency Professional Agency of Institute of Cost Accountants of India.

12. We have heard the Ld. Counsel for the Financial Creditor and after going through all the relevant papers and documents placed on record by the Financial Creditor, we are satisfied that since the Corporate Debtor has committed default in making payment of the debt due to the Financial Creditor and the application is complete in all respects, the application deserves to be admitted and Corporate Insolvency Resolution Process may be initiated. We are, therefore, admitting the application and pass the following orders:-

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ORDERS

- 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. George Distributors Private Limited** is hereby **admitted**.
- ii) 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.
- iii) 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 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;

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- (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.
- iv) 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.
- 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 have effect from 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 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

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effect from the date of such approval or liquidation order, as the case may be.

- viii) **Mr. Hiralal Prasad** of CK-104, Sector – 2, Salt Lake City, Kolkata 700091, Registration No. IBBI/IPA-033/IP-N000134/2017-18/11498, E.mail ID hrl_prasad@yahoo.com Mobile No. 9051320025, an Insolvency Professional registered with The Indian Institute of Insolvency Professional (CAI) is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) 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.
- x) Registry is hereby directed under section 7(4) 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.


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- xi) List the matter on **14th October, 2019** for filing of the progress report.
- xii) 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 (T)



(Jinan K.R.)
Member (J)

Signed on this 5th day of September, 2019.

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