

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.614/KB/2019

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:

Aris Capital Private Limited, having its registered office at 60C, Colootola Street,
Kolkata - 700 073

.....Financial Creditor

And

In the Matter of:

Fort Projects Pvt. Ltd., having its Registered Office at 7/1A, Hazra Road, Kolkata
- 700 026

..... Corporate Debtor

Date of Hearing 18th October 2019

Order Delivered on 24th October 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Kumar Gupta, Member (T)

For the Financial Creditor : 1. Mr. S.K. Singhi, Advocate
2. Mr. Ankur Singhi, Advocate
3. Mr. Prashant Kumar tripati, Advocate

For the Corporate Debtor : Mr. P. Roy, Advocate

ORDER

Virendra Kumar Gupta, Member (Technical)

This application has been filed under Sec.7 of Insolvency & Bankruptcy Code, 2016 by the financial creditor, viz., Aris Capital Private Limited to initiate corporate insolvency resolution process against the corporate debtor, viz., Fort

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Projects Pvt. Ltd. The amount of default has been stated in the application at Rs.72,89,178/- which includes principal sum of Rs.50,00,000/- and interest thereon of Rs.22,89,178/- as on 10/3/2019 and the date of default has been stated as 1st July 2016.

2. The facts, in brief, are that the financial creditor granted an inter corporate loan of Rs.50,00,000/- on 14/11/2012 to the corporate debtor. Copy of the bank statement has been placed at page 20 of the Paper Book. The said loan had been given on interest @ 17% per annum.

3. Ld. Counsel appearing for the financial creditor narrated this fact and stated that the said loan was not repaid by the corporate debtor in spite of persuasion. As regard the aspect of limitation, Ld. Counsel drew our attention to page 51 and 52 of the Paper Book containing copy of cheque of Rs.50,00,000/- dated 18/9/2018 which had been dishonoured. In addition to this, Ld. Counsel drew our attention to page 18 of the Paper Book containing copy of the account showing outstanding balance of Rs.63,39,274/- as on 31/3/2018 which was duly confirmed by the corporate debtor. He also drew our attention to page 35 of the Paper Book to show that amount of 1,90,726/- being amount of interest had been paid by the corporate debtor on 4/7/2016.

4. Ld. Counsel also drew our attention to Form 26AS for the financial 2015-16 wherein tax had been deducted and deposited by the corporate debtor on the amount of interest payable by the corporate debtor.

5. Ld. Counsel on behalf of the corporate debtor relied on the reply affidavit filed in response to petition filed by the corporate debtor. In the said reply affidavit the amount of loan has not been disputed and contention have been raised regarding rate of interest as well as some arrangement being worked out for settlement or allowing payment within the enlarged period. In the said reply it has also been claimed a residential flat could be given in lieu of said loan.

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6. We have considered submissions made by both sides and have also perused the materials on record. From the perusal of documents placed on record it is sufficiently established that debt is due and payable in law and in fact. The last payment has been made in July 2016. Tax at source has also been deducted on the amount of interest paid/payable by the corporate debtor. The cheque given by the corporate debtor has bounced in the year 2018. The balance confirmation is also attached. Thus, debt is not barred by limitation.

7. In the reply admission of loan is established, although there have been raised certain issues regarding rate of interest and mode of settlement/repayment of said loan along with interest in a different way but this fact/contention do not make the application filed by the financial creditor to be untenable because as per Sec.7 of the Insolvency & Bankruptcy Code, 2016 there should be a debt which is due and payable and a default has to happen to initiate CIRP against the defaulter. The application meets these conditions and is found defect free.

8. It reveals from the record that the financial creditor has proposed the name of Shri Pradeep Kumar Goenka, Registration No.IBBI/IPA-002/IP-N00294/2017-2018/10851, email ID goenka.pradeep@gmail.com as Interim Resolution Professional who has given his consent in Form 2 and it further appears that no disciplinary proceedings are pending against the IRP. Accordingly, we approve his appointment as IRP.

9. The petition is otherwise complete in all respect. Accordingly, we admit the same and order as under:-

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, Fort Projects Pvt. Ltd. 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:
 - 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.
- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Shri Pradeep Kumar Goenka, Registration No.IBBI/IPA-002/IP-N00294/2017-2018/10851, email ID goenka.pradeep@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 a sum of Rs.2,00,000/- (Rupees Two lakh only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if

not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.

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.

10. List the matter on 9/12/2019 for the filing of the progress report.

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

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

Sd/-
24/10/2019
(Madan B Gosavi)
Member (J)

Signed on 24th October 2019