

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA**

**I.A (IB) No. 356/KB/2022
in
C.P (IB) No. 449/KB/2020**

A 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.

In the matter of:

Oversure Enterprises Private Limited (CIN U51909WB2012PTC178534), a Company incorporated under the Companies Act, 1956 having its registered office at 25, Swallow Lane Kolkata – 700001.

...Financial Creditor

Versus

Siri Longview Tea & Agro Limited (CIN U01132WB1907PLC001779), a Company incorporated under the Companies Act, 1956 having its registered office at 51, Shakespeare Sarani, 2nd Floor, Kolkata - 700017

....Corporate Debtor

I.A (IB) No. 356/KB/2022

An application under section 60 (5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Siri Longview Tea & Agro Limited (CIN U01132WB1907PLC001779)

...Applicant

Date of Hearing: 04.05.2022

Date of pronouncing the order: 12.05.2022

Coram:

Shri Rajasekhar V.K.

: **Member (Judicial)**

Shri Balraj Joshi

: **Member (Technical)**

Appearances (through Video Conferencing)

- | | |
|------------------------------------|--------------------------|
| 1. Ms. Swati Agarwal, Advocate | } For Financial Creditor |
| 2. Mr. Shailendra Jain, Advocate | } |
| | |
| 1. Mr. Jishnu Chowdhury, Advocate | } For Corporate Debtor |
| 2. Mr. Nirmalya Dasgupta, Advocate | } |
| 3. Mr. D. Chakraborty | } |

ORDER

Per Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Oversure Enterprises Private Limited (*'Financial Creditor'*), by Mr. Arun Kumar Lackar, Manager, duly authorised *vide* board resolution dated 10 September, 2019 for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Siri Longview Tea & Agro Limited (*'Corporate Debtor'*).
3. The present Petition was filed on 06 February, 2020 before this Adjudicating Authority on the ground that a loan or inter-corporate loan (*'Loan'*) for a sum of Rs.25,00,000/- along with interest @12% p.a. was advanced by the Financial Creditor to the Corporate Debtor and the Corporate Debtor has defaulted in payment of the same.
4. The total amount claimed to be in default by the Financial Creditor is Rs.25,25,000/- (Rupees Twenty Five Lakh Twenty Five Thousand) including interest as on 31 December, 2019. The date of default is stated to be **28 August, 2019**.
5. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.3,00,00,000/- (Rupees Three Crores only) with paid up Capital as Rs.2,95,00,000/- (Rupees Two Crore Eighty Nine Lakh only).

6. Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor

- 6.1 The Financial Creditor is a private limited company engaged in the business of investment in shares and securities and providing corporate finances. The Corporate Debtor is engaged in the business of growing crops, market gardening, and horticulture.
- 6.2 The Corporate Debtor approached the Financial Creditor for a *loan* of Rs.25,00,000/- (Rupees Twenty Five Lakh only). Due to a good business relationship between the parties, the Financial Creditor decided to provide the loan to the Corporate Debtor. Thereafter, on 03 August, 2016, the Financial Creditor by way of RTGS transferred a sum of Rs.25,00,000/- to the Corporate Debtor.¹
- 6.3 On 01 June, 2018 the Corporate debtor issued a letter, enclosing TDS Certificate for the period April, 2017 to March 2018.² Further, the Form 26AS for the Financial Year 2016-2017, 2017-2018, 2018-2019 and 2019-2020 reflects that the interest was paid by the Corporate Debtor irregularly.
- 6.4 On failure of the Corporate Debtor to pay the interest as agreed between the parties, the Financial Creditor requested for refund of the loan amount along with interest. After prolonged persuasion, the Corporate Debtor in discharge of the debt issued a Cheque No.131342 dated 30 July, 2019 drawn on State Bank of India, in favor of the Financial Creditor.
- 6.5 However, on presentation of Cheque for clearance, the Financial Creditor from its banker came to know that the Cheque was dishonored on the ground of '*funds insufficient*'.³
- 6.6 In the above circumstances, the Financial Creditor issued a notice under section 138 read with section 141 of the Negotiable Instruments Act, 1881 dated 11 September, 2019. In spite of receipt of the said notice, the Corporate Debtor till

¹ Annexure – A-7 of the Petition

² Annexure – A-8 of the Petition

³ Annexure – A-10 of the Petition

date has not made any payment towards the discharge of its debts. On the contrary, the Corporate Debtor sent a mischievous response to the said notice. However, the Corporate Debtor in their letter dated 27 September, 2019 admits the aforesaid amount.

6.7 There is a default in repayment of loan amount by the Corporate Debtor even after several reminders by the Financial Creditor.

7. *Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor*

7.1 The transaction between the parties does not classify as a 'Financial Debt' under the provisions of the Code. Further, the Financial Creditor has failed to disclose whether it has obtained registration from the Reserve Bank of India to carry on Non-Banking Financial activities.

7.2 The transaction contemplated between the parties relates to a long term arrangement. The Financial Creditor has breached the trust of the Corporate Debtor by maliciously, wrongfully and illegally depositing the Cheque for encashment. Further, the Corporate Debtor has made payments on interest upto September 30, 2020

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8. This is an application under section 60(5) of the Code filed by Siri Longview Tea & Agro Limited i.e., the Corporate Debtor against the Financial Creditor, *inter alia*, praying for the following reliefs;

a. The Financial Creditor be directed to clarify its stand before the Adjudicating Authority with regard to the issue raised by the Corporate Debtor in respect of notice by the Income Tax Department on 22 November, 2021, show cause notice dated 27 March, 2022 and assessment order dated 30 March, 2022 ;

b. The Corporate Debtor be granted liberty to adjust a sum of Rs.12,38,099/- assessed by the Income Tax Department in its order dated 30 March, 2022 and also such amount that may be levied as penalty in the proceedings against the Corporate Debtor under section 271 AAC of the Income Tax Act,

1961 from the amount of Rs.20,00,000/- as is receivable by the Financial Creditor from the Applicant.

9. *The submission by the Ld. Advocate appearing on behalf of the Corporate Debtor in I.A. (IBC) 356/KB/2022*

- 9.1 An Application for initiating CIRP was filed on 05 February, 2020 by the Financial Creditor. Though the said application is not maintainable on the face of the records but still the Corporate Debtor tried to settle the dispute amicably. The Corporate Debtor to show its bona fide has also paid a sum of Rs.5,00,000/- by way of RTGS on 14 February, 2022 to the account of the Financial Creditor.
- 9.2 However, during the pending of the application the Corporate Debtor had received a demand notice dated 22 November, 2021 issued by the Income Tax Department under section 143 (2) read with section 147 of the Income Tax Act, 1961. From the perusal of the said notice it is evident that the Corporate Debtor had received a sum of Rs.25,00,060/- from the Financial Creditor during the financial year 2016-2017. It is also the finding of the Income Tax Authorities that the Financial Creditor is a shell company and is providing accommodation entries in the nature of bogus unsecured loan. After receiving such notice the Corporate Debtor tried connecting to the Financial Creditor but no response was received.
- 9.3 With no other alternative, the Corporate Debtor in its email dated 04 March, 2022 and 10 March, 2022, while trying to settle the matter, also informed about the said notice from the Income Tax Department.
- 9.4 On 27 March, 2022, the Corporate Debtor was again served with a copy of the cause notice by the Income Tax Department, wherein the Corporate Debtor was called upon to show cause as to why the variation (?) should not be made and the assessment should not be completed after taking into account the sum of Rs.25,00,000/- being an unexplained credit being received from the Financial Creditor.
- 9.5 An assessment order dated 30 March, 2022 was received by the Corporate Debtor, where the Income Tax Department had further re-assessed the Corporate Debtor

and had found out the Corporate Debtor is liable to pay a sum of Rs.12,38,099/- as income tax demand after giving due credit to all adjustments. Further, the assessment order categorically states that a notice dated 28 February, 2022 under section 133(6) of the income tax was sent to the Financial Creditor, calling upon to provide information with regard to such transactions with the Corporate Debtor, to which the Financial Creditor did not responded.

- 9.6 The Corporate Debtor will suffer from double jeopardy if the Corporate Debtor pays the entire amount as mentioned in the section 7 Application and also to the Income Tax Authorities. It is pertinent to mention that the Financial Creditor had abstained from submitting or saying anything in these issues. In these facts and circumstances the Corporate Debtor pray for an adjustment for a sum of Rs.12,38,099/- from the amount due to the Financial Creditor.

Analysis and Findings

- 10.** We have heard the Ld. Counsel appearing on behalf of the Financial Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor. No reply has been filed by the Financial Creditor in the *I.A. (IB) No. 356/KB/2022* .
- 11.** Upon perusal of the record at page 179 (*Para 5-6*), 191 (*show cause notice dated 27 March, 2022, Point 2*) of the *I.A.*, it is evident that the Income Tax Authority in a search action under section 132 of the Income Tax Act on Banka Group had come to a conclusion that the accounts of the Banka Group reflects an accommodation entry of worth Rs.25,00,000/- to the Corporate Debtor from the A/C no. 01900210012390 maintained with the UCO Bank by the Financial Creditor, one of the group companies of the Banka Group.
- 12.** Further, as per the Assessment Order dated 30 March, 2022 (*para 5*) the Income Tax Authority has categorically stated that the transaction received from the Financial Creditor is nothing but the Corporate Debtors own fund which was routed through the account of the lender i.e., the Financial Creditor. Further, the Corporate Debtor also failed to establish the business utility of unsecured loan and even failed to establish the genuineness of the credit worthiness of the Financial

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Creditor. On the other hand, the Authority noticed from the post search enquiries that the Financial Creditor is engaged in providing accommodation entries by way of bogus unsecured loan entries and is a shell company.

13. In these circumstances, a company petition under section 7 of the Code cannot be maintained and deserves to be dismissed. It is ordered accordingly. Consequently, *I.A (IB) No. 356/KB/2022* shall stand disposed of. The parties are left to their own remedies under the law. Needless to mention, the observations made herein shall not be construed as restraining any authority from taking any action under the law in case any violation is noticed.
14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI** Digitally signed
by BALRAJ JOSHI
Date: 2022.05.12
23:22:33 +05'30'

Balraj Joshi
Member (Technical)

**Rajasekhar
r V K** Digitally signed by
Rajasekhar V K
Date: 2022.05.12
18:48:47 +05'30'

Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 12th day of May, 2022

Safura A., LRA