

306

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**CORAM:** 1. Shri M.B. Gosavi, Member (Judicial)  
2. Shri Virendra Kr. Gupta, Member (Technical)

**CP(IB)No.676/KB/2018**

**In the matter of:**

An application for initiation of Corporate Insolvency Resolution Process under Section 10 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:**

Sri Aranath Logistics Limited, having registered address at 16, British India Street, 2<sup>nd</sup> Floor, Kolkata-700069.

.....Corporate Person

**Counsels appeared:**

For Corporate Person

1. Mr. R. Banerji, Sr. Advocate
2. Mr. D.N Sharma, Advocate
3. Sananda Mukhopadhyay, Advocate
4. M. Benthia, Pr. CS

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1. Mr. Nirmalya Dasgupta, Advocate
2. Mr. Nilanjan Pal Choudhury, Advocate

For CFM Asset Reconstruction Pvt. Ltd.

1. Mr. Joy Saha, Sr. Advocate
2. Mr. A.K. Awasthi, Advocate

For the Financial Creditor

1. Anitra Das, Advocate
2. S. Ghosh, Advocate

Date of pronouncement of order: 8<sup>th</sup> November, 2019.

### **ORDER**

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

1. This application under Section 10 of Insolvency and Bankruptcy Code, 2016 is filed by M/s. Sri Aranath Logistics Ltd. – the corporate person to start its Corporate Insolvency Resolution Process (in short "CIRP") on the ground that the corporate person defaulted in paying the debt of two financial creditors, total amount of Rs. 111,99,32,000/- (Rupees One Hundred Eleven Crore Ninty Nine Lakh Thirty-Two Thousand Only).
2. We peruse the record. We heard Ld. Senior Counsel for the corporate person. Ld. Counsel appearing for one of the Financial Creditors i.e. Centrum Financial Services Limited. Ld. Counsel appearing for some of the shareholders of the corporate person.

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3. To start self-proclamation insolvency resolution under Section 10 of Insolvency & Bankruptcy Code, 2016, the corporate person has to file
  - (i) Information relating to books of account {Section 10(3)(a)}.
  - (ii) Information relating to resolution professional proposed to be appointed as the IRP.
  - (iii) Special resolution passed by the shareholders of the corporate person or resolution passed by at least three-fourth of total number of partners of the corporate person {Section 10(3)(c) of I & B Code, 2016}.
4. The application to start CIRP filed by the corporate person can be rejected only on the ground if it is shown that disciplinary proceeding is pending against the proposed Resolution Professional but again before rejecting application on this ground the Adjudicating Authority has to give notice to the corporate person calling upon it to cause to remove such defects in the application.
5. As far as this case is concerned, the corporate person produced along with the application necessary books of accounts. It has suggested name of one Mr. Hanumal Mal Choraria having registration no. IBBI/IPA-002/IP-No0079/2017-18/10210 for appointment as the Interim Resolution Professional. There is nothing on record to show that any disciplinary proceeding is pending against him.
6. The corporate person by supplementary affidavit dated 23.07.2019 produced on record resolution passed by directors/shareholders of the corporate person in Extraordinary General Meeting held on 21.04.2018. It is seen from the material on record that the corporate person herein complied all provisions led down in Section 10 of I & B Code, 2016 to admit it in CIRP. The prayer of admission of corporate person in CIRP is objected by one of the Financial Creditors namely, Centrum Financial Services Limited. It raised objection that special resolution of

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shareholders of the corporate person relied on is not genuine. Its second objection is that it is secured creditor of the corporate person and unless it is declared to be secured creditor, this application may not be considered.

7. Two shareholders of the corporate person by name Mr. Suresh Kumar Jain and Smt. Sunita Jain also objected this application. They gave history of the company/property hold by Jain family and further contended that if corporate person is admitted in CIRP, they will greatly be prejudiced. They also raised objection about the special resolution relied on by the corporate person.
8. Main objection they raised is about the special resolution shown to have been passed in Extraordinary General Meeting held on 21.04.2018 (supplementary affidavit -2). Ld. Counsel for defending shareholders of the corporate person submitted that they have 25% shareholding in the corporate person. They were not taken in confidence. Moreover, similar special resolution was used to start CIRP of other sister concern company, namely, MunisuvrataAgri International Ltd. (formerly known as LMJ International Ltd.). He further submitted that this authority (Bench No. 1) pleased to reject that application on the ground that vide order dated 15.11.2018, for want of special resolution. That company has filed appeal. On 19.08.2018, hon'ble NCLAT noted that registered office of the appellant company and LMJ International Limited (appellant formerly known name) appears to be different. Hon'ble Appellate Tribunal noted that there appears some doubt about existence of one or other company. The Hon'ble Appellate Tribunal also called upon the appellant to show cause as to why proceeding under Section 65 of I & B Code, 2016 should not be initiated.
9. As far as this application is concerned, the registered office of the corporate person i.e. Sri Aranath Logistics Limited is shown as 16 British

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India Street, 2<sup>nd</sup> Floor, Kolkata 700069. In the special resolution of the corporate person's, the registered office is mentioned as 15B Hemanta Basu Sarani Kolkata-700001. According to Ld. Counsel, it creates doubt whether the shareholders of the corporate person have passed any such special resolution dated 24.01.2018.

10. We considered his above objections. It is true that registered address of the corporate person in this application form-I is 16 British India Street, 2<sup>nd</sup> Floor, Kolkata 700069 and its registered address mentioned in special resolution dated 24.01.2018 is 15B Hemanta Basu Sarani Kolkata-700001. However, only for this reason, it is difficult for us to raise a doubt about special resolution dated 21.04.2018. The objector themselves produced on record the arbitral award dated 03.01.2013. It was not in dispute that Jain family was then having number of companies registered at the one and same address. It is also not in dispute that corporate person is also owned and controlled by Jain family and it has gone to the share of other family member. There appears some dispute still going on in between members of Jain family about unequal distribution of assets of all the companies. We are not concerned thereto in this proceeding. We have only to see whether the corporate person Sri Aranath Logistics Ltd. is indebted and whether it is unable to pay the debt and thereby compelled to file self-proclaimed CIRP application.

11. In this case, we find from the material on record that the Corporate Debtor committed default in paying the debt more than Rs. 1,00,000/- (Rupees One Lakh Only) of some of the creditors (reference Section 4 of IBC, 2016). Out of two, one financial creditor earlier Standard Chartered Bank and now M/s. CFM Asset Reconstruction Pvt. Ltd. (Assignee) {Assignment agreement dated 24<sup>th</sup> July, 2019} has no objection to admit the corporate person in CIRP. Another financial

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creditor, namely, Centrum Financial Services Limited objected on the ground that they are secured creditors. We made it clear that Financial Creditor, namely, Centrum Financial Services Limited can raise its contention before the RP at proper stage. Application cannot be rejected on this ground. Ld. Counsel for some of the shareholders who were objecting this application submitted that the registered office as shown as registered office of the corporate person is not assets of the corporate person. At this stage, we are also not entering into that controversy. What are the assets of the Corporate Debtor shall be considered by the RP during CIRP and the objector have liberty to raise this issue before RP.

12. According to objectors, they have 25% shareholdings in company. They have not taken into confidence while passing special resolution to start CIRP. We peruse minutes of extraordinary general meeting dated 21.04.2018. We find that almost all directors and almost all shareholders attended the said meeting and they have passed special resolution. Section 103(1)(A) of the Companies Act 2013 requires that if the total member of the company does not exceed 100 then five members personally present in such meeting shall form the Coram if it is a public company. In this case, admittedly Sri Aranath Logistics Limited does not have 100 members. Hence, required Coram has passed to special resolution. In our considered opinion the special resolution to start self-proclamation CIRP cannot be said to be invalid.
13. Coming back to other facts, we find that corporate person successfully demonstrated before this Authority that is has committed default in paying the debt more than Rs. 1 Lakh. We hold that corporate person is eligible to start self-proclamation CIRP. No disciplinary proceeding is pending against the IRP. Special resolution produced on

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record appears to be proper and correct. Hence, we admit this Petition by following order.

### ORDER

- i) The application filed by the Financial Creditor under section 10 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process of the Corporate Person, **M/s Sri Aranath Logistics Limited** 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

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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) **Mr. Hanumal Mal Choraria** having registration no. IBBI/IPA-002/IP-N00079/2017-18/10210 of 14/2 Old China Bazar Street 4<sup>th</sup> Floor, Room No. 401 Kolkata-700001, 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 applicant to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

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 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.

List the matter on **19.12.2019** for the filing of the progress report.

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



**(Virendra Kr. Gupta)**  
**Member( T )**



**(Madan B. Gosavi)**  
**Member( J )**

Signed on this, the 8<sup>th</sup> day of November, 2019.

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