In the National Company Law Tribunal
Kolkata Bench
Kolkata

CORAM: Shri Madan B. Gosavi,
Member (Judicial)
&
Shri Virendra Kumar Gupta,
Member(Technical)

CP(IB)No.956/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, Stressed Assets Management Branch, Nagaland House, 8th Floor, 11 and 13, Shakespeare Sarani, Kolkata-700071, registered office at Samriddhi Bhavan, Block B, 1, Strand Road, Kolkata-700001.

..... Financial Creditor

In the Matter of:

M/s Swati Udyog Private Limited, a company having its registered office at 71, Canning Street, Flat No. 512, Block-B, 5th Floor Kolkata, Kolkata-700001, West Bengal.

..... Corporate Debtor

Counsels appeared:

For Financial Creditor

1. Mr. Rajarshi Dutta, Advocate
2. Mr. Uttiyo Mallick, Advocate
3. Mr. Dwaipayan Ghosh, Advocate

Date of pronouncement of order: 26th November, 2019.

ORDER

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

1. This application under Section 7 of Insolvency and Bankruptcy Code, 2016 is filed by the Financial Creditor – **State Bank of India** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor – **M/s. Swati Udyog Private Limited** on the ground that the Corporate Debtor committed default in paying financial debt of Rs. 68,07,32,424/- (Rupees Sixty-Eight Crore Seven Lakh Thirty-Two Thousand Four Hundred and Twenty-Four Only).

2. The following facts are not in dispute: -

   2.1. Initially in the year 2007, the Financial Creditor granted and disbursed in favour of the Corporate Debtor term loan of Rs. 11,95,000/- (Rupees Eleven Crore Ninty Five Lakh Only) and cash credit facilities of Rs. 5,73,000/- (Rupees Five Crore Seventy-Three Lakh Only). The terms of the loan and cash credit facilities were extended and enhanced from time to time. Lastly, on 16.04.2015, the Bank extended the time to pay the outstanding upon undertaking given by the Corporate Debtor that they would make the loan account regular. The Bank stated that on

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27.11.2015, they called upon the Corporate Debtor to deposit amount towards interest which became irregular. Since, the Corporate Debtor did not respond to the letter, on 16.12.2015 its loan account declared NPA on 23.02.2016. the Bank sent the Corporate Debtor notice under Section 13(2) of the SURFAESI Act, 2002 and filed recovery proceeding before Hon'ble DRT, Kolkata.

2.2. This proceeding under Section 7 of Insolvency and Bankruptcy Code, 2016 is filed by the Financial Creditor to resolve the insolvency of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt as above.

2.3. Financial Creditor suggested name of one Mr. Anil Agarwal having registration no. IBBI/IPA-001/IP-P00175/2017-18/10344 for appointment of IRP.

3. Corporate Debtor served with the notice of this application. It appeared though one Mr. Sanjay Tibrewal, one of the Directors of the Corporate Debtor. He filed affidavit in reply.

4. We have gone through the contents in the reply. The Corporate Debtor did not raise any contentious defense. According to the Corporate Debtor, they paid total sum of Rs. 108,78,78,947/- (Rupees One Hundred Eight Crore Seventy-Eight Lakh Seventy-Eight Thousand Nine Hundred and Forty-Seven Only) to the Bank. However, amount of interest is yet to be paid. According to them, they did not commit any willful default, the market condition was unfavourable. They tried to settle the amount but could not succeed in it.

5. We heard Ld. Counsel for the Bank and Ld. Counsel for the Corporate Debtor.

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6. The scope of inquiry of application under Section 7 of Insolvency and Bankruptcy Code, 2016 is limited. This Authority has to consider only two facts: -

   (i) Whether by evidence on record, the Financial Creditor could establish that there is financial debt payable by the Corporate Debtor more than Rs. 1 Lakh.

   (ii) Whether the Corporate Debtor committed default in paying the same.

7. In this case, we hold that the Bank has proved both the facts. In view of this we have no hesitation in admitting the Corporate Debtor in CIRP.

8. We find that in the year 2016, the Corporate Debtor admitted and acknowledged the debt. This proceeding is filed 3 years thereafter.

9. Financial Creditor suggested name of one Mr. Anil Agarwal having registration no. IBBI/IPA-001/IP-P00175/2017-18/10344 for the appointment of IRP against whom no disciplinary proceeding appears to be pending. 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 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Swati Udyog 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

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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.

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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. Anil Agarwal having registration no. IBBI/IPA-001/IP-P00175/2017-18/10344, E-mail ID: anilagarwal@aaainsolvency.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 sum of Rs. 1,00,000/- (Rupees One Lakh 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) In case, further funds are required by IRP/RP and in the event of non-provision thereof, IRP/RP can approach this Tribunal so that CIRP would not be hampered for want of funds.

xiii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

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xiv) 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.

List the matter on **10.01.2020** 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.

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(Virendra Kumar Gupta)
Member(Technical)

Sd 26/11/2019

(Madan B. Gosavi)
Member(Judicial)

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

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