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

**CP(IB)No.1388/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:**

M/s. Sugesan Transport Pvt. Ltd., a company registered under the provisions of Companies act, 1956 having its registered office at No. 340, 1<sup>st</sup> South Main Road, Kapaleshwarar Nagar, Neelankarai, Chennai-600115.

.....Financial Creditor

**In the Matter of:**

M/s. E.C. Bose and Company Pvt. Ltd., a company registered under the provisions of Companies act, 1956 having its registered office at 13A, St. George Terrace, Hastings, Kolkata-700022.

..... Corporate Debtor

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

**Counsels appeared:**

For Financial Creditor

1. Ms. Sonal Shah, Advocate
2. Mr. Kushagra Shah, Advocate

For Corporate Debtor

1. Mr. Sailesh Kumar Gupta, Advocate
2. Mr. Dilawar Khan, Advocate

Date of pronouncement of order: 25<sup>th</sup> October, 2019.

**ORDER**

Per Shri Virendra Kumar Gupta, Member (T):

1. This application has been filed under Section 7 by the financial creditor, namely, **M/s Sugesan Transport Pvt. Ltd.** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor, namely, **M/s E.C. Bose & Company Private Limited.** The amount of default has been stated at Rs. 5,44,85,928/- (Rupees Five Crore Forty Four Lakh Eighty Five Thousand Nine Hundred and Twenty Eight Only) with interest and the default as stated took place from January, 2016.
2. The relevant facts are that the Financial Creditor and the Corporate Debtor entered into memorandum of understanding on 10<sup>th</sup> December, 2015 whereby the Corporate Debtor requested for financial assistance to the tune of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) which was provided by the Financial Creditor. The repayment of the same was to be done within 89 days along with interest at bank rate. The Corporate Debtor also issued postdated cheques which, however got dishonoured.
3. The Ld. Counsel appearing on behalf of the Financial Creditor stated these basic facts and drew out attention to Clause 1 of the Memorandum of Understanding (MOU) to submit that the purpose of the loan was to enable the Corporate Debtor to provide bank guarantee in connection with one project. The Ld. Counsel, thereafter referred to the letter dated

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06.06.2016 written by the Corporate Debtor wherein it was mentioned that the tender had been illegally terminated by Kolkata Port Trust and therefore due to pending litigation and unavoidable circumstances, originally issued cheques could not be honored. Consequently, the earlier cheques were being replaced by new cheques on this basis. She pleaded that there was a confirmation of loan by the Corporate Debtor and this Petition is well within the period of limitation. She also drew our attention to the copies of cheques given by the Corporate Debtor to substantiate her claim. She also drew our attention to the promissory note dated 11.12.2015 issued by the Corporate Debtor confirming the transaction and the terms and conditions of MOU.

4. The Ld. Counsel for the Corporate Debtor on the other hand drew our attention to page no. 13 and 14 of the paper book to show that both the parties had entered into an arrangement whereby both the parties were interested for working together. He then drew our attention to Clause 2 of the memorandum to show that a special purpose vehicle was to be formed. He also submitted that the contribution to be made by the financial creditor was not done, hence, such special purpose vehicle could not be formed. He further pleaded that MOU on the basis of which, this Petition had been filed was not terminated and, therefore, such MOU could not be enforced. He then drew our attention to the facts that the impugned sum of Rs. 2.5 Crores was received from three different corporate entities and Petitioner was only one of them who has given only Rs. 1 Crore whereas other two entities given 75 Lakhs each. He further contended that both entities were legally independent entities and without any assignment of debt being made by them in favour of the applicant, such application was not maintainable. It was also pleaded that arbitration proceedings were also filed by the Financial Creditor and which were running parallelly, hence, for this reason also this Petition was not maintainable.

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5. In the rejoinder, the Ld. Counsel for the Financial Creditor stated that the transaction of granted loan was independent of formation of SPV and business association, therefore, it had got no bearing on the maintainability of this Petition. She further emphasized on the fact that for the purpose of Section 7 of Insolvency and Bankruptcy Code, 2016, there should be a debt due and payable and a default should have occurred in that regard. In the present case, both these conditions were present, hence, Petition was liable to be admitted. It was also contended that arbitration proceedings were also not having any bearing on this application.
6. We have considered submissions made by both the sides and material on record. This Petition has been filed by M/s Sugesan Transport Pvt. Ltd. It is not in dispute that in addition to this party, two other entities which appear to be group companies have also given money to the Corporate Debtor. The money has been given to the Corporate Debtor by these entities as evident from the promissory note of Corporate Debtor in the following manner : -

**Sugesan Transport Pvt. Ltd., Rs. 1,00,00,000/- vide UTR No. CORPR92015121112850002**

**Sugesan Warehousing Pvt. Ltd., Rs. 75,00,000/- vide UTR No. CORPR92015121112850003**

**Sugesan Mines and Minerals Pvt. Ltd. Rs. 75,00,000/- vide UTR No. CORPR92015121112850004**


As far limitation aspect is concerned, there is no doubt that the Petition has been filed within limitation period. We have also carefully perused the terms and conditions of MOU whereby both the parties in addition to this financial transaction have entered for creation of a SPV which has not materialized. It is to be noted that the Corporate Debtor was already having tender in its favour from Kolkata Port Trust which as per its claim only has been illegally terminated by the Kolkata Port Trust and which has resulted into default in the payment of the loan taken by the


  
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Corporate Debtor. In our view, MOU consists of two transactions i.e. one is related to granting of loan and other is in regard to formation of SPV. From the perusal of MOU, it is evident that both these transactions are independent of each other. In any case, transaction loan has not been made for equity, hence, it remains of the nature of financial debt.

7. As far as the condition that Petition should have been filed by all the three entities independently or by the Financial Creditor on behalf of other two parties only when such purpose would have assigned the debt payable by the Corporate Debtor to them to the Financial Creditor. In this regard, provisions of Section 5(7) of the Insolvency and Bankruptcy Code, 2016 are absolutely clear. No material has been placed on record that to the fact that such debt has been legally assigned or transferred to the Financial Creditor. Hence, to this extent, we accept this plea of the Corporate Debtor. However, the loan given by the Financial Creditor itself is more than threshold limit of Rs. 1 Lakh, hence, this fact has not help the cause of the Corporate Debtor as far as maintainability of this Petition is concerned. The other two parties may lodge their claims before IRP/RP as per the provisions of Insolvency and Bankruptcy Code, 2016 read with relevant Regulations. We further hold that pending arbitration proceedings cannot be limiting factor.
8. The Financial Creditor has suggested name of one Mr. Swarnamani Ramasamy of D6, Dev Apartments 32 Kalakshetra Road, Lakshmipuram, Thiruvanmiyur, Chennai-600041, having registration no. IBBI/IPA-002/IP-N00560/2017-2018/11701 having email id. [ramasamy41@gmail.com](mailto:ramasamy41@gmail.com) for appointment as the Interim Resolution Professional. The proposed IRP has also given his consent and there is nothing on record to show that any disciplinary proceeding is pending against him. This application is defect free. In view of the above facts,





we admit this Petition for initiating CIRP of the Corporate Debtor and order as under.

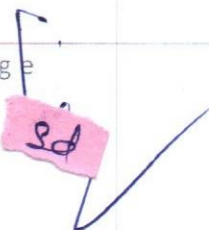
### ORDER

- 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, **M/s E.C. Bose and Company Private 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 any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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- 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. Swarnamani Ramasamy of D6, Dev Apartments 32 Kalakshetra Road, Lakshmipuram, Thiruvannamiyur, Chennai-600041, having registration no. IBBI/IPA-002/IP-N00560/2017-2018/11701 having email id. [ramasamy41@gmail.com](mailto:ramasamy41@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 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) 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.

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.

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 Kumar Gupta)**  
**Member(T)**

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

Signed on this, the 25<sup>th</sup> day of October, 2019.

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