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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/12(CHE)2023

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of **EVERSHINE WOOD PACKAGING PRIVATE LIMITED**

**INDIAN BANK,
No. 55, 2nd Floor,
Zonal Office Building,
Ethiraj Salai, Egmore,
Chennai – 600 008.**

... Financial Creditor

-Vs-

**EVERSHINE WOOD PACKAGING PRIVATE LIMITED,
93-135, Pondur Road,
Aranery Village,
III Cross Street,
SIPCOT Industrial Complex,
TN 602 106.**

... Corporate Debtor

Order Pronounced on 23rd June 2023

CORAM:

**SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

Present:-

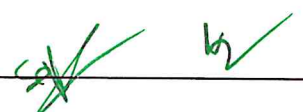
For Financial Creditor : Mr. Pranava Charan, Advocate

For Corporate Debtor : Mr. Thanu Madhan

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This Application under Section 7 of IBC, 2016 has been filed by **Indian Bank**, Financial Creditor / Applicant herein for initiating CIRP against **Evershine Wood Packaging Private Limited**, the Respondent / Corporate Debtor herein.



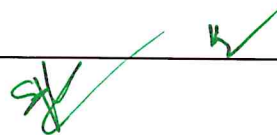
2. Part-I of the Application contains the details of the Applicant/Financial Creditor. Part-II of the Application discloses the particulars of the Corporate Debtor. As detailed, the Corporate Debtor was incorporated on 05.05.2005 with authorized share capital as Rs.7,99,00,000/- and paid-up share capital as Rs.7,98,20,000/-. Its registered office is at 93-135, Pondur Road, Aranery Village, III Cross Street, SIPCOT Industrial Complex 602 106.

3. The case of the Applicant/Financial Creditor in brief is that the Financial Creditor had sanctioned certain facilities namely, OCC/OD/CC/CCL (collectively referred as OCC facilities) which were renewed from time to time under CEGLS to the Corporate Debtor. For availing these facilities, the Corporate Debtor inter-alia executed the following documents.

Under OCC Facilities: -

- i. Sanction Letter dated 28.12.2017 (Annexure-I (2))
- ii. Renewal Sanction Letter dated 07.09.2019 (Annexure-I (3))
- iii. Demand Promissory Note dated 29.12.2017 (Annexure-I (4))
- iv. Letter of Continuity dated 29.12.2017 (Annexure-I (5))
- v. Agreement of Guarantee dated 29.12.2017 (Annexure-I (6))
- vi. Agreement for Open Cash Credit dated 29.12.2017 (Annexure-(7)).
- vii. Acknowledgement of Debt-cum-Security dated 06.10.2020 (Annexure-I (8))
- viii. Agreement of Hypothecation of movables dated 29.12.2017 (Annexure-I (9))

4. It is alleged that the Corporate Debtor defaulted in the repayment obligations. The Financial Creditor sent numerous notices including notices

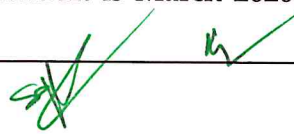


under the SARFAESI Act, dated 10.11.2021 (Annexure-I (14) and Possession Notice dated 02.02.2022 (Annexure-I (15)) but to no avail. It is stated that as on 04.12.2022 a total debt for a sum of Rs.78,85,09,547.55 became outstanding and payable by the Corporate Debtor to the Applicant/Financial Creditor. In Part-IV of the Application, the date of default is stated as 23.12.2020.

5. In Part V of the Application, the Applicant/Financial Creditor has given the particulars of the financial debt (documents), reports and evidence of default stating that the Applicant/Financial Creditor had charge over the movables as per the Agreement dated 29.12.2017 and immovable property situated at Aaraneri Village, admeasuring 8 Acres and 38.60 Cents.

6. The Applicant/Financial Creditor with the Application has filed authenticated record of default certificates issued by NESL showing the outstanding amount of the default amount, date of default in respect of the various facilities availed by the Corporate Debtor / Respondent, which is available at page 493 to 508.

7. On getting notice of the Application, the Corporate Debtor / Respondent filed the reply stating that the Corporate Debtor is into the business of Timber for several decades. Due to demonetization in late 2016, its business ran into financial difficulty. The introduction of GST and RERA Acts also affected its business and it went into default. It has admitted to have received the statutory Demand Notice under Section 13(2) of the SARFAESI Act. It is stated that the date of default is March 2020 and not



23.09.2020 as claimed by the Applicant/Financial Creditor. It is stated that the claim is barred by limitation. No document was signed by the borrower / guarantor after 29.12.2017. It is however stated that the Corporate Debtor had sent a revised OTS proposal to the Applicant Bank on 04.03.2023 after the rejection of an earlier OTS offer dated 22.12.2022.

8. Rejoinder has been filed by the Applicant/Financial Creditor wherein it denied the averments made in the reply and it reiterated the facts as stated in the Application. It is stated that there are multiple dates of defaults. Reference is made to an order of the Hon'ble Supreme Court in W.P.No.476 of 2020 in the case of *Small Scale Industrial Manufacturers Association -vs- Union of India* injunctioning all the Banks including the Financial Creditor from declaring any account as NPA. It is stated that the Hon'ble Supreme Court vide Order dated 23.03.2021 vacated the interim order and hence the accounts of the Corporate Debtor were declared as NPA on 31.03.2021 w.e.f 23.12.2020 as per the RBI guidelines. It is stated that even after the declaration of the accounts as NPA, the Corporate Debtor vide letter dated 19.07.2021 at Annexure-2 had sought permission to operate the accounts. Since the Corporate Debtor was a MSME unit, it allowed to operate the account. It is stated that even after the date of default, the Corporate Debtor paid the amounts on an irregular basis until 25.10.2021 as detailed in the statement of account of GECLS facility – Annexure-3. It is alleged that the default is continuing till date.



9. It is stated that the Corporate Debtor in its reply has admitted the debt / default in para-3. It has filed the documents relating to OTS proposals admitting the defaults. It is stated that the Application is within limitation.

10. We have heard Ld. Counsel for the parties and perused the records.

11. It is an admitted case of the parties that the Corporate Debtor who was into the business of Timber had availed various OCC facilities as detailed above which facilities were sanctioned vide sanction letter dated 28.12.2017. The facilities were renewed vide renewal sanction letter dated 07.09.2019. The Corporate Debtor signed the Demand Promissory Note, Letter of Continuity, Agreement of Guarantee, and Agreement for open cash credit. The Corporate Debtor also issued the acknowledgement of debt / security dated 06.10.2020 as Annexure-I (8). It is not the case of the Corporate Debtor has not signed the said acknowledgement letter admitting the debt / security. The said acknowledgement was signed within the period of three years from the sanction of the OCC facilities. The Financial Creditor had also issued a letter dated 03.10.2020 giving sanction of IND-GECLS-COVID-19 as Annexure-I (10).

12. In the instant case, when the Corporate Debtor committed the defaults in repayment of loan / debt, the Applicant/Financial Creditor issued the Demand Notice dated 10.11.2021, but despite that the Corporate Debtor did not make the payment. The record of default issued by NESL shows that the Corporate Debtor defaulted in the payments. In the said record the date of



default has been recorded as 15.04.2022. The extract of the same is reproduced below,

**FORM D
RECORD OF DEFAULT(RoD)**

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s INDIAN BANK in respect of the default of debt as per details given below-

(a) Name of the Submitter: M/s INDIAN BANK
(b) Schedule-2 Bank (Y/N): Y
(c) Name of Corporate Debtor: M/s EVERSHINE WOOD PACKAGING PRIVATE LIMITED
(d) Unique Debt Identifier Number: AAAC11607G_6932473838
(e) Registered Address: 61,Rajaji Salai,Chennai
(f) Total Outstanding Amount: 57143332.00
(g) Default Amount: 18205395.00
(h) Date of Default: 15-04-2022
(i) Status of Authentication of Default: AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated / Disputed / Deemed to be authenticated)	Authentication completed on
(8)	22-10-2022 01:35:57	*AUTHENTICATED Colour Code :GREEN	09-11-2022 17:42:26


13. The Applicant/Financial Creditor has also filed the statement of accounts which shows various entries relating to the payments made by the Corporate Debtor after March 2020 i.e., on 29.09.2021 for an amount of Rs.1,19,935.93. The Corporate Debtor in its reply has specifically stated that due to the situation arising out of the Covid-19 pandemic and introduction of the GST / RERA Act, it ran into financial difficulty and went into default. The Corporate Debtor has also submitted the details of repayment made by memo vide SR.No.1044 dated 06.03.2023 to the Indian Bank / Applicant /



Financial Creditor after the account was declared as NPA showing the payments for the period from 31.12.2022 and 03.11.2022.

14. The reply of the Corporate Debtor shows that it had signed an OTS offer on 22.12.2022 admitting the debt and its liability to make the payments which offer was rejected by the Applicant/Financial Creditor. The said offer was made within the period of 3 years from the date of last acknowledgement. The Applicant/Financial Creditor again sent a revised OTS proposal on 04.03.2023. Since the acknowledgements have been made within the limitation period as provided under Section 18 of the Limitation Act, 1963, which is also applicable in the cases related under IBC as per Section 238A of IBC, 2016, we are of the view that the Application filed by the Applicant/Financial Creditor is within limitation. We may note that due to the Covid-19 pandemic, the Hon'ble Supreme Court in suo-moto Writ Petition 3/2020 extended the period of limitation from 15.03.2020 till 28.02.2022 which benefit the Application is also entitled to in the IBC proceedings.

15. In the present case, there is an acknowledgement of debt and default by the Corporate Debtor. The amount default is more than Rupees one crore which is above the threshold limit of Rs.1 Crore. The record of default and the amount has been duly authenticated by the NESL. It is well settled law that for a company to be admitted into CIRP under IBC, there must be a debt, there must be a default within the period of limitation and the amount of default should be above the threshold limit set out under Section 4 of IBC.



16. The Hon'ble Supreme Court *in Innoventive Industries Ltd Vs. ICICI Bank & Anr. (2017 SCC Online SC 1025)*, held as follows,

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise".

17. On considering the averments made in the pleadings, the documents, and the above decision of Hon'ble Apex Court, we are of the view that the Corporate Debtor has committed the default in respect of the debt which is more than Rupees one crore and hence it is a fit case to initiate CIRP against the Corporate Debtor. Accordingly, this Tribunal allow this application and order to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

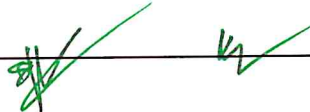
18. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

- 19. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;
 - (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
 - (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where



such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.



- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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 the 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.

21. The Financial Creditor has proposed the name of **Mr. S.R.Shriraam Shekher**, having **Reg. No. IBBI/IPA-003/IP-N000144/2017-2018/11598**; **Email ID: shekhershriraam@gmail.com** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 15.011.2023.

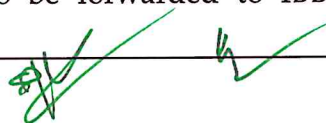


22. **Mr. S.R.Shriraam Shekher**, is appointed as the IRP. He is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of a claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, and 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

25. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its



records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

26. Accordingly, the present petition stands **admitted**.



-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)



-sd-

SANJIV JAIN
MEMBER (JUDICIAL)