IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.P. (IB) No. 4760/NCLT/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of:

TJSB Sahakari Bank Limited

…Financial Creditor / Applicant

V/s

Aireff De Tox Private Limited

...Corporate Debtor / Respondent

Order Dated: 10th October 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh

Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Partha Sarkar

For the Respondent: None present

Per: Rajesh Sharma*, Member (*Technical*)*

ORDER

1. This is an Application being CP 4760(IB)/MB/2018 filed by **TJSB Sahakari Bank Limited,** the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Aireff De Tox Private Limited,** Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Application is filed claiming a total default of ₹14,38,62,488/- (Rupees Fourteen Crore Thirty Eight Lakh Sixty Two Thousand Four Hundred and Eighty Eight Only) including interest as on 30.09.2018. The Application is signed by Mr. Makarand Pandurang Godse, Deputy General Manager, of the

Financial Creditor duly authorised to file this Application vide Resolution dated 05.09.2018.

3. The Applicant submits that it sanctioned loan in nature of credit facility to the tune of ₹7,50,00,000/- (Rupees Seven Crore and Fifty Lakh Only) to the Corporate Debtor vide Sanction Letter No. 44/12 dated 01.12.2014. The Applicant and Corporate Debtor entered into Facility Agreement dated 06.08.2014 and Supplemental Facility Agreement dated 09.01.2015 in respect of the said credit facility, and Deed of Hypothecation secured the credit facility. The Applicant has filed Sanction Letter dated 01.12.2014; Supplemental Deed of Hypothecation, Letter of Continuity of Promissory Note and Letter of Lien and Set Off all dated 09.01.2015 in support of its claim which are annexed to the Application.

4. It is submitted that said credit facility was renewed vide Sanction Letter No. 45/15 dated 27.11.2015 and Disbursement Order dated 27.11.2015, whereby the validity of said credit facility was extended up to 29.02.2016. The copy of Sanction Letter and Disbursement Order are annexed to the Application.

5. The Applicant submits that the Corporate Debtor has confirmed and acknowledged the said debt vide "Acknowledgment of Debt and Letter of Confirmation of Balance and Security" dated 27.11.2015. Copy of the said letter is annexed to the Application.

6. The Applicant submits that Corporate Debtor defaulted in repayment of credit facility after expiry of validity period and therefore the Applicant sent a Notice dated 08.05.2018 to Corporate Debtor and its Directors calling upon them to pay the outstanding loan amount along with interest. The said Notice was replied by one of the directors of Corporate Debtor, Mr. Jatin Arun Kini, alleging that he is not liable or responsible for repayment of loan. The copy of Applicant's Notice and Reply from Director dated 28.05.2018 are annexed to the Application.

7. The Applicant submits that it exercised diligence and conducted a secretarial inspection in respect of default of Corporate Debtor and placed a Note before its Board of Directors in CRR Meeting. The Secretarial Inspection Report contains Particulars of Charge against Corporate Debtor which reflects the name of Applicant as Charge Holder. The copy of said Note and Secretarial Inspection Report dated 18.05.2018 are annexed to the Application.

8. The Applicant has annexed Account Statement of Corporate Debtor prepared by Applicant for period 01.09.2009 to 24.10.2018 reflecting ₹14,38,62,488/- (Rupees Fourteen Crore Thirty Eight Lakh Sixty Two Thousand Four Hundred and Eighty Eight Only) as outstanding balance due from Corporate Debtor as on 30.09.2018.

9. The Applicant was directed to serve Court Notice to Corporate Debtor vide our Order dated 28.02.2019 and 25.03.2019. However, the notice issued to Corporate Debtor returned with postal remark "Office Closed". Therefore, vide our Order dated 30.04.2019 the Applicant was further directed to serve notice by way of Publication and also on registered email id of Corporate Debtor. The Applicant filed its affidavit of service on 10.05.2019 proving the service by publication and email upon Corporate Debtor.

10. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to ₹7,50,00,000/- (Rupees Seven Crore and Fifty Lakh Only) is due and payable by the Corporate Debtor to the Applicant as on the date of filing of this Application. The Corporate Debtor has even acknowledged the debt vide Letter dated 27.11.2015. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount. The Corporate Debtor has failed to appear before this Bench. Therefore, we do not have any objection on record against the Application filed for initiation of CIRP against the Corporate Debtor.

11. The Application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the Application deserves to be admitted.

12. The Applicant has proposed the name of Mr Kamal Kumar Naulakha, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00486/2017-18/11652] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the Application.

13. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **TJSB Sahakari Bank Limited,** Financial Creditor / Applicant, against **Aireff De Tox Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench at this moment appoints **Mr Kamal Kumar Naulakha,** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00486/2017-18/11652]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
RAJESH SHARMA	**V. P. SINGH**
Member (Technical)	Member (Judicial)

10th October 2019