

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 1239/KB/2018

IN THE MATTER OF:

An application 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. SYNDICATE BANK, a body Corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Manipal in the State of Karnataka and carrying on business through its different branches including one at 26, Shakespeare Sarani, P.S. Shakespeare Sarani, Kolkata 700071, commonly known as SYNDICATE BANK, CAMAC STREET BRANCH, KOLKATA, within the jurisdiction as aforesaid.

AND

UNION BANK OF INDIA, a body Corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at 239, Vidhan Bhawan Marg, Nariman Point, Mumbai – 400021 and carrying on business through its different branches including one at 2B, Lee Road, Kolkata 700020, commonly known as Union Bank of India, Mid Corporate Branch, within the jurisdiction as aforesaid.

... Applicants/Financial Creditors





-Versus-

IN THE MATTER OF:

M/S. VISA DRUGS AND PHARMACEUTICALS PRIVATE LIMITED, a Company incorporated under the provisions of Companies Act, 1956, having its registered office at 1, A.J.C. Bose Road, 3rd Floor, B-Wing, Kolkata 700020, West Bengal.

... Corporate Debtor

Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record:

1. MR. N. SRINIVAS, Advocate]
2. MR. MANOJ KUMAR SINGH, Advocate] For Financial Creditors

1. MR. ABHRAJIT MITRA, Sr. Advocate]
2. MR. RATNANKO BANERJI, Sr. Advocate] For Corporate Debtor
3. MS. DEBALEENA GANGULY, Advocate]

Date of pronouncement of Order: 05/12/2019.

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ORDER

Per Shri Harish Chander Suri, Member (Technical).

1. This is a joint petition filed under Section 7 of the Insolvency & Bankruptcy Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s. Syndicate Bank**, a body corporate and **M/s. Union Bank of India**, a body Corporate, constituted under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, hereinafter referred to as the "Financial Creditors No. 1 & 2" respectively, seeking initiation of Corporate Insolvency Resolution Process against **M/s. Visa Drugs and Pharmaceuticals Private Limited**, hereinafter referred to as the "Corporate Debtor". The Financial Creditor No. 1 have authorized Mr. Bansi Gopal Pujari, who is one of its Chief Managers. The Financial Creditor No. 2 i.e. Union Bank of India vide its letter dated 13th August, 2018 has authorized Syndicate Bank for initiating proceedings against M/s. Visa Drugs and Pharmaceuticals Private Limited i.e. the Corporate Debtor hereinbefore this Tribunal under IBC 2016.
2. In addition to this vide letter of authority dated 12th August, 2016 the Union Bank of India has been authorized to take all actions and decisions within the overall framed work of the stipulations contained in the Interse agreement dated 12th August, 2016 and further agreed to ratify and confirm whatever acts, deeds and things





lawfully and bona fide done, taken or effected by the Syndicate Bank. So, Syndicate Bank for its and on behalf of the Financial Creditor No. 2 has been pursuing the matter before this Tribunal.

3. It is alleged in the application that the Corporate Debtor which is a Corporate entity is engaged in the business of manufacturing all kinds of medicines having its factory unit in the State of Himachal Pradesh and its registered office in Kolkata. It is submitted that in the year 2016 the Corporate Debtor approached the Financial Creditors through its Directors for sanctioning an overdraft facility, Cash Credit facility, Term Loan and Bank Guarantee etc. Under the Consortium agreement the Directors of the Corporate Debtor had made representations that there is a great potential and business stability in the Corporate Debtor's business and relying on these representations the Financial Creditors agreed to sanction the facilities. The Financial Creditors entered into various agreements on 12th August, 2016 like Working Capital facility agreement, Joint Deed of Hypothecation, Power of Attorney etc. and the Board Resolutions and necessary documents were submitted in favour of the Financial Creditors but the Corporate Debtor has not been performing its obligations towards the Financial Creditors and has failed to operate the accounts leading to heavy outstanding dues which it has chosen not to repay. It is submitted that in spite of acknowledgement of its liability, the Corporate Debtor has failed to liquidate the same and

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has no intention to honour collective and several contractual commitments made in the agreements.

4. It is submitted that a sum of Rs. 123,70,01,785/- (Rupees One Hundred Twenty Three Crores Seventy Lakhs One Thousand Seven Hundred and Eighty Five Only) has become due and outstanding as on 1st August, 2018 and the Financial Creditors are also entitled to interest.
5. It is submitted that no part of the claim is barred by the laws of limitation. The cause of action arose when the account was declared NPA. The Financial Creditors have proposed the name of Mr. Uday Narayan Mitra, a Resolution Professional to act as IRP, in case of admission of the present application.
6. The Financial Creditor has secured its loans by executing various documents viz., Working Capital Consortium Agreement dated 12th August, 2016, Joint Deed of Hypothecation dated 12th August, 2016, Power of Attorney in respect of Book Debts facility dated 12th August, 2016, Attendance Sheet in the matter of Extension of Mortgage and Memorandum of entry of mortgage dated 12th August, 2016, Letter of Confirmation of mortgage by deposit of title deeds of mortgaged property dated 12th August, 2016 etc., copies of which have been placed on record.

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7. It is submitted that when the Corporate Debtor failed to repay, the Financial Creditor No. 1 issued a notice to the Corporate Debtor on 21st May, 2018 calling upon the Corporate Debtor to repay Rs. 123,70,01,785/- including interest calculated up to 31st July, 2018 and all the charges due and payable.

8. In its reply affidavit the Corporate Debtor had submitted that the application is not maintainable in substance and in form and therefore deserves to be rejected. It is submitted that no specific power of attorney has been granted by Syndicate Bank for initiation of the Corporate Insolvency Resolution Process. It is submitted that the application under Section 7 suffers from gross suppression of material facts and the demand notice has not been sent by the Financial Creditors to the Corporate Debtor. It is submitted that the Financial Creditors have filed an OA under Section 19 which is pending before the Debts Recovery Tribunal, Kolkata and therefore multiple proceedings have been initiated for almost similar remedies and therefore the application must be dismissed on this ground alone.

9. It is submitted that the Corporate Debtor has substantial assets and properties but for some unforeseen and unavoidable circumstances and due to fire having broken out on 16th September, 2018 at the registered address of the Corporate Debtor, the documents and records were destroyed and that the estimated value

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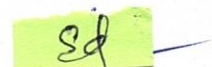
of Securities pledged with the Financial Creditors is far more than the alleged default.

10. In its rejoinder the Financial Creditors have denied the version of facts submitted by the Corporate Debtor and reiterated and re-affirmed the facts mentioned in the application under Section 7 IBC. It is submitted that there is no plausible defense with the Corporate Debtor and that the relief sought in the application deserves to be granted by this Tribunal. As regards authorization of Mr. Bansi Gopal Pujari, Chief Manager, we are satisfied that there is sufficient documentation on record to file and pursue the matter before this Tribunal.

11. Section 7(1) permits the Joint Application to be made by Financial Creditors. The relevant extracts of Section 7(1) is reproduced below:-

“A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred. Explanation – For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”





12. During the course of arguments the Ld. Counsel for the Financial Creditors has taken us through all the documents. We found Form No. 1 completed in all respect and the date of default and the NPA has been mentioned as 1st May, 2017. During the course of argument the Ld. Counsel for the Corporate Debtor submitted that there is no authorization given by the Union Bank of India in favour of Syndicate Bank to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor. It is submitted that the Syndicate Bank Officer Mr. Bansi Gopal Pujari was not authorized.
13. It is submitted that the Reserve Bank of India guidelines have not been followed for restructuring of the debt.
14. The Ld. Counsel for the Corporate Debtor has referred to and relied upon the judgment of the High Court of Kolkata reported in State Bank of India vs. SRC Steels Pvt. Ltd. in support of its argument. In our view the judgment being relied upon is not at all applicable to the facts of the present case because the judgment in the aforesaid matter i.e. State Bank of India vs. SRC Steels Pvt. Ltd. relates to recovery of the amount under SARFAESI Act, 2002 before DRT while the present application is under IBC. We are not at all convinced with the argument of the Ld. Counsel for the Corporate Debtor.
15. An argument was advanced on the side of the corporate debtor as to the authority of Mr. Bansi Gopal Pujari, the Chief manager of the Syndicate Bank who had filed this application for and

behalf of the Syndicate Bank and Union Bank of India. According to Ld.Sr.Counsel for the corporate debtor the said manager was not given any special authority to initiate CIRP as against the corporate debtor .The above said objection also seen found not sustainable as per the letter of authority brought to our notice on the side of the financial creditor. The Financial Creditor No. 1 has authorized Mr. Bansi Gopal Pujari, who is one of its Chief Managers. The Financial Creditor No. 2 i.e. Union Bank of India vide its letter dated 13th August, 2018 has authorized Syndicate Bank for initiating proceedings against M/s. Visa Drugs and Pharmaceuticals Private Limited i.e. the Corporate Debtor herein before this Tribunal under IBC 2016. The Syndicate Bank admittedly is the lead Bank of the consortium banks from which the corporate debtor had availed the admitted loan.

16. The case of the Financial Creditors however, fulfills all the requirements of the Code and complete in all respect since there is no denial of the disbursement of the loans/facilities/limits availed by the Corporate Debtor and the default in repayment having taken place, we are of the considered view that there cannot be any other option before this Tribunal but to admit the petition and pass the following:-

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ORDERS

- 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. VISA DRUGS AND PHARMACEUTICALS PVT. LTD.** is hereby **admitted**.
- ii) 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.
- iii) 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 judgement, 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.
- iv) 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.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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.

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- viii) **Mr. UDAY NARAYAN MITRA** of 72/1, Dawnagazi Road, Bally, Howrah 711201, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having **registration number IBBI/IPA-001/IP-P00793/2017-18/11360, Mobile No. 9433532994, e-mail id: udaynarayanmitra@yahoo.co.uk** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Registry is hereby directed under section 7(7) of the Insolvency and Bankruptcy 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.

- xi) The matter be listed on **06.01.2020** for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 5th day of December, 2019.

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