

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1175/KB/2019

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. OUTLOOK TRACOM PRIVATE LIMITED, a Company incorporated under the provision of Companies Act, 1956 having its registered office at 1, Old Court House Corner, 5th Floor, Tobacco House, Room No. 510, Kolkata WB 700001 IN;

... Applicants/Financial Creditor

-Versus-

IN THE MATTER OF:

M/S. TOSHNIWAL ENTERPRISES CONTROLS LIMITED, a Company incorporated under the provision of Companies Act, 1956 having its registered office at 1A, Akrur Datta Lane, kolkata WB 700012 IN;

... Respondent/ Corporate Debtor

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

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





Counsel on Record:

1. MR. SAURAV JAIN, Advocate] For Financial Creditor
1. MR. SHASHANKA S. DEY, Advocate] For Corporate Debtor

Date of pronouncement of Order: 22/11/2019.

ORDER

Per Shri Jinan K.R., Hon'ble Member (judicial).

1. **M/s. Outlook Tracom Private Limited**, hereinafter referred to as the "Financial Creditor" has filed this application under Section 7 of the Insolvency & Bankruptcy Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor **M/s. Toshniwal Enterprises Controls Limited**, hereinafter referred to as the "Corporate Debtor", on the allegation that the Corporate Debtor has committed default in repayment of Rs.50,00,000/- (Rupees Fifty Lacs Only) with interest @ 12% p.a. despite repeated demand.

2. The brief averment for the consideration of the points for determination is the following:-

M/s. Outlook Tracom Private Limited is a Company registered under the provisions of Companies Act, 1956 had lent Rs. 50,00,000/-

to the Corporate Debtor with an agreed interest @ 12% p.a. for 120 days for enabling the Corporate Debtor to do its business. However, the Corporate Debtor had failed in repayment of the above said loan amount and, therefore, issued a demand notice and despite the demand notice the Corporate Debtor failed to repay the amount, hence filed this application.

3. It is further contended that the Applicant has granted the loan twice to the Corporate Debtor, firstly on 11.05.2015. The loan advanced to the Corporate Debtor on 11.05.2015 to the tune of Rs. 50,00,000/- has been repaid by the Corporate Debtor to the Financial Creditor on 17.02.2018. The Applicant has further granted a loan to the Corporate Debtor to the tune of Rs. 50,00,000/- on 04.08.2016 and the said loan amount has been disbursed to the Corporate Debtor by way of RTGS transfer.
4. The Corporate Debtor though deducted TDS for the interest due for the period of loan to the tune of Rs. 74,959/- (Rupees Seventy Four Thousand Nine Hundred Fifty Nine Only), did not pay the interest nor paid the principal amount and since the Corporate Debtor has failed to pay the same, a notice has been issued to the Corporate Debtor and the Corporate Debtor issued a post dated cheque which has been dishonored due to Funds being Insufficient and thereby one another notice also issued under Section 138 of Negotiable Instrument Act, 1881. Since the Corporate Debtor had not replied to the legal notice sent under Section 138, the Financial

sd

sd

Creditor had filed a complaint against the Corporate debtor under section 138/141 of the Negotiable Instrument Act before the Ld. Chief Metropolitan Magistrate, Hare Street Police Station, and it is still pending before the Magistrate Court. Upon the said contentions the applicant prays for an order of admission under section 7 of the Code.

5. Respondent though entered appearance and availed opportunities to file reply affidavit, but did not choose to file one despite repeated opportunities having been given to them. Vide order dated 27th September, 2019, last opportunity as requested also was granted upon payment of costs. However, the Corporate Debtor chose not to pay costs or to file reply thereby adjourning the matter for hearing to 09/12/2019. This case was then preponed to 19th November, 2019 for an early hearing and on that day also the Corporate Debtor has neither chosen to file reply nor paid the cost. However, the case was heard on 19.11.2019 permitting the Ld. Counsel appearing for the Corporate Debtor to advance her arguments even in the absence of written objections on the side of the corporate debtor.
6. Heard both sides. Perused the records.
7. This is an application filed by M/s. Outlook Tracom Private Limited alleging that the Corporate Debtor availed a loan of Rs.50,00,000/- from the Financial Creditor by agreeing to pay interest @ 12% p.a. and that despite deducting the tax by way of TDS for the

Sd

Sd

interest payable to the Financial Creditor, the Corporate Debtor did not pay interest or the amount and therefore committed default and therefore this application for initiating Corporate Insolvency Resolution Process was filed against the Corporate Debtor. To substantiate the case of the Financial Creditor, the Financial Creditor has highlighted Annexure 'A', a statement showing the amount disbursed to the Corporate Debtor on 11.05.2015 and on 04.08.2016.

8. The claim in the case in hand is related to the alleged loan granted to the Corporate Debtor on 04.08.2016 to the tune of Rs.50,00,000/-. To prove that the amount was paid to the Corporate Debtor by way of RTGS transfer, a copy of statement of accounts maintained by the Financial Creditor in the State Bank of India also produced which is marked as Annexure 'A'. So Annexure 'A' proves the disbursement of an amount of Rs. 50,00,062/- to the Corporate Debtor.

9. To prove that it was a loan granted to the Corporate Debtor, the Corporate Debtor cause produced a letter of intimation of transfer through RTGS dated 04.08.2016. The letter evidenced that an amount of Rs.50,00,000/- has been transferred through RTGS to the Corporate Debtor's Account as Term Loan for a period of 120 days, repayable on demand with an interest @ 12% p.a.

sd

sd

10. According to the Ld. Counsel for the Financial Creditor, the above said letter has been acknowledged by the Corporate Debtor on 04.08.2016 itself. The acknowledgement is seen annexed at the page No. 21 of the Application. Although it is in Hindi, (translation seems to be not annexed) it evidences acknowledgment issued by the Corporate Debtor acknowledging the receipt of the amount repayable with interest to the Financial Creditor. The Financial Creditor also relied upon confirmation of accounts by the Corporate Debtor for the years between 1st April, 2016 till March, 2018. The confirmation of accounts (page Nos. 31 & 32) reveals that the alleged loan advanced to the Corporate Debtor bears interest and therefore the debt found advanced to the Corporate Debtor comes under the purview of "financial debt" as prescribed under Section 5(8) of the Code.
11. At this juncture the Ld. Counsel for the Corporate Debtor referred to a judgement of this Tribunal in **CP (IB) No. 994/KB/2018 in the case of SKDJ Dream Home Private Limited vs. Avinash Raj Constructions Private Limited**, and submitted that the debt allegedly due to the Financial Creditor is not a debt legally liable to be paid because the lending of money by the Applicant Company is illegal and in violation of Section 186 of Companies Act, 2013.
12. The facts in the above said case are not at all similar to the facts in the case in hand. The Financial Creditor in the case in hand is not

sd

sd

a money lender and also not an NBFC. However, as per Section 186 sub section (2) proviso, inter corporate deposit or loan is prohibited to a company like the Financial Creditor *exceeding 60% of its paid up share capital, free reserves and securities premium account or 100% of its free reserves and security premium account whichever is more.* Nothing brought out on the side of the Corporate Debtor to prove that lending money by the Financial Creditor to the Corporate Debtor exceeds the above said limits. So it appears to us that the inter corporate credit loan found granted to the Corporate Debtor cannot violate Section 186 of the Companies Act, 2013 and accordingly we are of the considered opinion that the debt found due being in default on the side of the Corporate Debtor is liable to be paid by the Corporate Debtor to the Financial Creditor. The above said only one objection raised on the side of the corporate debtor is therefore found devoid of any merit.

13. Annexure 'J' evidences that tax has been deducted towards the interest liable to be paid to the loan amount received by the Corporate Debtor from the Financial Creditor. It itself is an indication that the loan was availed by the Corporate Debtor against payment of interest. So, being satisfied that it is a Financial debt and the financial debt is found due to the Applicant, and that the applicant is coming under the purview of Section 5(7) of the Code this application is perfectly maintainable and is liable to be admitted.

sd

sd

14. The Financial Creditor has proposed the name of Mr. Kamal Nayan Jain, a practicing Chartered Accountant as Insolvency Professional. The written communication in Form 2 proves that there is no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
15. Keeping in view of the above mentioned facts and circumstances, this application is liable to be admitted as prayed for under section 7 of the Code. Accordingly we admit the application upon the following:-

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. TOSHNIWAL ENTERPRISES CONTROLS LIMITED** 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:-

Sd/

Sd/

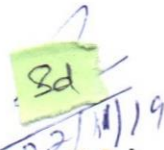
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate 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.
- viii) **Mr. Kamal Nayan Jain** of 2, Lal Bazar Street, 2nd Floor, Room No. 204 & 205, Kolkata 700001, having Registration No. **IBBI/IPA-001/IP-P00029/2016-2017/10065**, Email ID: knjain@knjainco.com, an Insolvency professional 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 30th December, 2019 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)



(Jinān K.R.)
Member (J)

Signed on this, the 22nd day of November, 2019.

VC