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IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.1254/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:

Veda Commercial Pvt. Ltd., having its registered office at 5/1, Anil Moitra Road, Kolkata - 700 019

.....Financial Creditor

And

In the Matter of:

ASAP Retail Private Limited, having its Registered Office at 23, Bankim Mukherjee Sarani, Kolkata - 700 053

.....Corporate Debtor

Date of Hearing 4th December 2019

Order Delivered on 6th December 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Kumar Gupta, Member (T)

For the Financial Creditor : 1. Mr. Nikunj Barlia, Advocate
2. Mr. S. Kejriwal, Advocate
3. Mr. Mrigank Kejriwal, Advocate

For the Corporate Debtor : Ms. Sristi Barman Roy, Advocate

ORDER

Per Virendra Kumar Gupta, Member (Technical)

This application has been filed under Sec.7 of Insolvency & Bankruptcy Code, 2016 by the financial creditors, viz., Veda Commercial Pvt. Ltd. to initiate





corporate insolvency resolution process against the corporate debtor, viz., ASAP Retail Private Limited.

2. The facts, in brief, are that the financial creditor granted a loan of Rs.25 lakh to the corporate debtor on 7/5/2013 interest @ 10% per annum for financial year 2013-14 and thereafter @ 9% per annum payable quarterly. Corporate debtor repaid principal amount of Rs.12 lakh in three installments on 1/7/2015, 7/7/2015 and 1/10/2015. A cheque had also been issued which was dishonoured. Corporate debtor paid installment of interest lastly on 15/9/2017 which has been claimed to be as date of default.

3. Ld. Counsel appearing on behalf of the financial creditor narrated these facts and drew our attention to the relevant pages of the Paper Book to substantiate its claim regarding disbursement, repayment, dishonour of cheque. Ld. Counsel contended that the amount was given as a temporary assistance and was repayable on demand.

4. Ld. Counsel for the corporate debtor argued that it was not a case of inter corporate loan for a fixed tenure, hence, whatever due had been paid and the remaining amount was not due and payable as per the understanding between the corporate debtor and the financial creditor. She further submitted that the cheque of Rs.13 lakh dated 31/3/2016 had been issued by Svelte and not by the corporate debtor. It was also contended that Shri Hirdesh Ghai who signed the cheque was neither a director nor the shareholder of the corporate debtor. Thus, no significance could be attached to issuance of such cheque or dishonour thereof.

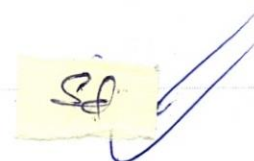
5. In the rejoinder, Ld. Counsel for the corporate debtor submitted that Shri Hirdesh Ghai was the relative of the promoters of the corporate debtor and on their behalf it was given to the financial creditor. In this regard, it was further submitted that there were no transactions between the said person and the



financial creditor. It was further pleaded, even otherwise the application was well within limitation and maintainable for the reason that for constituting default as per the provision of Insolvency & Bankruptcy Code, 2016 non payment of interest was also to be taken into consideration.

6. In respect of this contention, Ld. Counsel drew our attention to the financial statement of the corporate debtor wherein outstanding loan as well as interest payable had been taken into consideration in the balance sheet of the corporate debtor.

7. We have considered the submission made by both the sides and perused the materials on record. As far as facts of disbursement of loan, part repayment of loan and rate of interest are concerned, there is no dispute between the parties. As per the contention of the financial creditor, it was a case of inter corporate loan given at the request of the corporate debtor based upon verbal understanding for repayment thereof as per their mutual convenience. Repayment has been done partially in 2015, hence, to say that such loan has been given for longer duration or no tenure was fixed for repayment, remains unsubstantiated on the part of the corporate debtor. It is noted that the financial creditor is not engaged in the business of financing in normal course and, therefore, it is an instance of friendly assistance. Corporate debtor has failed to produce any evidence in support of its claim that debt was not due and payable except mere making a claim to that effect. The claim of the financial creditor that issuance of cheque by the relative of the promoter of the corporate debtor has also remained un-controverted, as merely it has been claimed that he was neither a director nor a shareholder of the corporate debtor. In the balance sheet, the amount of unsecured loan appears which has been duly signed by the corporate debtor, hence, acknowledgment of debt exists. The loan is not time barred.



8. It reveals from the record that the financial creditor has proposed the name of Shri Daulat Ram Jain, Registration No.IBBI/IPA-001/IP-P00945/2017-18/11565 email address daulatjain@rediffmail.com Mobile No.9830059845 as Interim Resolution Professional who has has given his consent in Form 2. It further appears that no disciplinary proceedings are pending against the IRP. Accordingly, we approve his appointment as IRP.

9. The application is otherwise complete and defect free. Accordingly, we admit the application 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, ASAP Retail 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

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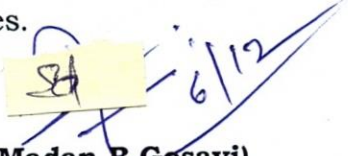
- any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce 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);
 - 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.

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- ix. Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.
- x. Shri Daulat Ram Jain, Registration No.IBBI/IPA-001/IP-P00945/2017-18/11565 email address daulatjain@rediffmail.com Mobile No.9830059845 as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi. The Financial Creditors to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
- xii. 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.
10. List the matter on 24/1/2020 for filing of the progress report.
11. 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 6th December 2019