

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKTA BENCH,**

**KOLKATA**

**C.P (IB) No.922/KB/2020**

**In the matter of**

An application under section 7(1) 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 Manavta Trade-Link Private Limited**, a Private Non-Government Company, registered under the provisions of the Companies Act, 1956 bearing CIN: U51909WB2012PTC188967 and having its registered office at 24, Roy Street, Room No.4, Kolkata-700020, West Bengal.

*... Financial Creditor*

Versus

**In the matter of:**

**M/s Deepraj Vinimay Private Limited**, a Non-Government Company, registered under the provisions of Companies Act, 1956, bearing CIN: U51109WB1994PTC062352 having its Registered office at 235/2A A.J.C. Bose Road, 3<sup>rd</sup> Floor, Kolkata- 700020, West Bengal.

*...Corporate Debtor*

Date of hearing : 30/03/2022

Order Pronounced on : 10/05/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

1. Mr. Rishav Banerjee, Adv.

] For the Financial Creditor

2. Mr. Sanjib Dawn, Adv.

1. Ms. Urmila Chakraborty, Adv. ] For the Corporate Debtor
2. Ms. Debaleena Ganguly, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **M/s Manavta Trade-Link Private Limited**, through its Director, Mr. Dileep Kumar Thakur, vide Board Meeting dated 21/08/2020 (**However, the name of the Director in Board meeting dt. 21/08/2020 is written as Sri Dilip Thakur at page 89 of the petition**) (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **M/s Deepraj Vinimay Private Limited**, having its Registered office at 235/2A A.J.C. Bose Road, 3<sup>rd</sup> Floor, Kolkata- 700020, West Bengal ( hereinafter referred to as the Corporate Debtor).
3. It is submitted by the Financial Creditor that in or around September, 20, 2015, the Corporate Debtor had approached the Financial Creditor at its office in Calcutta representing that the Corporate Debtor was going through some financial problem in running its business and requested the Financial Creditor for financial assistance by way of a loan of Rs.5,51,00,000/-in the form of unsecured loan for the period of two years @ 12% P.A. The Financial Creditor issued letter dated 19<sup>th</sup> September, 2015 disbursing the loan of Rs.98,00,000/-. A further letter of 24<sup>th</sup> September, 2015 issued by the Financial Creditor disbursing the loan of Rs.1,15,00,000/-, thereafter vide letter dated 19<sup>th</sup> July, 2016, the Financial Creditor issued letter disbursing the loan of Rs.1,30,00,000/- and vide letter dated 21<sup>st</sup> July, 2016, the Financial Creditor issued letter disbursing loan of Rs.1,10,00,000/-. It is submitted that letters of acknowledgement were received from Corporate

Debtor on 19<sup>th</sup> September, 2015, 19<sup>th</sup> September, 2015, 24<sup>th</sup> September, 2015, 19<sup>th</sup> July, 2016 and 21<sup>st</sup> July, 2016. It is further submitted that a demand promissory note was issued by the Corporate Debtor on 19<sup>th</sup> September, 2015, again on 19<sup>th</sup> September, 2015, 24<sup>th</sup> September, 2015, 19<sup>th</sup> July, 2016 and 21<sup>st</sup> July, 2016. All the above mentioned documents have been enclosed and marked as Annexure-C.

4. It is submitted that the total amount claimed to be in default is Rs.4,38,37,000/- along with interest @ 12% P.A. till the date of repayment. It is further submitted that the debt fell due on 1<sup>st</sup> March, 2019, which is the date of default. The Financial Creditor has annexed with the petition a working sheet in tabular form Annexure-D, which would indicate the date of default.

5. It is further submitted that the Financial Creditor has enclosed all the related documents of disbursement etc. with the petition. The Financial Creditor has further enclosed with the petition a demand notice dated 30<sup>th</sup> October, 2019 recalling the said loan demanding therein Rs.4,38,37,000/- along with the interest @ 12 P.A. (Annexure-G). The Financial Creditor has further annexed the Bank statement of Uco Bank from 1<sup>st</sup> September, 2015 to 20<sup>th</sup> June, 2020 evidencing the payment and non-receipt of total financial due from the Corporate Debtor (Annexure-H).

6. The Financial Creditor had passed a resolution in its board meeting of the Board of Directors held on 3<sup>rd</sup> September, 2015 at its registered office whereby the request letter of the Corporate Debtor to grant a loan of Rs.5,51,00,000/- for a period of two years with interest @ 12% p.a. whereby the company had agreed to give an unsecured loan of Rs.5,51,00,000/- to the Corporate Debtor ( Board resolution is annexed with this petition).

7. On being served with the notice of the Court, the Corporate Debtor has filed its reply affidavit.

8. **In reply** affidavit filed by one of the Directors of the Corporate Debtor,

it is submitted that the loan availed by the corporate debtor was deployed and or invested in its business activities and due to economic recession and losses in investment made, the said loan could not be repaid.

9. It is further submitted that the condition of economy has deteriorated for past several years, which has halted and hampered in the progress of the business of the corporate debtor and companies in which Corporate Debtor had made investments, unfortunately the Corporate Debtor has not been able to meet its commitments and liabilities. This is on record that Corporate Debtor has repaid loan worth Rs.1,12,63,000/- which shows that there was intention to pay, however because of factors beyond its control, it could not meet with all its liabilities.

10. It is submitted that the Corporate Debtor is not the willful defaulter but victim of the circumstances and as such denied the allegation of non-payment.

11. It is submitted by the Ld. Counsel for the Corporate Debtor that there has not been any intentional default on the part of Corporate Debtor and alleged payment could not be made by reason of deterioration of the business of the Corporate Debtor.

12. In the Rejoinder filed by one of the Directors of the Financial Creditors, duly authorized by the Board Resolution dated 21<sup>st</sup> August, 2020, the Financial Creditor submitted that the Corporate Debtor has failed to serve the interest in terms of the sanction letter. It is submitted in the Rejoinder that the loan of Rs.5,51,00,000/- sanctioned by the Financial Creditor has become Rs.5,68,22,360/- as on 1<sup>st</sup> March, 2019 after the interest @ 12% p.a accrued on the said amount. It is submitted that by letter dated 30<sup>th</sup> August,2018, on the request of the Corporate Debtor, the Financial Creditor had waived the interest on loan on the condition that the Principal amount would be paid within six months from August 30, 2018 but since then the Corporate Debtor has paid only a sum of Rs.1,12,63,000/- thereby leaving the balance of Rs.4,38,37,000/- along with interest @ 12% p.a till the date of repayment.

13. It is submitted that in paragraph 1 to 7 of the reply, the Corporate Debtor has in a way expressed that they are involved in circumstances due to economic recession and therefore, they could not repay the amount with interest. It is submitted by the Financial Creditor that since the Corporate Debtor has admitted its inability to pay the outstanding financial debt, the order of CIRP may be passed against the Corporate Debtor.

14. The Financial Creditor has proposed the name of **Mr. Sudipta Ghosh**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00484/2017-18/10872**, who has consented vide his affidavit and Form-2, and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

15. During the Course of arguments, the Ld. Counsel for the Financial Creditor submitted that the said loan was disbursed in four tranches. First tranche of Rs.1,96,00,000/- on 19<sup>th</sup> September, 2015, Second of Rs.1,15,00,000/- on 24<sup>th</sup> September, 2015 , Third of Rs.1,30,00,000/- on July 19,2016 and last one of Rs.1,10,00,000/- on July 21, 2016. It is submitted that the Corporate Debtor had issued Five Demand Promissory Notes on different dates which are annexed as (Annexure-C to the petition ) and the tabular statement of amount due as, annexed with the petition shows a balance outstanding of Rs.5,68,22,360/- It is submitted that the financial information was recorded under form C with the National E-Governance Services Limited. The Financial Creditor had raised a demand of repayment of the loan amount vide its letter dated October 30, 2019 (Annexure-G), but the Corporate Debtor has made some payment in four tranches which in aggregate is Rs.1,12,63,000/-. The last payment was made by the Corporate Debtor on 29<sup>th</sup> March, 2019. It is submitted that the Financial Creditor had agreed to waive the interest but till date the Corporate Debtor could not discharge its liability in full. Therefore, now a sum of Rs.4,38,37,000/- is due

---

and payable with interest from 1<sup>st</sup> March, 2019 @ 12% p.a. till repayment. It is submitted that the debt fell due on 1<sup>st</sup> March, 2019. It is submitted by the Ld. Counsel for the Financial Creditor that since the Corporate Debtor has admitted its claim and expressed its inability to pay financial debt due and outstanding for the reasons recorded therein in its reply, the petition may be admitted.

16. The petition is otherwise complete in all respects.

17. In view of the aforesaid pleadings of the parties, we consider it to be a fit case for admission of the petition, we, therefore, pass the following orders:-

### **O R D E R S**

- 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 is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 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 rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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 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.
- ix) **Mr. Sudipta Ghosh, IRP** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00484/2017-18/10872**, Email [sudipta.ghosh08@yahoo.com](mailto:sudipta.ghosh08@yahoo.com), is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) 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.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs 5,00,000/- (Rupees Five Lakhs Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the

jurisdictional Registrar of Companies by Speed Post as well as through email.

xiii) List the matter on 01/07/2022 for the filing of the progress report.

xiv) 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 (Technical)**

**( Rohit Kapoor)**  
**Member (Judicial)**

Order signed on, this 10<sup>th</sup> day of May, 2022

Pj