

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No. 117/CTB/2019

**CORAM: 1. Ms. Sucharitha R. (J)
2. Shri Satya Ranjan Prasad (T)**

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:

M/s S.P.M. Leasing & Finance Pvt. Ltd., a Private Limited Company incorporated under the Companies Act, 1956 having its Registered Office situated at 16A Shakespeare Saraniunitiind, 2nd Floor, PS Park Street, Kolkata, W.B. – 700 071.

... .. **Applicant/ Financial Creditor**

-Versus-

In the Matter of:

M/s Shubham Industries Ltd., a Private Limited Company incorporated under the Companies Act, 1956 having its Registered Office situated at C/o Purna Ch Dasadhikari Tapundia Remu Jasuli, Baleshwar, Orissa – 756 081.

... .. **Respondent/ Corporate Debtor**

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Counsels appeared:

1. Arani Guha]
2. Madhuri Panda] For the Petitioner.

Date of pronouncement of Order: 14th day of November, 2019.

ORDER

Per Ms. Sucharitha R., Member (J):

1. This application is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (For brevity IBC, 2016) by M/s S.P.M. Leasing & Finance Pvt. Ltd./Financial Creditor is represented by Mr. Suresh Kumar Saraogi, Director, as per Board Resolution dated 03.05.2019 against the Corporate Debtor – M/s Shubham Industries Ltd. to start Corporate Insolvency Resolution Process as the Corporate Debtor has committed default in paying financial debt of Rs. 2,33,03,000/- (Two Crore Thirty-Three Lakh & Three Thousand) as on 1st April of 2019.
2. The applicant submits that based on the loan agreement dated 24.04.1997. The applicant sanctioned sum of Rs. five crores to the

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Corporate Debtor, however, the applicant disbursed only two crores to the Corporate Debtor. The Corporate Debtor availed loan to the tune of Rs. two crores. The loans amount carries interest at the rate of 9 per cent per compounded annual as stated in Article 2 of the loan agreement. Article 5 of the loan agreement states that loan for the period of 12 years. Hence, as per this agreement the loan ought to be repaid by 2009. Petitioner has also filed Confirmation of Balance executed by the Corporate Debtor dated 1st April, 2019.

3. In the reply, the respondents/Corporate Debtor accept of the loan agreement. The Corporate Debtor further states that in Paragraph No. 7. The default is only for six months. The Corporate Debtor further states that the calculation by Financial Creditor is not acceptable. At Paragraph No. 10 of the reply submits that the amount is due and payable. Since, the Corporate Debtor is in financial crisis, they are unable to repay the same.
4. We have gone through the record and pleadings filed in this application. The applicant has established the “debt” and the “default” on the part of the Corporate Debtor. Hence, in view of the above we are inclined to ADMIT this application.
5. The applicant/Financial Creditor has suggested the name of Mr. Anil Kumar Saraf residence of M/s Saraf & Associates, Saha Court, 8 Ganesh Chandra Avenue, 3rd Floor, Room No. 12, Kolkata, West Bengal

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,700 013 having Registration No. IBBI/IPA-001/IP-P00340/2017-18/10611 and Email Id. anilsaraf.ip@gmail.com. There is nothing on record to show that any disciplinary proceeding is pending against the proposed IRP. This application is defect free. Hence, this application is ADMITTED by following Order.

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 **M/s S.P.M. Leasing & Finance Pvt. Ltd.** is hereby admitted.
- ii) We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the Insolvency & Bankruptcy Code, 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:

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- 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 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.

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- 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.
- ix) Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made.
- x) **Mr. Anil Kumar Saraf** residence of M/s Saraf & Associates, Saha Court, 8 Ganesh Chandra Avenue, 3rd Floor, Room No. 12, Kolkata, West Bengal ,700 013 having Registration No. IBBI/IPA-001/IP-P00340/2017-18/10611 and Email Id. anilsaraf.ip@gmail.com is appointed as Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a Resolution Plan.
- xi) The 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

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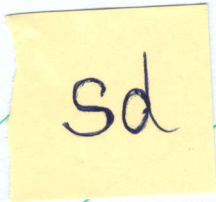
Applicant within **105 days** from the insolvency commencement date.
The Interim Resolution Professional is directed to produce **Form - 2** and written communication within **one week** from the date of the receipt of the Order.

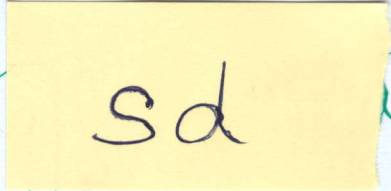
- xii) Registry is hereby directed under Section 7 (7) of the Insolvency & Bankruptcy Code, 2016 to communicate the Order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

Interim Resolution Professional to file **1st Progress Report** on **18.12.2019**.

List the matter on **18.12.2019**.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


Shri Satya Ranjan Prasad
Member (T)


Ms. Sucharitha R.
Member (J)

Signed on this, the 14th day of November, 2019.

Santosh_P.S.