

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1331/KB/2018

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

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:

Union Bank of India, a body corporate constituted under the Provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, having its Head Office at 239, Vidhan Bhawan Marg, Mumbai-400021 and carrying on business through its different branches including its branch office at Overseas Branch, 9, India Exchange Place, Police Station-Hare Street, Kolkata-700 001, West Bengal, and Assets Recovery Branch, 15, India Exchange Place, Kolkata - 700001;

... Petitioner (Financial Creditor)

-Versus-

5d

IN THE MATTER OF:

M/s Enfields Gems & Jewellery Ltd., a Private Sector Company and a body corporate within the meaning of the Companies Act, 1956, having its Registered Office at 4/1A, Jogmohan Mullick Lane, Police Station - Posta, Kolkata - 700007;

... Respondent (Corporate Debtor)

Counsel on Record:

- | | | |
|--|---|----------------------------|
| 1. Mr. Ramesh Chandra Prusti, Advocate |] | |
| 2. Ms. Manini Kabi, Advocate |] | For the Financial Creditor |
| 3. Mr. Pranab Chatterjee, Advocate |] | |

Order pronounced on: 23rd April, 2019.

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code, 2016) by the Union Bank Of India/Financial Creditor for initiating Corporate Insolvency Resolution Process (in short, CIRP) against the Respondent/Corporate Debtor, M/s Enfield Gems & Jewellery Ltd. alleging that the Corporate Debtor defaulted in repaying the loan availed by it from the Financial Creditor and that the amount claimed to be in default including interest

as on 17.09.2018 is **Rs. 53,21,31,671/- (Rupees Fifty Three Crores Twenty One Lakhs Thirty One Thousand Six Hundred Seventy One only)** in terms of the aggregate loan availed under Sanction Letters dated 29.09.2008, 18.06.2011 and 06.09.2011, and has therefore, committed default and so, the Financial Creditor has filed this application.

2. Brief facts for the consideration of the application are as follows:-

- a) The Financial Creditor, vide Sanction Letter dated 29.09.2008 has granted various credit facilities amounting to Rs. 25,00,00,000/- (Rupees Twenty Five Crores only) to the Corporate Debtor, a copy of the Sanction Letter has been annexed with the petition and marked as **Annexure "D"**. The aforesaid credit facilities had been renewed and sanctioned from time to time at the request of the Corporate Debtor. Thereafter, the Financial Creditor granted credit facilities amounting to Rs. 35,00,00,000/- (Rupees Thirty Five Crores only) vide Sanction Letter dated 18.06.2011, and further granted Adhoc FDBP of Rs. 5,00,00,000/- (Rupees Five Crores only) for ninety days in addition to the existing financial and/or credit facilities vide Sanction Letter dated 06.09.2011 to the Corporate Debtor. Copies of the said Sanction Letters dated 18.06.2011 and 06.09.2011 have been annexed with the petition and marked as **Annexure "D-1"** and **Annexure "D-2"**, respectively.



- b) The Corporate Debtor executed various loan and banking documents in favour of the Financial Creditor and deposited the Title Deed for creation of mortgage towards repayment of the loan of the Corporate Debtor and charge was registered with the Registrar of Companies, West Bengal. The copy of the Particulars of Charges filed with the ROC are annexed with the petition and marked as **Annexure - "C"**. The Corporate Debtor had availed the aforesaid credit facilities through four accounts vide. 495607040000009, 495607040000010, 495607040000011 and 495609030000132 which are maintained with the Financial Creditor's Overseas Branch, Kolkata.
- c) The Financial Creditor submits that the Corporate Debtor failed to make payments for the amount due and payable by the Corporate Debtor to the Financial Creditor on various dates and in that circumstances the Financial Creditor was constrained to classify the accounts of the Corporate Debtor as non-performing asset (NPA) on 10.01.2013 as per the Reserve Bank of India guidelines. The Financial Creditor issued a recall notice dated 22.04.2013 to the Corporate Debtor, a copy of which has been annexed with the petition and marked as **Annexure "G"**. The Corporate Debtor made a payment of Rs. 60,00,000/- (Rupees Sixty Lakhs only) to the Financial Creditor, pursuant to the recall notice dated 22.04.2013 and thereafter the Corporate Debtor has failed to pay the balance amount. The Financial Creditor

sent a demand notice dated 27.05.2013 under Section 13 (2) of the SARFAESI Act, 2002, to the Corporate Debtor for repaying the amount due to the Bank/Financial Creditor, a copy which has been annexed with the petition and marked as **Annexure "H"**. Subsequently, several communications were exchanged between the parties in spite of which the Corporate Debtor failed to make the payments.

- d) Thereafter, the Financial Creditor made an Original Application being O.A. No. 339 of 2014 before the Debts Recovery Tribunal-I, Kolkata for recovering the outstanding dues and the same is pending for final adjudication. The Financial Creditor states that despite several attempts by the Financial Creditor, the Corporate Debtor has neglected to pay its dues to the Financial Creditor and hence, the Financial Creditor has filed this application under Section 7 of the Code and prays for passing an order for admission of the application.

3. The Financial Creditor produced proof of lending loans to the Corporate Debtor and the following are the documents relevant for the consideration of the case in hand:-

- (a) Copy of the Sanction Letters dated 29.09.2008, 18.06.2011 and 06.09.2011 stating details of the various credit facilities sanctioned by the Financial Creditor to the Corporate Debtor, marked and annexed as "**Annexure D**", "**Annexure D-1**" and "**Annexure D-2**", respectively.

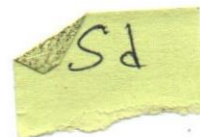
- (b) Copy of the Index of Charges dated 28.08.2018, registered at the Registrar of Companies, from the MCA portal, marked and annexed as "**Annexure B**".
- (c) Copy of the Recall notice dated 22.04.2013 issued by the Financial Creditor, marked as "**Annexure G**".
- (d) Copy of the demand notice dated 27.05.2013 under Section 13 (2) of the SARFAESI Act, 2002, annexed and marked as "**Annexure H**".
- (e) Copy of the Original Application filed before the DRT-I, Kolkata having reference No. O.A. 339 of 2014, annexed and marked as "**Annexure Q**".
- (f) Copy of the Statement of Account of the Corporate Debtor in accordance with the Banker's Books Evidence Act, 1891 (as amended), marked and annexed as "**Annexure S**".
- (g) CIBIL Report of the Corporate Debtor, marked and annexed as "**Annexure U**".

4. The applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, and produced Form 2 and written communication from **Mr. Sanjai Kumar Gupta**, with address at 153A, A.P.C. Road, Kolkata – 700 006 with **Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045** with e-mail id : **casanjaigupta@gmail.com**.

5. Notice of admission was served upon the Corporate Debtor. The Financial Creditor filed an affidavit of service proving publication of notice in the newspapers. So also, notice was served by way of e-mail. So, delivery of notice to the Corporate Debtor is declared sufficient. Since nobody on the side of the Corporate Debtor appeared, thereby, the Corporate Debtor was called absent and declared *ex-parte* vide order dated 06.03.2019.

6. Heard the Ld. Counsel appearing for the Financial Creditor and perused the records.

7. This is an application filed by the Financial Creditor for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor alleging that the Corporate Debtor committed default in repayment of the loan amount to the tune of **Rs. 53,21,31,671/- (Rupees Fifty Three Crores Twenty One Lakhs Thirty One Thousand Six Hundred Seventy One only)** including interest as on 17.09.2018 availed by it as per the three Sanction Letters dated 29.09.2008, 18.06.2011 and 06.09.2011. The copies of the Sanction Letters stating details of the various credit facilities sanctioned by the Financial Creditor to the Corporate Debtor are annexed with the application and marked as "**Annexure D**", "**Annexure D-1**" and "**Annexure D-2**". According to the Ld. Counsel for the Financial Creditor, the requirement to be meted out to file an application of this nature has been complied with by the applicant and since the Corporate Debtor did not repay the debt, the application is liable to be allowed. It is contended that despite loan recall



notice dated 22.04.2013, the Corporate Debtor failed to repay the loan amount and, thereafter, the applicant sent a demand notice dated 27.05.2013 to the Corporate Debtor under Section 13 (2) of the SARFAESI Act, 2002, for repaying the amount due to the Bank/Financial Creditor. The applicant also filed an application before the Ld. Debts Recovery Tribunal-I, Kolkata for recovering the dues from the Corporate Debtor, in spite of which the Corporate Debtor has failed to clear the outstanding dues and hence this application has been filed against the Corporate Debtor under Section 7 of the Code.

8. The Ld. Counsel on behalf of the Financial Creditor submits that the account of the Corporate Debtor was declared as NPA on 10.01.2013. Thereafter, a loan recall notice dated 22.04.2013 and notice under SARFAESI Act, 2002 dated 27.05.2013 were issued by the financial creditor to the Corporate Debtor. However, the Corporate Debtor failed to pay the loan amount. Subsequently, the Financial Creditor filed an Original Application being O.A. No. 339 of 2014 before the Ld. Debts Recovery Tribunal - I, Kolkata in the year 2014. But the Corporate Debtor did not pay the debt and so the Financial Creditor has filed this application under Section 7 of the IBC to initiate CIRP against Corporate Debtor.

9. It is submitted on behalf of the Financial Creditor that the audited Balance Sheet of the Corporate Debtor as at page 283 shows admission of amount due to the Financial Creditor. Truly, the Balance Sheet referred to states amount due to the Applicant Bank but the said Balance Sheet is for the financial year ending 31.03.2013. The Ld. Counsel

for the Financial Creditor submitted that the period of limitation was saved on the basis of a balance confirmation statement as annexed with the application at pages 67-68. However, the said statement appears to be dated 06.09.2011. It is evident that the debt became due on 10.01.2013 (date of NPA) and the Original Application being O.A. 339 of 2014 was filed before the Ld. DRT for recovering the dues from the Corporate Debtor is seen filed in 2014. So, it appears to me that the period of limitation is saved here in the case in hand.

10. The Ld. Counsel for the Financial Creditor also submitted that a copy of the statement of accounts is produced to prove that the above said amount is due and the document is marked as "**Annexure "S"**". CIBIL Report of the Corporate Debtor to prove default is also seen produced on the side of the Financial Creditor, marked and annexed as "**Annexure "U"**" which adds strength to the contention on the side of the Corporate Debtor that debt is due. The Corporate Debtor in the instant case did not turn up to contest the petition. The applicant has produced all the required documents. The existence of default also stands proved. The applicant here, in this case, succeeds in proving that it has complied with all the requirements to be meted out under Section 7(3) of the I & B Code, 2016. Therefore, the application is liable to be allowed.

11. In the result, this application is admitted upon the following orders:-

ORDER

(i) This application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Enfields Gems & Jewellery Ltd.** is hereby admitted.

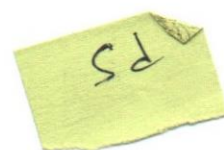
(ii) I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

(iii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency and Bankruptcy Code, 2016. The Interim Resolution Professional 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 the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iv) Moratorium under Section 14 of the Insolvency and 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 Securitisation 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 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 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 IBC, 2016 may be made.

(x) **Mr. Sanjai Kumar Gupta**, with address at 153A, A.P.C. Road, Kolkata - 700 006 with **Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045** with e-mail id : casanjaigupta@gmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and constituting Committee of Creditors for evolving a resolution plan.

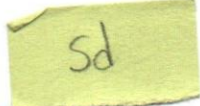
xi) The Interim Resolution professional should convene a meeting of the committee of Creditors and submit the resolution passed by the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.

xii) The registry is hereby directed under Section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the interim resolution Professional by Speed Post as well as through e-mail.



List the matter on **03/06/2019** for the filing of the progress report.

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


~~(Jin K.R)~~
Member (J)

Signed on this 23rd day of April, 2019.

/vc