

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**CORAM: Shri Madan B. Gosavi,
Member (Judicial)
&**

**Shri Virendra Kumar Gupta,
Member(Technical)**

CP(IB)No.108/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

United Bank of India , a body Corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at 11, Hemanta Basu Sarani, Kolkata-700001 and also having its numerous branches including one at 6, Netaji Subhas Road, Kolkata-700040 commonly known as United Bank of India, Tollygunge Team Depot within the jurisdiction as aforesaid..

.....Financial Creditor

In the Matter of:

M/s Purple Advertising Services Private Limited, having corporate identity number U74300wbWB2008PTC127335, a company incorporated





under the Companies Act, 1956 and having its registered office at 45, Shakespeare Sarani, Second Floor, Kolkata, within the aforesaid jurisdiction.

..... Corporate Debtor

Counsels appeared:

For Financial Creditor

1. Mr. S. Pal Choudhuri, Advocate

For Corporate Debtor

1. Mr. Rajarshi Dutta, Advocate
2. Ms. Madhurima Das, Advocate

Date of pronouncement of order: 29th October, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. **United Bank of India** (Financial Creditor) filed this application under Section 9 of Insolvency and Bankruptcy Code, 2016 against **M/s Purple Advertising Services Private Limited** (Corporate Debtor) to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying financial debt of Rs. 26,26,90,721/- (Rupees Twenty-Six Crore Twenty-Six Lakh Ninety Thousand Seven Hundred and Twenty-One Only).
2. The following facts are not in dispute.

Sd

Sd

- 2.1. On 07.01.2011, the Bank granted and disbursed Corporate Debtor loan of Rs. 10,45,00,000/- (Rupees Ten Crore Forty-Five Lakh Only). The Corporate Debtor executed loan agreement and other documents having avail the loan term of repayment was extended from time to time. The Bank also increased the credit facilities of the Corporate Debtor. However, loan of the Corporate Debtor classified as NPA on 30.06.2014. On 20.02.2016, the Bank served Corporate Debtor notice under Section 13(2) of SURFAESI Act, 2002 and called upon the Corporate Debtor to clear outstanding. It is also not in dispute that on 02.08.2016 and 16.09.2016, the Corporate Debtor gave OTS proposal to the Bank but the Bank did not consider the same.
- 2.2. According to the Bank, in spite of repeated demand, the Corporate Debtor committed default in paying this loan, this application is file to start CIRP of the Corporate Debtor.
- 2.3. Financial Creditor suggested name of on Mr. Shyam Kumar Bhattacharjee, of 27/1 B.T. Road, Green View Apartment, Block-I, Flat, 001 Kamarhati, Kolkata-58 having registration no. IBBI/IPA-003/IP-N00092/2017-2018/10892, contact no. 8240740353, email id. shy_bhatta1990@yahoo.co.in for appointment as the Interim Resolution Professional (IRP). It is nothing on record to show that any disciplinary proceeding is pending as against the IRP.
3. The Corporate Debtor is served with the notice of this application. One Mr. Pritimoy Chakraborty, director of the Corporate Debtor appeared on behalf of the Corporate Debtor and filed affidavit-in-reply. We perused the affidavit-in-reply. We find that the Corporate Debtor raised the defense that it is time bar claim. In para (p) of the affidavit-in-reply, the Corporate Debtor categorically stated that it gave number of letters from 19.01.2016 to 18.12.2016 requesting the Bank

Sd

Sd

to restructure the loan or to accept their OTS proposal. But bank did not cooperate. In short, in affidavit-in-reply, the Corporate Debtor only raised point of limitation.

4. We heard Ld. Counsel for the Financial Creditor, Mr. S. Pal Choudhuri and Ld. Counsel for the Corporate Debtor, Mr. Rajarshi Dutta. We perused the record.

5. Ld. Counsel for the Corporate Debtor submitted that Bank declared loan account as NPA on 30.06.2014. This proceeding is filed on 16.01.2019. It is filed beyond period of limitation. Hence, not maintainable. Ld. Counsel further submitted that the letters written by the Corporate Debtor for OTS proposal to the Bank cannot be considered to be acknowledgment of the debt within meaning of Section 18 of Law of Limitation. He relied on ruling of Apex Court in the case of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited (Civil Appeal No. 4952 of 2019) and Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. (Civil Appeal No. 7673 of 2019).

6. In this case, there is no dispute that the debt of more than Rs. 26 Crore is due and payable by the Corporate Debtor and the Corporate Debtor committed default in paying the same. The Corporate Debtor raised only defense that it is time barred debt.

7. We have considered Ruling of Apex Court in case of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited (Civil Appeal No. 4952 of 2019) and Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. (Civil Appeal No. 7673 of 2019) relied by the Ld. Counsel for the Corporate Debtor. Apex Court made clear that for filing of application under Section 7 or 9 of I & B Code, 2016 and for purpose of completing period of limitation, Article 137 of the Law of Limitation will be applicable and not Article 62 of the Law of Limitation. In this case, the Corporate Debtor committed default in paying debt and their

sd

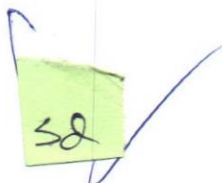
SQ

loan account was classified NPA on 30.06.2014. So right to sue accrued on to the Bank in year 2014. This application is filed in 2019. However, it is not in dispute that the Corporate Debtor itself gave number of letters to the Bank requesting therein either to restructure the loan account or consider OTS proposal. Those letters dated 19.01.2016, 19.02.2016 and 18.12.2016 are on record.

8. Ld. Counsel for the Corporate Debtor submitted that letters cannot be said as acknowledgment within meaning of Section 18 of Law of Limitation. However, we are not inclined to accept these submissions of the Ld. Counsel for the Corporate Debtor. Upon perusal of above letters by the Corporate Debtor, it is seen that Corporate Debtor categorically stated that **amount of Rs. 11.10 Crore as final payment will be made against clearing the account and obtaining back the entire mortgaged property with UBI** (Letter to the Bank by the Corporate Debtor dated 18.12.2016).

9. In our considered opinion, this is the admission and acknowledgment of debt by the Corporate Debtor within meaning of Section 18, Explanation (a) of Law of Limitation. Moreover, we are not considering recovery proceeding but we have to see whether the Corporate Debtor's insolvency can be resolved because they committed default in paying the debt. Admittedly the Corporate Debtor did not pay the debt due even till filing of this application. There are number of letters written by the Corporate Debtor admitting the debt as above. Considering evidence on record, we hold that it is not time barred claim.

10. The Financial Creditor suggested name of RP for the appointment of Interim Resolution Professional against whom no disciplinary proceeding appears to be pending. This application is defect free, hence we admit the same by following orders: -



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 Purple Advertising Services Pvt. Ltd.** 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 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);

sq

sq

- 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.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) Mr. Shyam Kumar Bhattacharjee, of 27/1 B.T. Road, Green View Apartment, Block-I, Flat, 001 Kamarhati, Kolkata-58 having registration no. IBBI/IPA-003/IP-N00092/2017-2018/10892, contact no. 8240740353, email id. shy_bhatta1990@yahoo.co.in, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

sq

sd

xi) The Financial Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

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.

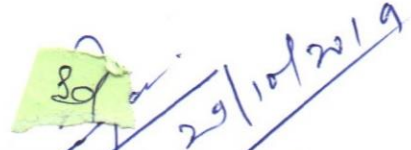
xiii) Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **19.12.2019** 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.

 29/10/19

(Virendra Kumar Gupta)
Member(T)

 29/10/2019

(Madan.B. Gosavi)
Member(J)

Signed on this, the 29th day of October, 2019.

Deeksha(steno)