IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) No.1147/KB/2020

In the matter of:

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.

In the matter of:

Janpragti Commodities Private Limited [CIN:U51109WB1995PTC068406] having its registered office at 94/1 Purna Chandra Mitra Lane, Charu Market, Kolkata – 700033, West Bengal.

... Financial Creditor/Applicant

Versus

In the matter of:

Radission Resources Private Limited [CIN: U27100JH2013PTC001781] having its registered office at F-1, Asha Apartment Kalpanapuri, Adityapur Jamshedpur Seraikela 831013, Jharkhand.

... Corporate Debtor

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing):

For the Financial Creditor	:	Mr. Rishav Banerjee, Advocate
		Mr. Sanjib Dawn, Advocate
For the Corporate Debtor	:	Ms. Urmila Chakraborty, Advocate
		Ms. Debaleena Ganguly, Advocate
		Ms. B. Gayatri, Advocate

Date of hearing: 03 January 2022

Order pronounced on: 27 January 2022

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.

2. This is a Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Janpragti Commodities Private Limited (**'Financial Creditor'**), a Company incorporated under the Companies Act, 1956, having its registered office at 94/1 Purna Chandra Mitra Lane, Charu Market, Kolkata – 700033, West Bengal, by Mr. Ramsanker Bisal, Director, duly authorised *vide* Board Resolution dated 21 January 2020 for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) against Radission Resources Private Limited (**'Corporate Debtor'**), a Company incorporated under the Companies Act, 2013 having its registered office at F-1, Asha Apartment Kalpanapuri, Adityapur Jamshedpur Seraikela 831013, Jharkhand.

The case of the Financial Creditor

3. The present Petition was filed on 27 October 2020 before this Adjudicating Authority on the ground that long term unseured loan (**'Loan'**) for a sum of Rs.30,00,000/- (Rupees Thirty Lakh only), carrying interest @ 12.%, repayable on demand at the end of three years from the date of loan was advanced by the Financial Creditor to the Corporate Debtor. The Loan was advanced in two instalments i.e., on 10 August, 2016 and 16 August 2016. The total amount to be claimed in default by the Financial Creditor is Rs.42,33,863/- (Rupees Forty Two Lakh Thirty Three Thousand Eight Hundred Sixty Three only) including interest as on 20 January, 2020. The date of default is stated to be 22 August, 2019.

4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is ₹1,00,000/- (Rupees One Lakh only) with paid-up capital as ₹1,00,000/- (Rupees One Lakh only).

5. Mr. Rishav Banerjee, Ld. Counsel, appearing on behalf of the Financial Creditor submits that:

   (a) In August, 2016, the Corporate Debtor had approached the Financial Creditor for financial assistance of Rs.30,00,000/- (Rupees Thirty Lakh only), in the form of a long term unsecured loan, along with rate of interest @ 12% per annum, on the grounds that the Corporate Debtor is going through some financial difficulties .

   (b) The aggregate amount was disbursed in two instalments i.e., of Rs.10,00,000/- (Rupees Ten Lakh only) and Rs.20,00,000/- (Rupees Twenty Lakh only) on 10 August, 2016 and 16 August 2016, respectively.

   (c) The Corporate Debtor acknowledged the receipt of the payments *vide* letters dated 10 August, 2016 (RTGS – UTR No.MAHBR52016081002681313)[1] and 16 August 2016 (NEFT – UTR No.MAHBH16229084169)[2]. Promissory Notes were also issued by the Corporate Debtor to the Financial Creditor for the payment of the loan amount on demand at the end of three year, along with rate of interest @ 12% per annum[3]. The Ledger Statement of the Corporate Debtor from 01 April, 2018 to 31 March, 2019 reflects the payment of Rs.30,00,000/- (Rupees Thirty Lakh only) received by the Corporate Debtor[4].

   (d) After the expiry of three years, letter dated 05 March, 2019[5] was sent by the Financial Creditor to the Corporate Debtor informing that the period of three years has come to an end and the repayment of the loan along with interest has fallen due. The total outstanding amount is of Rs.39,16,273/- (Rupees Thirty Nine Lakh Sixteen Thousand Two Hundred Seventy Three only).

---

[1] Page 21 of the Petition
[2] Page 22 of the Petition
[3] Pages 23 & 24 of the Petition.
[4] Annexure – E, Page – 26 of the Petition.
[5] Annexure – G, Page – 27 of the Petition.

(e) On March 28, 2019, the Corporate Debtor replied to the letter dated 05 March, 2019 by the Financial Creditor, stating that due to certain financial exigencies they are unable to pay at once and they are making every effort to clear the dues immediately. Further, they also acknowledged that a balance outstanding liability principal and interest amount of Rs.39,16,273/- (Rupees Thirty Nine Lakh Sixteen Thousand Two Hundred Seventy Three only) is due and payable.

(f) On different occassions reminder letters were sent to the Corporate Debtor for the repayment of the loan amount along with the interest and assurances were given by the Corporate Debtor for the repayment of the loan.

(g) Accordingly, the amount of default is Rs.42,33,863/- (Rupees Forty Two Lakhs Thirty Three Thousand Eight Hundred Sixty Three only) including interest as on 20 January, 2020.

The case of the Corporate Debtor

6. Ms. Urmila Chakraborty, Ld. Counsel, appearing for the Corporate Debtor submits that:

   (a) The Financial Creditor has failed to provide any record of default as available with an information utility or a credit information company which would substantiate the claim of the Financial Creditor.

   (b) Neither any loans were provided by the Financial Creditor nor there is any existence of the financial debt or default.

   (c) The petition is not maintainable in the eye of law and has not been filed in accordance with the prescribed forms under the Code.

7. The Corporate Debtor has also filed its brief notes of arguments, where the Corporate Debtor has stated that the Financial Creditor was admitted to CIRP by this Adjudicating Authority *vide* order dated 15 July, 2021. Hence, it is disqualified to initiate any CIRP under Section 11(a) of the Code.

Findings and Analysis

8. We have heard the Ld. Counsel appearing on behalf of the parties and perused the records.

9. The Financial Creditor is being represented by the Resolution Professional ("**RP"),** who was appointed as RP of the Financial Creditor *vide* order dated 01 December, 2021 by this Adjudicating Authority**.** The RP has also filed a fresh Vakalatnama with the Adjudicating Authority.

10. On perusal of the records it is evident that the amounts were disbursed by the Financial Creditor because the same has been acknowledged by the Corporate Debtor in their letters dated 10 August, 2016 and 16 August, 2016. The bank statement of the Financial Creditor from 01 August, 2016 to 31 March, 2017[6] also reflects the transactions.

11. Further, at various instances there are communications made by the Corporate Debtor admitting the unsecured long term loan of Rs.30,00,000/- (Rupees Thirty Lakh only), along with rate of interest @ 12% per annum, repayable on demand, was taken from the Financial Creditor and they have categorically mentioned that because of financial difficulties they are unable to pay the debt.

12. In light of the above facts and circumstances, it is, accordingly, hereby ordered as follows:-

    (a) The application bearing CP (IB) No. 1147/KB/2020 filed by Janpragti Commodities Private Limited, the Financial Creditor, under section 7of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Radission Resources Private Limited, the Corporate Debtor, is **admitted**.

    (b) There shall be a moratorium under section 14 of the IBC.

    (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the

[6] Page 40 of the Petition

resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) Mr. Neeraj Jain, registration number IBBI/IPA-001/IP-P01067/2017-2018/11758, email: reachneerajjain@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

(f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

(g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

(j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

13. **CP (IB) No. 1147/KB/2020** to come up on **21.04.2022** for filing the periodical report.

14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2022.01.27 17:34:53 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
27.01.2022

SA, LRA