

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.78/KB/2019

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:

United Bank of India, carrying on its business from its Branch Office at Singur Branch, Ashutosh Pada Sarani, Station Road, Singur, Hooghly - 712 409

.....Financial Creditor

And

In the Matter of:

Mondal and Manna Cold Store Pvt. Ltd., having its Registered Office at Village Ratanpur, P.O. Singur, District Hooghly - 712 409

..... Corporate Debtor

Order Delivered on 23rd September 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Kumar Gupta, Member (T)

For the Financial Creditor : 1. Mr. Debasish Chakraborti, Advocate
2. Ms. Trisha Saha, Advocate

ORDER

Virendra Kumar Gupta, Member (Technical)

This petition has been filed by the financial creditor, viz., United Bank of India to initiate corporate insolvency resolution process against the corporate debtor, viz., Mondal and Manna Cold Store Pvt. Ltd. The amount of default has been stated as Rs.7,06,69,767.95 as on 31/12/2018.

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2. The facts, in brief, are that the corporate debtor was sanctioned term loan and working capital term loan facility by the financial creditor firstly on 2011 which were subsequently modified from time to time. Respective agreements were executed. The financial creditor declared the account as NPA on 30/9/2013. A suit for recovery was filed with Debts Recovery Tribunal, Kolkata on 15/2/2016.

3. Ld. Counsel appearing on behalf of the financial creditor narrated these facts and drew our attention to relevant pages of the Paper Book to substantiate its claim. He pleaded that there was a debt due and payable by the corporate debtor in respect of which default had occurred and the same was not barred by limitation, hence, this petition was liable to be admitted. Ld. Counsel further submitted that the bank had also proposed the name of the IRP Smt. Uma Kothari, Chartered Accountant who is qualified to work and there were no disciplinary proceedings pending against her. He further contended that the requisite consent of proposed IRP was also annexed with the application.

4. We have considered submissions made by Ld. Counsel for the financial creditor and have also perused the materials on record.

5. The facts of disbursement of loan from time to time and classification of accounts of the corporate debtor as NPA on 30/9/2013 are not in dispute. The financial creditor has also filed original application with Debts Recovery Tribunal, Kolkata on 15/2/2016 which is well within the limitation period from the date of account becoming NPA and consequently, the amount become payable. It is settled proposition that limitation gets arrested from the date of filing of application with any statutory authority under Article 137 of Limitation Act, 1963. Thus, such debt is not barred by limitation for the purpose of Insolvency & Bankruptcy Code, 2016. The petition filed by the financial creditor is complete in all respects. Accordingly we admit the same and order as under: -

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, Mondal and Manna Cold Store 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);
- 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. Smt. Uma Kotharin having registration No.IBBI/IPA-001/IP-P01041/2017-2018/11714 e mail id caumakothari@gmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
 - xi. The Financial Creditor to pay a sum of Rs.3,00,000/- (Rupees Three lakh only) to IRP as advance fee 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.
6. List the matter on 18/11/2019 for the filing of the progress report.
7. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Madan B Gosavi)
Member (J)


(Virendra Kumar Gupta)
Member (T)

Signed on 23rd September 2019