In the National Company Law Tribunal
Kolkata Bench
Kolkata

CP(IB)No.992/KB/2018

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 Techmech Realtors Pvt. Ltd., having incorporated under the provisions of the Companies Act, 1956 having its registered office at Room No. 53, P-36, India Exchange Place Extension, Kolkata-700001, West Bengal.

........Financial Creditor

In the Matter of:

M/s Omega Transmission Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 60+61/1 Jaya Bibi Road, Ghusuri, Howrah-711107, West Bengal within the jurisdiction of this Tribunal.

.... Corporate Debtor

CORAM: Shri M.B. Gosavi, Member (Judicial)

Counsels appeared:

For Financial Creditor

1. Mr. Bidyut Kumar Banerjee, Advocate
2. Mr. Delawar Khan, Advocate

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For Corporate Debtor

1. Mr. Anirban Raj, Advocate
2. Mr. Pratik Garai, Advocate
3. Mr. R.S. Tiwari, Advocate
4. Mr. A Sikdar, Advocate

Date of pronouncement of order: 5th August, 2019.

ORDER

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

1. **M/s Techmech Realtors Pvt. Ltd.** - the Financial Creditor has filed this application under Section 7 of Insolvency and Bankruptcy Code,2016 against **M/s Omega Transmission Pvt. Ltd.** - the 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. 2,43,00,000/- (Rupees Two Crores Forty Three Lakhs Only).

2. The Financial Creditor stated that by loan agreement dated 01.02.2013, they had lent sum of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) to the Corporate Debtor and rate of interest was fixed at 18% per annum. Loan was to be repaid by 14.05.2014. The loan amount was disbursed by various checks. The Corporate Debtor used to repay loan by installment together with interest theron. The Last such payment was made by the Corporate Debtor on 30.05.2017. Thereafter, the Corporate Debtor committed default in paying the debt. On 18.04.2018, the Financial Creditor sent notice to the Corporate Debtor calling upon them to repay

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entire outstanding loan. Second such notice was also sent on 28.05.2018. In spite of receipt of notice, the Corporate Debtor did not pay the debt and thereby committed default. Hence this proceeding is filed.

3. The Financial Creditor suggested name of one Mr. Raj Singhania having registration no. IBBI/IPA-001/IP-P00188/2017-18/10367 for appointment of Interim Resolution Professional (in short "IRP").

4. The Corporate Debtor was served with the notice of this proceeding. They appeared through one of authorised representative, Mr. Subhash Shaw. He filed affidavit-in-reply. In para 9 of the reply, the Corporate Debtor contended that agreement dated 01.02.2013 is not a loan agreement but it is a joint venture agreement with regard to the suplly of electrical cables to L & T Construction Ltd.. It is further contended that the agreement clearly indicates that there is no relationship as a creditor and debtor at all exist in between the applicant therein and them. In fact the applicant and they were the partners in joint venture business. The Financial Creditor has invested the money in that business on the basis of above agreement. They made payment of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only) to the Financial Creditor as and by way their share in joint venture business. Later on L & T Construction Ltd. withdrew the work order.

5. It is further contended that nothing is due and payable by them to the applicanct and by way of debt, much less financial debt as sought to be portraid by the Financial Creditor. This application is not be maintainable. They further contended that they have filed a suit before the Civil Judge (Sr. Division) 2nd Court at Howrah being Money Suit No. 55 of 2018. Since the Court of competent jurisdiction, siezed with above dispute, this proceeding is not maintainable.

6 The Financial Creditor filed rejoinder and reiterated their claim by supplementary affidavit. The Corporate Debtor field on record copy of

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written statement of the Financial Creditor filed in that suit. The Financial Creditor also filed sur-rejoinder thereto.

7. I peruse the record. I heard Ld. Counsel Mr. Bidyut Kumar Banerjee for the Financial Creditor and Ld. Counsel Mr. Anirban Raj for the Corporate Debtor at length. From the pleadings and submissions made at by both Ld. Counsels, the following point arises from a determination. My finding thereto with the reason thereon are as follows:-

(i) Whether amount mentioned in the agreement dated 01.02.2013 is the financial debt within meaning of Section 5(8) of I & B Code, 2016.

8. It is not in dispute that on 01.02.2013, the Financial Creditor and Corporate Debtor entered into the agreement. The terms of agreement reduced in writing. The agreement is on record at Annexure "G" to the Petition. According to the Financial Creditor, it is loan agreement whereas, Corporate Debtor contended that it is the joint venture agreement.

9. I peruse the agreement. It is titled as the "Loan Agreement". Ld. Counsel for the Corporate Debtor submitted that the amount mentioned there in cannot be said to be financial debt because it was investment by the Financial Creditor in the business of supply of electrical cables to L & T Construction Ltd. The Financial Creditor invested the amount in that business at the request of Corporate Debtor, it was joint venture agreement. He pointed out definition of 'financial debt' as appeared in Section 5(8) of I & B Code, 2016 together with definition "Claim" appear in Section 3(6) of I & B Code, 2016. According to him amount was not lent for time value of the money. He further submitted that Corporate Debtor has already filed Money Suit against the Financial Creditor before the Civil Judge (Sr. Division), Howrah as a restrain the Financial Creditor from recovering any amount on the basis of that agreement.

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10. As against this, Ld. Counsel for the Corporate Debtor submitted that plain reading of agreement dated 01.02.2013 on record would reveal that the Financial Creditor gave loan to the Corporate Debtor amounting to Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only). The amount carries interest at the rate of 18% per annum. The Corporate Debtor paid some amount towards interest. Now, they cannot turn around and say that it was not loan agreement. He further submitted that the Corporate Debtor filed suit after this proceeding is filed against them. The suit is filed only to avoid the payment of debt. Civil Court does not have jurisdiction to entertain the suit. He also submitted that when terms of agreement are plain and clear, there is no scope of its any other interpretation. No evidence can be allowed to establish the facts other than the terms of the agreement. He relied on Ruling in case of T.N. Electricity Board Vs. N. Raju Reddiar (AIR 1996 Supreme Court 2025).

11. As pointed out, the agreement dated 01.02.2013 is on record as Annexure "G". Perusal of it clearly indicates that under this agreement, the Financial Creditor had lent the Corporate Debtor sum of money, Rs. 2,50,00,000 (Rupees Two Crore Fifty Lakh Only) on the interest at the rate of 18% per annum. Some of the recitals of that agreement are enough to establish this fact.

> ***"At the request of the Borrower and subject to the terms and conditions set out herein below and mutually agreed between the parties the Lender is agreeable to part finance the Supply Orders by granting a working capital loan of upto a maximum of Rs. 2,50,00,000 (Rupees Two Crore Fifty Lakh Only)."***

As far as interest part is concerned, it is mentioned para 4A as :-

> ***"The Lender will be entitled to a fixed rate of interest of 18% per annum, payable at quarterly intervals on the outstanding loan amount. A quarter shall be a continuous***

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period of 3 months, to be reckoned on the basis of the financial year."

As far as repayment is concerned, it is mentioned at para 6.1 as:-

> ***"The loan drawn by the Borrower under this Agreement will be repaid within 30 days after completion/execution of all the Supply Orders or by 14th May, 2014, whichever is earlier, unless the lender agrees otherwise in writing on a specific request made by the Borrower. It is hereby agreed that "completion/execution of all or any of the Supply Orders" for the purpose of this Agreement shall also include termination of the Supply Orders by the Customer or the Borrower, for any reasons what-so-ever."***

In view of above, it is not necessary to go into on all rentals of the agreement. Plain reading of agreement makes it crystal clear that it is the loan agreemet executed by the Corporate Debtor in favour of the Financial Creditor having received loan of Rs. 2.5 Crores at the rate of interest 18% per annum. Though, Ld. Counsel for the Financial Creditor relied on Supreme Court Ruling and submit that no evidence can be led to contradic terms of this contract, I hold that the terms of above contract are very clear and it is loan agreement.

12. Although Corporate Debtor filed the Suit against the Financial Creditor but that cannot be ground to reject this application. This Adjudicating Authority has jurisdiction because it is proved from the evidence on record that the amount mentioned in the agreement dated 01.02.2013 is the financial debt within the meaning of Section 5(8) of I & B Code, 2016.

13. It is not in dispute that Corporate Debtor did not repay the loan. They committed default.

14. The Financial Creditor suggested name of one Mr. Raj Singhania having registration no. IBBI/IPA-001/IP-P00188/2017-18/10367 residing

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at Central Plaza, 41, B.B. Ganguly Street, 5th Floor, Room No. 5A, Kolkata-700012. No disciplinary proceeding is pending against him. This application is defect free. Hence I admit the Corporate Debtor in Corporate Insolvency Resolution Process 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 Omega Transmission Pvt. Ltd.**, is hereby admitted.

ii) I 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

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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 bespecified 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. Raj Singhania having registration no. IBBI/IPA-001/IP-P00188/2017-18/10367 residing at Central Plaza, 41, B.B. Ganguly Street, 5th Floor, Room No. 5A, Kolkata-700012 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

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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 **18.09.2019** 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.

Sd 5/8/2019

(M.B. Gosavi)
Member (Judicial)

Signed on this, the 5th day of August, 2019.

Deeksha(steno)