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NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI
IB-804/ND/2020

Item no. 532 of 25.03.2021

In the matter of:

Corporation Bank

Financial Creditor (FC)

Vs

DMC Infrastructure Private Limited

Corporate Debtor (CD)

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Judgment delivered on: 15.04.2021

Coram:

ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

Present:

For the applicant : Ms. Ekta Choudhry, Adv.

For the respondent : None.

ORDER

Per: K.K. Vohra, Member (T)

1. Corporation Bank (FC) has filed the application 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 (the Rules) with a prayer to trigger Corporate Insolvency Resolution Process (CIRP) in respect of Respondent Company, DMC Infrastructure Pvt. Ltd, referred to as the Corporate Debtor (CD) being corporate guarantor of two principal borrowers namely, J.B. Gold Private Limited and Roshini Jewellers Private Limited.

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[Signature]
16/4/2021



2. FC is a body corporate constituted under Banking Companies (Acquisition & Transfer of Undertaking) Act, 1980 having its Head Office at Mangla Devi Temple Road Mangalore, Karnataka.

3. DMC Infrastructure Pvt Ltd (CD) (CIN No. U454 00DL 2008 PTC 178327) against whom initiation of CIRP has been prayed for, was incorporated on 19.05.2008 having its registered office at 8356, W. N. 14, Model Basti Bara, Hindu Rao Filmistan Cinema Building, Delhi - 110005, within the territorial jurisdiction of this Bench.

4. It is the case of the FC that CD is a corporate guarantor of two principal borrowers for claim of debt amount due of Rs 22.85 crore as on 10.03.2020 (Roshini Jewellers Pvt Ltd: Rs 11.45 cr and JB Gold Pvt. Ltd: Rs 11.40 cr). Brief facts of the present case are as follow:

a) FC sanctioned Overdraft (OD) facility of Rs 9.00 crore in favour of principal borrower, Roshini Jewellers Pvt Ltd, on 25.06.2013. Thereafter, a guarantee agreement (tripartite agreement) was executed by CD in favour of FC on 27.06.2013 for OD facility to Roshini Jewellers Pvt Ltd (pg 89 of petition).

b) FC sanctioned OD facility of Rs 9.00 crore in favour of another principal borrower, J.B. Gold Pvt Ltd, on the same day i.e., 25.06.2013. Thereafter, a guarantee agreement (tripartite agreement) was executed by CD in favour of FC on 27.06.2013 for OD facility to J.B. Gold Pvt Ltd (pg 110A).

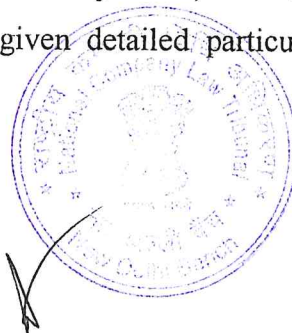
c) Both the principal borrowers have failed to repay the loan amounts sanctioned by FC and the accounts of both the borrowers were declared NPAs on 16.06.2017 (Roshini Jewellers Pvt Ltd) and 30.09.2017 (J.B. Gold Pvt Ltd).

d) FC issued notices under section 13(2) of SARFAESI Act dated 05.09.2017 against Roshini Jewellers Pvt Ltd and dated 09.10.2017 against J.B. Gold Pvt Ltd (pg 194 and 197). FC filed recovery suit before Debt Recovery Tribunal, New Delhi (DRT) in which summons were issued against the said two principal borrowers. Thereafter, FC has filed present application against CD, i.e., the guarantor of both the borrowers.

5. FC has filed documents of securities in favour of FC, i.e., deeds of guarantee (duly signed by FC, principal borrower and guarantor i.e., CD), deposit of title deed dated 27.06.2013 (pg 93 and 114) and copies of summons issued by DRT, Delhi, against aforesaid two principal borrowers. In addition, FC has also given detailed particulars of 'financial debt' including



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records and evidence of default as required under sub-section 3 (a) of Section 7 of the Code (pg 3 and 10 of Additional Affidavit dt 17.03.21).

6. In terms of the Sub-section (3) (b) of Section 7 of the Code, the FC has proposed the name of Mr. Ashok Kumar Dewan for appointment as Interim Resolution Professional (IRP). Mr. Dewan has agreed to accept the appointment as IRP and has signed a communication in Form 2 (pg 201 of Petition).

7. It is pertinent to mention here that notice of the petition was issued on CD by all modes vide order dated 15.09.2020. Affidavit of service dated 08.10.2020 showing service of petition along with next date of hearing, is on record. It is seen that notice through Bench was also sent to CD vide email dated 23.09.2020 (pg 3 of affidavit of service). Despite service, none appeared on behalf of the CD. Therefore, CD was proceeded ex-parte vide order dated 05.11.2020 and 26.11.2020.

8. Thereafter, the FC was directed to take steps to file a record of default before Information Utility. FC vide affidavit dated 17.03.2021 has filed reports of default issued by NeSL in respect of Roshini Jewellers Pvt Ltd and J.B. Gold Pvt Ltd. It is seen that in respect of Roshini Jewellers Pvt Ltd, the date of default is 16.06.2017 and amount of default is Rs. 10.98 crore (9 crore + interest) and in respect of J.B. Gold Pvt Ltd the date of default is 30.09.2017 and amount of default is Rs. 11.16 crore (9 crore + interest) (pg 7 and 14 of affidavit) as on 21.02.20. The debt start date as per the reports is 28.06.2013 for both the principal borrowers (pg 6 and 14 of affidavit). The present application is filed on 17.03.2020, within three years from the date of default; therefore, the present petition is within limitation. After 9 hearings, the matter was finally reserved on 25.03.2021.

9. In terms of Section 5 (8) (i) of the Code, "financial debt" includes the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h). Section 5 (8) (i) has been reproduced below:

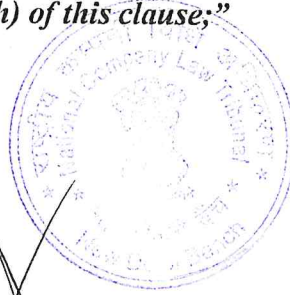
"(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

.....

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;"



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10. In the present matter, CD has signed deeds of guarantee in favour of FC for the OD facilities sanctioned to the two principal borrowers. In terms of the aforementioned provisions of the Code, FC is clearly a financial creditor to the CD having legally recoverable financial debt.

11. At this stage, we reproduce below the provisions of Section 7 (5) of the Code:

“Where the Adjudicating Authority is satisfied that-

(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.”

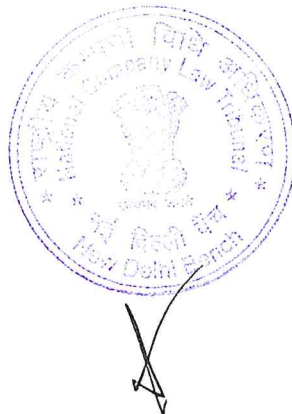
12. If it is established that default has occurred and no disciplinary proceeding is pending against the IRP and application is complete, the Adjudicating Authority (AA) has no option but to admit the application; if any of the conditions is lacking, the application is liable to be rejected.

13. From the facts, it is seen that the applicant falls within the definition of Financial Creditor. The material placed on record further confirms that FC had disbursed loan facilities to the principal borrowers in respect of which guarantees were issued by the CD. The principal borrowers had committed default in repayment of the outstanding financial debt. The FC has placed on record the guarantee agreement (tripartite agreement) executed by CD in favour of FC.

14. We are satisfied that the present application is complete in all respects and the FC is entitled to claim outstanding financial debts from the CD and that there has been default in payment of the financial debt. Consent of the IRP is enclosed with Petition. The defaulted amount is more than Rs 1, 00,000, being the minimum threshold limit fixed by the Code. Under such circumstances, this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent. Accordingly, **this petition is admitted.**

15. Mr. Ashok Kumar Dewan is hereby appointed as IRP having registration number IBBI/IPA-0001/IP-P00603/2017-18/11054 with email id: akdewan1001@gmail.com.

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16. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the IRP immediately (within 3 days) with regard to admission of this application under Section 7 of the Code.

17. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

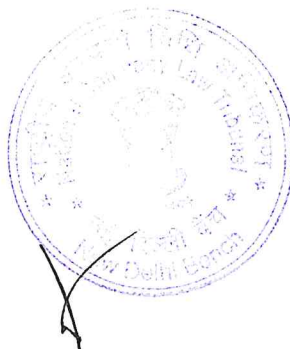
- a) *the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- b) *transferring, encumbering, alienating or disposing of by the CD any of its asset or any legal right or beneficial interest therein;*
- c) *any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD."*

18. The supply of the essential goods or services to the CD as specified, are not to be terminated or suspended or interrupted during the moratorium period [Sec 14(2) of the Code]. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government in consultation with any financial regulator. In addition, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the CD in terms of Section 14 (3) (b) of the Code.

19. The IRP shall perform all his functions contemplated, inter-alia, by Sections 17, 18 and 21 of the Code and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations and shall file reports before the AA. It is further made clear that all the personnel connected with the CD, its promoters or any other persons associated with the Management of the CD are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the CD. The IRP shall be under duty to protect and



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preserve the value of the property of the CD as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

20. The FC is directed to deposit a fee of Rs 2 lakh to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to the FC to be recovered as CIRP cost.

21. The office is directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, New Delhi at the earliest possible but not later than seven days from today.

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(K. K. VOHRA)
MEMBER (T)



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(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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sd 16.4.2021
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003