

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB) No. 1309/KB/2019

IN THE MATTER OF:

An application 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. APUNDARIK MERCHANTS PRIVATE LIMITED, a Company incorporated under the provision of Companies Act, 1956 having its registered office at 9, Weston Street, "Siddha Weston", 1st Floor, Room No. 127, Kolkata 700013, West Bengal

... Applicant/Financial Creditor

VERSUS

M/S. BANSIDHAR AGARWALLA & CO. PVT. LTD., (Proprietor of Bulbulitala Cold Storage) a Company incorporated under the provision of Companies Act, 1956 having its registered office at 2, Sudhir Chatterjee Street, Kolkata 700006, West Bengal

... Corporate Debtor/Respondent

Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)





Counsel on Record:

1. MR. JITENDRA LOHIA, Advocate] For Financial Creditor
2. MR. ARITRA BASU, Advocate]
3. MR. RAJESH UPADHYAY, Advocate] For Corporate Debtor

Order reserved on: 05/03/2020

Date of pronouncement of Order: 18/03/2020

ORDER

Per Harish Chander Suri, Member(T):

1. By way of this application under Section 7 read with Rule 4 of Insolvency & Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 **M/s. Apundarik Merchants Private Limited**, hereinafter referred to as the Applicant/Financial Creditor, seeks initiation of Corporate Insolvency Resolution Process against **M/s. Bansidhar Agarwalla & Co. Pvt. Ltd.**, a Corporate entity having its office at Kolkata, hereinafter referred to as the "Corporate Debtor", alleging that the Corporate Debtor is Proprietor of Bulbulitala Cold Storage and had approached the Financial Creditor for providing Inter Corporate Deposit to the tune of Rs.25,00,000/- (Rupees Twenty Five Lakh Only), which proposal of the Corporate Debtor was accepted and the Corporate Debtor was provided Inter Corporate Deposit of Rs.25,00,000/- on 2nd August, 2018. It is stated that the said loan was repaid on 29th November, 2018 with interest.

Sd/-

Sd/-

2. It is further stated that another request was made by the Corporate Debtor for Inter Corporate Deposit of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) @ 15% p.a. for 181 days. The Corporate Debtor confirmed the receipt thereof and issued three post-dated cheques to the Financial Creditor vide their letter dated 30th November, 2018.
3. It is stated that the cheque relating to interest amount up to 31st March, 2019 has been cleared but the cheque for the payment of loan amount and interest amount was dishonored, thereby the default was committed by the Corporate Debtor on 29th May, 2019.
4. The Financial Creditor has proposed the name of One Ms.Beena Jajodia, an Insolvency Professional for being appointed as Interim Resolution Professional in this matter, who, vide her letter dated 19th July, 2019 has given her consent for the said purpose. The Financial Creditor has also filed a copy of Ledger Account and Bank statement issued by the HDFC Bank to substantiate its claim.
5. In the reply affidavit the Corporate Debtor has submitted that this application is an abuse of the process of law and suffers from gross suppression of material facts and thus ex-facie not maintainable in law or under the provisions of the Insolvency & Bankruptcy Code, 2016. It is submitted in the reply that the loan was granted and disbursed to M/s. Bulbulitala Cold Storage and not to the Corporate Debtor and the transactions in question were with the said unit as is evident from the bank statement and other documents disclosed in the application. Therefore, the application cannot be maintained as against the Corporate Debtor at all.

Sd/-

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6. It is further submitted that the post-dated cheques appear to have been issued by Bulbulitala Cold Storage and not by the Corporate Debtor and the Applicant does not have any privity of contract with the Corporate Debtor or any locus standi to file the present application.

7. It is further submitted that Bulbulitala Cold Storage is a business being run by Agarwalla family who are in charge of the Corporate Debtor. The business of this Cold Storage is related to the business of the Corporate Debtor but the operations of Bulbulitala Cold Storage were independently handled by Late Mohit Agarwal and it is only on receiving the copy of the application that the Corporate Debtor came to know the surprising nature of the alleged transaction. It is evident that there is a collusion between the Applicant and one branch of the Agarwalla family to prejudice the rights of the Corporate Debtor. The alleged loan had been purportedly taken by Late Mohit Agarwal in the name of Bulbulitala Cold Storage which was exclusively managed and handled by him without the knowledge and consent of the Corporate Debtor or its Board of Directors and therefore the Corporate Debtor cannot be held liable for repaying the loan in any manner. Mr. Mohit Agarwal died on 3rd May, 2019 and thereafter, on discovering some cheque leaves being missing, a General Diary was lodged with the police on 27th June, 2019 by Bulbulitala Cold Storage and the same cheques were found to have been presented for payment to the Applicant.

8/1/-

8/1/-

8. We have heard Ld. Counsel for the parties. From the document placed on record i.e. the letter dated 30th November, 2018, we find that this letter has been signed by the Director of Bulbulitala Cold Storage on the letterhead of Bulbulitala Cold Storage. The cheques dated 29th May, 2019 for Rs.25,00,000/- (Rupees Twenty Five Lakh Only) and another cheque dated 29th May, 2019 for Rs.53,630/- (Rupees Fifty Three Thousand Six Hundred Thirty Only) have also been issued on behalf of the Bulbulitala Cold Storage by the said Director/Authorised Signatory. Since the borrower in the present case is M/s. Bansidhar Agarwalla & Co. Pvt. Ltd. and the cheques and the acknowledgement letter dated 30th November, 2018 have been issued by One of the Director In-charge of running the Bulbulitala Cold Storage, this transaction would not and cannot bind the Corporate Debtor for making the said payment.
9. It is clear from the record that since the Financial Creditor could not have filed any petition against Bulbulitala Cold Storage, which is a Proprietorship concern being looked after by One of the Directors of the Corporate Debtor Mr. Mohit Agarwala, the Financial Creditor has cleverly opted to drag the Corporate Debtor into this litigation, to settle its score and has sought to hold the Corporate Debtor liable for this loan. But, in fact from the records we find that the Corporate Debtor has no concern or privity of contract with this Financial Creditor. There is no resolution approving the said borrowing/loan from the Corporate Debtor by the Board of Directors of the Corporate Debtor. Neither the letter requesting for the said loan or the cheques issued as a security of the loan, have been issued by the Corporate

Sd/-

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Debtor nor any other acknowledgement is seen issued by the Corporate Debtor. Nothing has been brought to our notice to prove that there exists any privity of contract in between the Operational Creditor and the Corporate Debtor. So also, we are not at all satisfied with any of the documents available on record to prove that the debt as claimed by the Operational Creditor is payable by the Corporate Debtor. The Corporate Debtor being a separate entity in the eye of law, cannot be held responsible for any loan availed by any of its Directors in his personal capacity or any of its subsidiary.

10. It is further seen from the record and enquiry during the arguments that no complaint under Section 138 of the Negotiable Instrument Act was filed by the Financial Creditor when the cheques were dis-honoured, as would have been done by any aggrieved financial creditor.
11. We find that there is no force or substance in the application as against the corporate debtor, filed by the Financial Creditor. The application is therefore dismissed being devoid of any merit.
12. Accordingly, **C.P. (IB) No. 1309/KB/2019** is **dismissed** with no order as to costs.
13. Registry is hereby directed to communicate the order to the Financial Creditor & the Corporate Debtor by Speed Post as well as through E-mail.

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14. Certified copy/Free copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 18th day of March, 2020.

VC