

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1671/KB/2018

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:

ORIENTAL BANK OF COMMERCE, having their registered office at E-Block, Harsha Bhawan, Connaught Place, New Delhi – 110001 and Corporate Office at Plot No. 5, Institutional Area, Sector-32, Gurgaon – 122001 and having one of it's RRL Cluster, Kolkata at D-11, Sector-I, Salt Lake City, kolkata 700064.

... Financial Creditor/Applicant

-Versus-

IN THE MATTER OF:

M/S. RDH TECHNOLOGIES PRIVATE LIMITED, a Private Limited Company Registered under the Companies Act, having Identification No. CIN: U3007WB1987PTC042319 and its Registered Office at Plot No. F1, Block-GP, Sector-V, Salt Lake City, Kolkata - 700091

... Corporate Debtor

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**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsel on Record:

1. Mr. Tanweer Ahmed Khan, Advocate] For Financial Creditor
(For Md. Nasiruddin, Advocate)

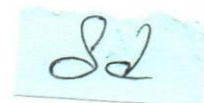
2. Mr. Mainak Bose, Advocate]
Ms. Urmila Chakraborty] For Corporate Debtor
Mr. Shakeel Mohammed Akhter]

Date of pronouncement of Order: 28/08/2019.

ORDER

Per Harish Chander Suri, Member (Technical).

1. This Company Petition No. CP(IB) No. 1671/KB/2018 has been filed by Oriental Bank of Commerce, hereinafter referred to as "The Financial Creditor" against M/s. RDH Technologies Private Limited, having its registered office at Kolkata, hereinafter referred to as the "Corporate Debtor" for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. The Financial Creditor has authorized One Mr. Pankaj Kumar Verma, the Chief Manager of the Financial Creditor who has been duly authorized by the General Manager of the Financial Creditor who, in turn, has been authorized



by the Board of Directors of the Bank vide Board Resolution No. A24 dated 16.12.2017 to file and pursue the proceedings before this Tribunal against the Corporate Debtor herein above.

2. It is submitted in the application by the Financial Creditor that the Financial Creditor had granted Term Loan of Rs. 23,00,00,000/- (Rupees Twenty Three Crores Only) to the Corporate Debtor vide sanction letter dated 17th April, 2007 which was issued to the Corporate Debtor subject to all the terms and conditions which were duly received and accepted by the Corporate Debtor. By way of a Resolution passed by the Board of Directors of the Corporate Debtor, the above said Term Loan of Rs. 23.00 crores was accepted by the Corporate Debtor on 20th April, 2007 whereby it was also resolved to pledge the shares of 3 Companies viz., M/s. Gunwate Properties Pvt. Ltd., (150000 shares), M/s. Calcutta Nursing Private Limited (140000 shares) & M/s. Anurashi Commotrade Pvt. Ltd./ (155000 shares) held by the Corporate Debtor as additional security to the bank to secure the overall credit limit of Rs. 23.00 crores.
3. The Corporate Debtor had created equitable mortgage on the entire fixed assets by simply depositing title deeds of the Company together with Hightech building proposed to be constructed therein at Plot No. F1, Block GP Electronics Complex, Sector V, Salt Lake City, Kolkata 700091 with an area of 0.34 acres of leasehold land in favour of the Financial Creditor Bank. The Corporate Debtor also executed

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an agreement of Term Loan. It was observed by the Bank that the construction of Hightech building at the above said plot was getting delayed for which a sum of Rs. 6.70 crore approx. had already been availed by the Corporate Debtor without any corresponding work at the site. Thus, the entire amount of outstanding along with interest was directed to be repaid by the Corporate Debtor to the Financial Creditor vide its letter dated 6th March, 2010, and in reply to the same, the Corporate Debtor submitted that arrangements to start the construction have already been made and the Financial Creditor was directed to disburse the Term Loan as per the agreement. A lot of correspondence was exchanged between the Financial Creditor and the Corporate Debtor, copies of which have been placed on record.

4. The Financial Creditor in its petition has submitted that the amount of Rs. 7,54,68,438/- (Rupees Seven Crore Fifty Four Lacs Sixty Eight Thousand Four Hundred Thirty Eight Only) was due as on 30th September, 2018 and the account of the Corporate Debtor had been classified as a Non Performing Asset as on 15th December, 2012 when the amount of Rs. 5,31,14,402/- was due. The Financial Creditor has further submitted that the Corporate Debtor had stood guarantee for (1) M/s. Bahubali Commercial Pvt. Ltd. a sum of Rs. 3,03,17,328/- inclusive of interest till 27.03.2014, (2) M/s. Safal Dealers Pvt. Ltd. a sum of Rs. 3,84,05,667.60 P. inclusive of interest till 27.03.2014, (3) M/s. Gandhyanya Properties Pvt. Ltd. a sum of Rs. 94,26,284.23p.

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inclusive of interest till 30.04.2012, (4) M/s. Purushotam Trade Promotion Pvt. Ltd. a sum of Rs. 89,05,156.85 p. inclusive of interest till 30.04.2012, and (5) M/s. Rameshwaram Trexim Pvt. Ltd. a sum of Rs. 2,78,89,937.53 p. till 30.04.2012, the outstanding total comes to Rs. 19,04,12,812.21p. (Rupees Nineteen Crore Four Lacs Twelve Thousand Eight Hundred Twelve and Paise Twenty One Only). In support of the claim the Financial Creditor has filed a copy of the Certificate of Registration for modification of charge registered with the Registrar of Companies, Kolkata in respect of the Corporate Debtor as on 2nd November, 2015 which confirms the charge on the mortgaged properties of the Corporate Debtor.

5. The Financial Creditor has also filed the Bank Statement in respect of the Corporate Debtor indicating payment of Rs. 39,40,000/- (Rupees Thirty Nine Lacs Forty Thousand Only) deposited in the account towards loan recovery on 21st March, 2017 and another Rs. 30 lacs deposited towards loan recovery on 23rd March, 2017. A similar entry of loan recovery of Rs. 99,000/- is dated 29th July, 2017. It also reflects an outstanding of Rs. 7,61,41,451/- as on 31st October, 2018.
6. The Financial Creditor has also enclosed all the letters/correspondences exchanged with the Financial Creditor and the Corporate Debtor with regard to the credit facilities/limits and terms and conditions therefor issued to the various companies for

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which the Corporate Debtor stood guarantee and mortgaged its assets. In reply to the petition, one of the Directors of the Corporate Debtor Mr. Saurav Mukherjee filed a reply affidavit and submitted that the present application under Section 7 is not maintainable in law as no default has been committed as the Application is incomplete and not in proper form and therefore deserves to be dismissed.

7. It is submitted in the reply affidavit that two separate and distinct cause of actions which are not connected with each other at all have been joined, by suppressing the material facts deliberately by the Financial Creditor and the default is alleged to be in respect of a sum of Rs. 19,04,12,812.21p. inclusive of interest. The Corporate Debtor has submitted that the entire claim of the Financial Creditor is barred by law of limitation.
8. In its reply the Corporate Debtor has taken the following stand as regards the default:-

"It would further appear that the purported default has been allegedly computed with respect to the five companies, the Financial Creditor has no cause of action against the corporate debtor and there is neither any financial debt nor any contract which is legally enforceable against the corporate debtor. Two documents have been appended to the application, a letter dated 28th May, 2014 issued by the Financial Creditor and a letter dated 16th April, 2018 also issued by the Financial Creditor. The letter dated 28th May, 2014 relates to a proposal for liquidation of accounts of five companies. The purported letter dated 16.04.2018 alleged to have been written by the

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Financial Creditor to a director of the corporate debtor is allegedly for withdrawal of the liquidation plan/settlement offered under the letter dated 28.5.2014. Apart from the two letters, nothing has been disclosed or stated regarding the debts of the said five companies. In Part-IV, Serial No. 2, a bald statement has been made that the corporate debtor is a corporate guarantor and certain purported amounts together with interest has been indicated and thereafter purported outstanding sum has been disclosed. The entire purported statement regarding default is incorrect, misconceived, fictitious, baseless and is devoid of substance whatsoever. There is no default within the meaning of Sub section 2 of Section 7 of the Code of 2016 and the Financial Creditor is not entitled to maintain the present proceedings against the Corporate Debtor”.

9. The Corporate Debtor has further disputed and denied that Mr. Pankaj Kumar Verma has been authorized by the Financial Creditor to submit application before this Tribunal. In the rejoinder to the reply filed by the Financial Creditor however, it has been submitted that Sri Pankaj Kumar Verma, Chief Manager had been authorized by Mr. Shashi Jain, General Manager on the strength of authority derieved from Board Resolution No. A-24 on 16th December, 2017 and he was delegated the powers to engage counsel/s and to file application, sign and verify Form-I, written statement, applications, affidavits and/or any other pleadings.
10. It is submitted that the Corporate Debtor in para 3 (d) of the reply has admitted the debt for 6 (Six) Companies aggregating to Rs. 19,04,12,812.21 (Rupees Nineteen Crores Four Lacs Twelve





Thousand Eight Hundred Twelve and Paise Twenty One only) which is substantiated by statement of accounts duly certified under Banker's Book Evidence Act. The Financial Creditor has further submitted that it is based on documentary evidence that no part of claim in this accounts as mentioned in page No. 5 part (iv) of Form No. 1, volume 1 is barred by the laws of limitation. It clearly shows that M/s. RDH Technologies Private Limited borrowed money from the Financial Creditor and extended as charge on the mortgage properties of the company guaranteeing to secure the loan and advances of other five companies viz., Rameshwaram Trexim Pvt. Ltd., Purushottam Trade Promotion Pvt. Ltd., Gandhnaya Properties (P) Ltd., Bahubali Commerce (P) Ltd. & Safal Dealers (P) Ltd. with the Financial Creditor. All the accounts became NPA.

11. It is further submitted that the Financial Creditor by letter dated 28th May, 2014 proved the liquidation plan/settlement of debt for all the 6 accounts and the same was withdrawn by letter dated 16th April, 2018 due to non compliance with the terms and conditions of the said Liquidation Plan/Settlement. All the details of the Companies with date of default, date of NPA, amount outstanding etc. have been given by the Financial Creditor in the rejoinder.
12. The Financial Creditor further submits that the Corporate Debtor has siphoned public money which has been categorized as NPA with the Nationalised Bank i.e. M/s. Oriental Bank of Commerce, the

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Financial Creditor. It is submitted that the default has been committed by the Corporate Debtor deliberately and that the Corporate Insolvency Resolution Process might be initiated against the Corporate Debtor.

13. We have heard the Ld. Counsel for the parties at great length. From the application and the documents placed on record by the Financial Creditor particularly the Bank statements which indicate that part of the amount of loan was paid by the Corporate Debtor till 29th July, 2017 but the default had occurred in respect of Rs. 7,54,68,438/- (Rupees Seven Crore Fifty Four Lacs Sixty Eight Thousand Four Hundred Thirty Eight Only) as on 30th September, 2018 and the total amount due from the Corporate Debtor in respect of the 5 (Five) Companies for which the Corporate Debtor had stood as Corporate Guarantor made the total outstanding to the tune of Rs. 19,04,12,812.21p. which the Corporate Debtor has failed to pay in terms of the agreement and sanction letter. The Bank however has further secured its loan by creation of equitable mortgage of the immovable properties of the Company including land.
14. The Financial Creditor has also proposed the name of Mr. Ajay Kumar Agarwal, an insolvency professional registered with ICSI Insolvency Professionals Agency having registration number IBBI/IPA-002/IP-N00608/2018-19/11859, to work as Interim Resolution Professional, who in his written communication dated

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19th November, 2018 stated that there is no disciplinary proceedings pending against him with the Board of ICSI Insolvency Professionals Agency.

15. In the aforesaid facts and circumstances and the documents placed on record by both the parties we are fully convinced that the Financial Creditor has successfully proved that the amount outstanding has not been paid as per the agreed terms by the Corporate Debtor and a default has in fact occurred which prompts us to admit the petition which is otherwise completed. We, therefore, pass the following Orders:-

ORDERS

- 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. RDH Technologies Private Limited is hereby **admitted**.
- ii) 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.

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- iii) 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 judgement, 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.
- iv) 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.





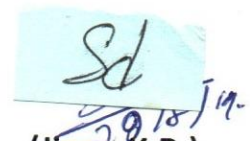
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.
- viii) **Mr. Ajay Kumar Agarwal**, of Ambey Garden, Block-I, Flat No. 3C, 3rd Floor, Banga Laxmi Abasan, Dashadrone Checkpost, Rajarhat Main Road, Kolkata 700136, an Interim Resolution Professional having **Registration No. IBBI/IPA-002/IP-N00608/2018-2019/11859, Mobile No. 9883362775** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.



- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy 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.
- xi) The matter be listed on **27th September, 2019** for filing of the progress report.
- xii) Certified 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)



(Jina K.R.)
Member (J)

Signed on this ~~27~~²⁹th day of August, 2019.

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