

IN THE NATIONAL COMPANY LAW TRIBUNAL,KOLKATA BENCH, KOLKATA**CP(IB) No. 1710/KB/2018****IN THE MATTER OF**

An application Under Section 7 read with rule 4 of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process.

And

IN THE MATTER OF

Socrato Capital Private Limited , having its registered office at 60D Colootola Street, 1st Floor, Kolkata-700073.

.....Financial Creditor

Versus

Tirumala Realcon Private Limited, having its registered office at 51 Shakespeare Sarani, 2nd Floor, Kolkata-700017.

.....Corporate Debtor

Date of Hearing : 30.10.2019
Order Delivered on : 31.10. 2019

Coram:**Madan B Gosavi, : Member (J)****Virendra Kumar Gupta, : Member (T)**

For the Financial Creditor :1.Mrs.Urmila Chakraborty Advocate
:2.Mr.Indradeep Basu, Advocate

For the Corporate Debtor :1.Mrs. Manju Bhuteria , Advocate
:2.Mr.Pradeep Kr. Jewrajka, Advocate
:3.Ms.Pooja Jewrajka, Advocate

ORDER**Per Virendra Kumar Gupta, Member (T)**

This application Under Section 7 has been filed by the Financial Creditor namely Socrato Capital Private Limited to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely Tirumala Realcon Private Limited. The amount of default has been claimed at Rs. 2,18,82,192/- (Rs. Two Crore Eighteen Lakh Eighty Two Thousand One Hundred and Ninety Two only) including interest and the date of default has been stated as 11.10.2018.

2. The facts, in brief, are that the Financial Creditor granted a loan of Rs. 2,00,00,000/- @ 17% which was repayable in 120 days. The said amounts were given through two cheques on 1st November, 2012 and 2nd November, 2012. The Corporate Debtor paid interest on different dates. However, the Principal Amount was remains unpaid along with further interest thereon.

3. The Learned Counsel appearing on behalf of the Financial Creditor narrated these facts and contended that Financial Creditor was NBFC and during course of its business these loans were granted. It was also pleaded that rates of interest were negotiated from time to time. It was also submitted that taxes at source was deducted by the Corporate Debtor and outstanding balance was also confirmed by Corporate Debtor as on 31st March, 2018. In this regard, our attention was drawn to page 47 of the paper book, where copy of confirmation has been placed. Based upon these facts, it was pleaded that there was a debt

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due and payable which was not paid, hence, there was a default. Consequently, this application was liable to be admitted.

4. The Learned Counsel for the Corporate Debtor, on the other hand, contended that the resolution under section 186 of the Companies Act, 2016 was not provided and company was not NBFC, hence, this petition was not maintainable for this reason alone. In this regard, she placed reliance on the order of this Tribunal being CP (IB) No. 994/KB/2018 vide order dated 14th February, 2019. It was also contended that this amount had been given for purchase of property, hence, it did not amount to financial debt within the meaning of provisions of section 5(8) of IBC, 2016. The conduct of the Financial Creditor was also questioned.

5. The learned counsel for the Financial Creditor, in the Rejoinder, submitted that there was no dispute as regard to the nature of the transaction and it was a case of financial debt, which had not been repaid. It was also contended that the name of the company had been changed and company was NBFC, therefore, granting of loan on interest was its ordinary course of business.

6. We have considered the submissions made by both the sides and also perused matter on record.

7. The amount of loan is not in dispute. The balance confirmation given by the Corporate Debtor for the period ended on 31st March, 2018 is also not in dispute. It is also noted that interest has been paid by the

Corporate Debtor from time to time. The tax at source has been deducted thereon. These facts by itself prove the nature of transaction.

8. In regard to the reliance placed by the Corporate Debtor on the decision of the Tribunal as mentioned hereinbefore, there have been subsequent judicial decision of this bench, wherein requirement of resolution under section 186 has been dispensed with on account of definition term "claim" in section 3(6) of the IBC. Hence, this decision does not help the case of the Corporate Debtor.

9. We also do not find any merit in the contention of the Corporate Debtor that it was not a case of financial debt as it has been given for purchase of property, for the reason this transaction of the nature of financial debt under clause 5(8)(f) of the IBC, 2016 as it has got commercial effect of a borrowing.

10. The financial creditor has proposed the name of IRP, whose consent has been placed on record. The petition filed by the Financial Creditor is defect free. Accordingly, we admit the same and order as under:-

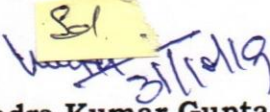
ORDER

- 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, namely Tirumala Realcon Private Limited 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. Mr. Pradeep Kumar Goenka , having registration No. IBBI/ IPA-002/ IP-N00294/ 2017-18/10851 email id goenka.pradeep@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. 2,00000/- (Rs. FTwo Lakhs) 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. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
 - 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.
9. List the matter on **16/12/2019** for the filing of the progress report.
10. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


 (Virendra Kumar Gupta)
 (Member (T))


 (Madan B Gosavi)
 (Member (J))

Signed on 31st October, 2019