IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

CP (IB) No. 698/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:
State Bank of India,having its Head office at State Bank Bhavan, Corporate Centre, Madam Cama Road, Mumbai- 400 021 through Stress Assets Management Branch (SAMB-I) at Nagaland House, 8th floor, 11 & 13, Shakespeare Sarani, Kolkata- 700 071 ;

... **Petitioner / Financial Creditor**

-Versus-

In the matter of:
TAPL International Pvt. Ltd., having his registered office at Room No.212, 2nd floor, Martin Burn House, 1, R.N. Mukherjee Road, Kolkata- 700 001 and Corporate Office at 11/1A/3, East , Topsia Road, TilPin- 711 202 within the aforesaid jurisdiction; CIN :U17120WB2011PTC166338;

.... **Respondent/Corporate Debtor**

Counsel appeared:

1. Mr. Debasish Chakrabarti, Advocate 2. Ms. Trisha Saha, Advocate 3. Ms. Urmila Chakrabarti, Advocate	] Financial Creditor
1 Mr. Prasenjit Burman, Advocate 2. Ms.Puja Beriwal, Advocate 3. Mr. Sushovon Dey,, Advocate	] Corporate Debtor

Date of Pronouncement of Order: 01.02.2019

ORDER

State Bank of India, Stress Assets Management branch, Kolkata- the Financial Creditor has filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **TAPL International Pvt. Ltd.-** the Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as they committed default in paying the loan amount of Rs. 58,44,10,445/- (together with interest till 31.03.2018).

2. The following facts are not in dispute:

2.1 The Corporate Debtor was formerly known as Tulip Attire Private Ltd.. In the year 2014, its name is changed as TAPL International Private Ltd. In the year 2012, the financial creditor granted and disbursed loan of Rs.34 crores to the corporate debtor. The Corporate Debtor executed in favour of the financial creditor the following documents:

i) Agreement of loan for overall limit dated 28.07.2012.

ii) Agreement of hypothecation of goods and assets and agreement of pledge of goods and assets;

2.2 On 26.08.2014, the said loan was restructured and the corporate debtor executed in favour of the financial creditor ISDA Master Agreement. In the year 2016, the account of the Corporate Debtor became NPA. Hence, on 25.05.2016, the financial creditor sent the corporate debtor notice under section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. The financial creditor stated that in spite of receipt of above notice, the corporate debtor failed and neglected to repay the loan as agreed. Hence, this proceeding is filed under section 7 of I&B Code to start CIRP of the corporate debtor.

3. Notice of this proceeding has been served on the corporate debtor. They appeared in the proceeding through one of the directors Mr.Anjan Ray and filed affidavit-in-reply dated 11.09.2018. They took two-fold defences (i) that the amount became due in the year 2014, more particularly on 27.09.2014 but this proceeding is filed in the year 2018 (11.05.2018) beyond a period of limitation. Hence, it is not maintainable as the amount claimed cannot be said to be legally recoverable debt and (ii) the financial creditor has already filed proceeding for recovery of the debt in DRT, Kolkata bearing OA no.682/2016. This material fact is suppressed by the financial creditor. Hence, proceeding is not maintainable.

4. I heard the Ld. Counsel, Mr. Debasish Chakrabarti and the Ld. Counsel Mr. Prasenjit Burman for the Corporate Debtor. I have perused the record and proceedings. Ld. Counsel for Corporate Debtor also filed on second written notes of arguments. I also considered those notes.

5. Most of the facts are not in dispute. The Financial Creditor granted and disbursed the loan to the Corporate Debtor. The Corporate Debtor failed to repay the loan as agreed. There may be dispute about the calculation of interest part but admittedly the amount payable and defaulted by the Corporate Debtor is more than Rs.1 lakh. Hence, in view of section 4 of the I&B Code, this proceeding is maintainable.

6. It is contended by the corporate debtor that the amount became due and payable on 26.08.2014. This proceeding is filed on 11.05.2018. It is filed beyond a period of limitation and hence not maintainable.

7. Ld. Counsel for the financial creditor submitted that the provision of law of limitations are applicable to the proceeding under section 7 and 9 of I&B Code as has been held by the Apex Court in case of B.K.Educational Services Private Ltd. -vs- Parag Gupta & Associates (Civil Appeal No.23988 of 2017). ***Article 137 of Law of Limitation prescribes the period of limitation for recovery of the debt as within three years from the date of the default***. In this case, default occured on 25.05.2016, i.e. the date on which the financial creditor called upon the corporate debtor to clear the dues by notice of demand and the Corporate Debtor did not pay. This proceeding is filed within three years thereafter. It is maintainable.

8. In case of B.K. Educational Services Private Limited-vs- Parag Gupta and Associates, the Hon'ble Apex Court held as follows:

> "***27. It is thus clear that since the Limitation Act is applicable to applications filed under sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.***"

9. Article 137 of Law of Limitation prescribes the period of limitation as three years from the date on which the amount became due. In this case, it is not in dispute that on 25.05.2016, the Financial Creditor sent the demand notice under section 13(2) of SARFAESI Act to the Corporate Debtor and the Corporate Debtor did not comply the notice. The Financial Creditor produced on

record the letter dated 14.05.2016 written by the corporate debtor admitting the debt. This proceeding is filed within three years. Hence, it is maintainable.

10. Another contention of the Corporate Debtor is that the financial creditor has already filed recovery proceeding in DRT, Kolkata. That proceeding is still pending. Ld. Counsel for the corporate debtor pointed out that the financial creditor did not disclose this fact in the application. According to the Ld. Counsel, this is amounting to suppression of material fact. Hence, this application is not maintainable.

11. I have considered the above submission. In proceeding under section 7 of I&B Code, the financial creditor is required to establish two facts essentially - (i) that the amount claimed is due and legally recoverable and (ii) corporate debtor committed default in paying that amount. In this case, both facts have been proved, even on the face of admission of the corporate debtor. Hence, any other fact which is not disclosed by the financial creditor has no relevance as far as the dispute at hand is concerned. More so, para 5 of the Form-1 filed by the financial creditor as per rule 4 of I&B Code, (Application to Adjudicating Authority) Rules, 2016 requires the financial creditor to disclose the order passed by any Court, Tribunal or Arbitrary Panel in respect of amount claimed. It is not necessary for the financial creditor to disclose mere pendency of such proceeding. Hence, although the financial creditor herein did not mention about the pendency of DRT proceeding against the corporate debtor, it is not amounting to suppression of material facts. This defence by the corporate debtor is not tenable at all.

12. The Financial Creditor has proved the debt and its default. He suggested the name of Mr. Sanjai Kumar Gupta (Mob. No. 9874877220) of Mr. Sanjai

Kumar Gupta, 153A, A.P.C. Road, Kolkata- 700 006 having Email id: casanjaigupta@gmail.com and registration no.IBBI/IPA-001/IP-P00592/2017-18/11045. A written communication dated 28.02.2018 of Mr. Sanjai Kumar Gupta, proposed IRP, mentions that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. This application is defect-free. Hence, I admit the Corporate Debtor in CIRP by the following order:

ORDER

(i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of TAPL International Pvt. Ltd. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

(ii) The 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.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 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 or suspended or interrupted during the 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 affect 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 Sec.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.

viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(ix) As per the proposal by the Financial Creditor for the appointment of Interim Resolution Professional (IRP), Mr. Sanjai Kumar Gupta (Mob. No. 9874877220) of Mr. Sanjai Kumar Gupta, 153A, A.P.C. Road, Kolkata- 700 006 having Email id: casanjaigupta@gmail.com and registration no.IBBI/IPA-001/IP-P00592/2017-18/11045 is appointed as the Interim Resolution Professional for Corporate Debtor for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

x) Registry is hereby directed to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **15.03.2019** for filing of the progress report.

Sd/-
(Madan B. Gosavi)
Member (J)

Signed on this, the 1st day of February, 2019.