

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

**C.P. (IB) No. 07/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:**

**LVB RARC 038 TRUST, through its Sole Trustee Reliance Asset Reconstruction Company Limited, having its office at Reliance Centre, 6<sup>th</sup> Floor, South Wing, Off Western Express Highway, Santacruz (East), Mumbai, Maharashtra – 400 055.**

**... Financial Creditor**

**VERSUS**

**In the matter of:**

**M/S. GUJARAT METALLIC COAL & COKE LIMITED, having its registered office at 155, Lenin Sarani, 4<sup>th</sup> Floor, Room No. 402, Kolkata 700013.**

**... Corporate Debtor**

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

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

Counsel on Record:

1. MR. SNEHASHIS SEN, Advocate ] For Financial Creditor  
1. MR. SUVODEEP CHAKRABORTY, Advocate ] For Corporate Debtor

Date of pronouncement of Order: 23/01/2020

ORDER

Per Shri Harish Chander Suri, Member (Technical).

1. The present Application under Section 7 of the Insolvency & Bankruptcy Code, 2016 has been filed by **LVB RARC 038 TRUST**, through Mr. Rajesh Bichitkar, Chief Manager (Legal) of Reliance Asset Reconstruction Company Limited, hereinafter referred to as the "**Financial Creditor**", seeking Corporate Insolvency Resolution Process against **M/s. Gujarat Metallic Coal & Coke Limited**, a Corporate entity, having its registered office at Kolkata, submitting that Gujarat Metallic Coal & Coke Limited, the Corporate Debtor herein had approached The Lakshmi Vilas Bank Limited for availing various credit facilities for the purpose of meeting its business requirements and the Corporate Debtor had executed several financing agreements and security agreements.
2. The Corporate Debtor was declared a Non Profit Asset on 9<sup>th</sup> January, 2014 by Lakshmi Vilas Bank Limited. Later, the Corporate Debtor approached the Lakshmi Vilas Bank Limited for restructuring the loan facilities granted to the Corporate Debtor and the term loan

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agreement dated 13<sup>th</sup> December, 2014 was executed whereby the outstanding was restructured to a term loan of Rs. 50,00,00,000/- (Rupees Fifty Crores Only) for the purpose of restructuring the existing limit. By way of this agreement, the Corporate Debtor was under an obligation to repay the said amount in 22 monthly instalments commencing from December, 2014. However, the Corporate Debtor failed to repay the loan from June, 2015 onwards as agreed.

3. It is further submitted that vide Assignment Agreement dated 31<sup>st</sup> March, 2017 the Lakshmi Vilas Bank Limited assigned the loan accounts to Reliance Asset Reconstruction Company Limited in its capacity as Trustee of LVB RARC 038 TRUST, and thus it stepped into the shoes of the secured creditor in relation to the loan account of the Corporate Debtor.
4. It is submitted that the Corporate Debtor issued a proposal on 7<sup>th</sup> June, 2017 for settlement of the loan account which was accepted by the Financial Creditor. The Financial Creditor duly issued a notice on 31<sup>st</sup> July, 2018 whereby the Corporate Debtor was called upon to come forward with a concrete proposal to settle the dues. The Corporate Debtor vide its letter dated 10<sup>th</sup> August, 2018 sought time of 30 days to submit a proposal for repayment of the outstanding dues and vide letter dated 24<sup>th</sup> August, 2018, the Corporate Debtor was granted time along with 10% upfront payment for such a

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proposal. Despite so many opportunities, the Corporate Debtor has failed to come with any such proposal. It is submitted that an amount of Rs. 16,67,57,892.33 (Rupees Sixteen Crores Sixty Seven Lakhs Fifty Seven Thousand Eight Hundred Ninety Two and Paise Thirty Three Only) inclusive of interest is due and payable by the Corporate Debtor under the Term Loan Agreement dated 13<sup>th</sup> December, 2014.

5. The Financial Creditor has proposed the name of Mr. Kanchan Dutta to act as an Interim Resolution Professional. Mr. Kanchan Dutta vide his letter dated 23<sup>rd</sup> October, 2018 addressed to this Tribunal, has agreed to accept the appointment as IRP in case the application is admitted.
  
6. In support of its claim the Financial Creditor has filed on record copy of the assignment agreement dated 30<sup>th</sup> December, 2016, Copy of Certificate of Registration for Modification of Charge along with Charge Modification Forms filed with the Registrar of Companies, Term Loan Agreement dated 13.12.2014, Letter of Hypothecation dated 13<sup>th</sup> December, 2014, Sanction letter dated 30<sup>th</sup> September, 2013 for ILC/FLC of Rs. 10.00 crore, Irrevocable Undertaking dated 30<sup>th</sup> September, 2013, Undertaking letter dated 30<sup>th</sup> September, 2013, Board Resolution passed by the Board of Directors of the Corporate Debtor in its meeting held on 10<sup>th</sup> November, 2014 authorizing its Chairman and Managing Director for the purpose of availing the aforesaid Term Loan facilities and to sign all the

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documents necessary for this purpose. The Financial Creditor has also filed Demand Promissory Note dated 30<sup>th</sup> September, 2013, Balance confirmation dated 30<sup>th</sup> December, 2014, Letter of Continuity dated 13<sup>th</sup> December, 2014, Letter of proposal dated 07<sup>th</sup> June, 2017 issued by the Corporate Debtor to the Financial Creditor and notice dated 31<sup>st</sup> July, 2018 issued by Reliance ARC along with various other letters relevant for the purpose.

7. The Corporate Debtor in its reply affidavit through one of its Directors Shri Sajjan Kumar Tailor submitted that the allegations in the application are untrue and false; the Financial Creditor has no locus to file the present application; that the alleged loan was not assigned in favour of the Financial Creditor and hence the present application is misconceived and is liable to be dismissed. It is further submitted that the Financial Creditor had never informed the Corporate Debtor that the loan had been assigned in its favour.
  
8. It is submitted that the Trustee cannot create or buy any beneficial interest without the permission of a principal Civil Court of original jurisdiction, as mentioned under Section 53 of the Indian Trusts Act, 1882. It is submitted that since the loan was assigned by Lakshmi Vilas Bank Limited in favour of Reliance Assets Reconstruction Company Limited and not in favour of the applicant in the petition, the applicant has no locus to initiate the present

proceedings. For the purpose of convenience in understanding, Section 53 of the Indian Trusts Act, 1882 is reproduced below:-

**“53. Trustee may not buy beneficiary’s interest without permission.** No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

*Trustee for purchase.*

*Trustee for purchase. And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.”*

9. It would be seen that LVB RARC 038 TRUST, the Financial Creditor herein had acquired the Financial Assets of Lakshmi Vilas Bank Limited vide Assignment Agreement dated 31<sup>st</sup> March, 2017 and stepped into the shoes of the Assignor. The Financial Creditor/Assignee had all the rights to recover the loans owed to the Assignor from the Corporate Debtor. When the proposal dated 7<sup>th</sup> June, 2017 was sent by the Corporate Debtor to the Financial Creditor/Assignee the same was accepted subject to further discussions and terms and conditions to be settled. The Financial Creditor/Assignee vide its letter dated 31<sup>st</sup> July, 2018 called upon the Corporate Debtor to come forward within 15 days with a concrete proposal to settle the aforesaid loan of Rs. 19,37,75,887.52 followed

by further correspondence between the parties annexed with the application.

10. During the course of arguments, the Financial Creditor has been able to prove its claim, and the fact that the Financial Creditor was entitled to recover the aforesaid loan with interest as financial debt from the Corporate Debtor.
11. The Ld. Counsel for the Corporate Debtor however has submitted that as per Section 53, of the Indian Trusts Act, 1882, the Financial Creditor could not have acquired the loan "without the permission of a principal Civil Court of original jurisdiction". We are surprised that the Ld. Counsel has completely misunderstood and misinterpreted the law laid down by Section 53 of the Indian Trusts Act, 1882. This Section debars a Trustee (present or former one) to buy or become mortgagee or lessee of the trust property or any part thereof without the permission of a principal Civil Court of original jurisdiction and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary. This section does not deal with any property other than the property of that Trust.
12. In the present case, the assignee is not being assigned the property of the Trust. In the present case, the Trust has acquired the loan from The Lakshmi Vilas Bank Limited, the assignor. The situation in the present case is altogether different and there is no application of

Section 53 of the Trusts Act in the present case. The Ld. Counsel for the Corporate Debtor has put up no other ground in its defence. The Financial Creditor thus succeeds and the application deserves to be admitted. With the above said observations, we pass the following:-

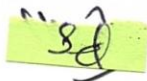
### **ORDERS**

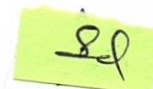
- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/S. GUJARAT METALLIC COAL & COKE LIMITED** is hereby **admitted**.
- ii) Moratorium is declared for the 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.
- 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;

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- (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.





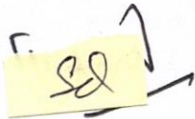
- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) **Mr.Kanchan Dutta**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00202/2017-18/10391**, e-mail id: [kanchan@kgrs.in](mailto:kanchan@kgrs.in), **Mobile No. 9007064061**, 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(7) of the Insolvency and Bankruptcy Code, 2016 to communicate the

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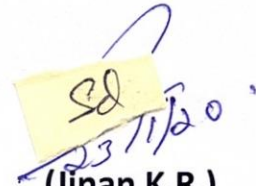
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order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

- xi) The matter be listed on **24.02.2020** 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)**



**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 23<sup>rd</sup> day of January, 2020.

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