

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH,**

**KOLKATA**

**C.P (IB) No.1497/KB/2018**

**In the matter of**

An application under 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:**

**1. M/s Cynosure Mercantile Private Limited, CIN: U51109WB2005PTC103388**, a Company registered under the Companies Act, 1956, having its registered office at 5A, N.C.Dutta Sarani, 4<sup>th</sup> Floor, Kolkata-700001, West Bengal.

*... Financial Creditor No.1*

**2. M/s Dream Estate & Holding Private Limited CIN: U70101WB1987PTC042877**, company registered under the Provisions of Companies Act, 1956, having its Registered Office at 23, Brabourne Road, Kolkata- 700001, West Bengal.

*... Financial Creditor No.2*

**3. M/s Deekay Properties Private Limited, CIN: U65993WB1987PTC042515**, having its registered office at G-395, New Alipore, Kolkata-700053, West Bengal.

*... Financial Creditor No.3*

Versus

**In the matter of:**

**M/s Kanoi Plantations Private Limited, CIN: U15491WB1973PTC028675**, having its Registered office at 4, Hastings Park Road, Alipore, Kolkata-700027, West Bengal.

*...Corporate Debtor*

Date of hearing : 15/09/2021

Order Pronounced on : 25 /11/2021

**Coram:**

***Mr. Rajasekhar V.K., Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

1. Ms. Manju Bhuteria, Adv. } For the Financial Creditor
2. Mr. Saurav Jain, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. By way of this Company Petition being C.P.(IB) No. 1497/KB/2018, jointly filed under section under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 by 1. **M/s Cynosure Mercantile Private Limited, CIN: U51109WB2005PTC103388**, 2. **M/s Dream Estate & Holding Private Limited CIN: U70101WB1987PTC042877**, 3. **M/s Deekay Properties Private Limited, CIN: U65993WB1987PTC042515**, a corporate entity ( hereinafter referred as the Financial Creditors) seeking initiation of corporate insolvency resolution process against the **M/s Kanoi Plantations Private Limited, CIN: U15491WB1973PTC028675**, another corporate entity, having its Registered office at 4, Hastings Park Road, Alipore, Kolkata-700027, West Bengal (hereinafter referred as the Corporate Debtor).
3. It is submitted that the aforesaid Financial creditors had granted the

unsecured loan of Rs. 80,00,000/- (Rupees Eighty Lakhs only) to the Corporate Debtor in the year 2012-13 and the Corporate Debtor was paying the interest amount on quarterly basis till 31<sup>st</sup> March, 2014. It is submitted that the Corporate Debtor made only some part payment of principal and interest amount and the rest of the amount has remained unpaid till date. It is submitted that the total amount of debt granted along with debts of disbursement are mentioned in “Annexure I: Ext. A” whereby M/s Cynosure Mercantile Private Limited had granted loan to the tune of Rs. 20,00,000/-, M/s Dream Estate & Holding Pvt.Ltd. had granted loan to the tune of Rs. 10,00,000/- and M/s Deekay Properties Pvt.Ltd. had granted loan to the tune of Rs. 50,00,000/-. It is submitted that the statement depicting the amount claimed to be in default and the date on which the default had occurred are mentioned in “Annexure-I, Ext.B” It is stated in Annexure I/B that a sum of Rs. 76,16,174/- is outstanding and payable by the Corporate Debtor on 30/09/2018, which is the date of default.

4. It is further submitted that the Financial Creditor sent a Notice to the Corporate Debtor on 29/07/2017 requesting him to clear the outstanding amount. However, the Corporate Debtor also sent its reply thereto through its advocate on 11/08/2017 making vague submissions, which is not maintainable in the eyes of law. A copy of the reply is annexed with the petition as “Annexure-I;Ext. C to E” . It is further submitted in the petition that on repeated reminders by the Financial Creditors, the Corporate Debtor decided to settle the entire dues. It is submitted that both the parties mutually decided and entered into the Memorandum of Understanding (MoU) on 28/08/2017, it was duly signed by both the parties. In term of Clause (c) and (d) of the MoU, it is clearly stated that in the event of non realization/ bounce of the cheques provided the Corporate Debtor towards the repayment of the principal and interest amount, the lender / the Financial Creditors will be entitled to initiate the legal proceedings against the borrower i.e. Corporate

Debtor, apart from legal charges and additional cost incurred by the Financial Creditors. A copy of the Memorandum Of Understanding ( MOU) dated 28/08/2017 **“Annexure-I: Ext. C to Ext. E”**. It is submitted that after entering into the MOU, the Corporate Debtor sent letters dated 03/10/2017, 27/03/2018 and 22/06/2018 for handing over the cheques for the payment of the dues to the Financial Creditors. A copy of “Annexure I:Ext. C to Ext. E”.

5. It is submitted that Financial Creditors had deposited the cheques into his bank account to get it encashed, but the cheques became dishonoured due to insufficiency of funds in their account. Due to the dishonour of the above-mentioned cheques of the Corporate Debtor, the Financial Creditors again on 11.06.2018 sent a letter initiating to clear the dues without any extension of time to the Corporate Debtor. The above letter was sent by each Financial Creditor to the registered office address of the Corporate Debtor through speed post on 11.06.2018. The copy of letter dated 11.06.2018, speed post acknowledgement and tack report are annexed to this petition as “ Annexure I:Ext.C to Ext.E”.
6. It is further stated that the financial transactions between the Corporate Debtor and Financial Creditors can be shown through the Ledger of Corporate Debtor in the books of accounts of each Financial Creditor for the period 01.04.2012 to 30.09.2018. The copy of the ledger for the period 01.04.2012 to 30.09.2018 of each of applicant are annexed to this petition as “Annexure I: Ext. C to Ext. E”.
7. It is stated that while making payment of the interest amount, the Corporate Debtor had deducted TDS under the provisions of Income Tax Act 1961 which clearly acknowledged the debt. Copy of Form 26AS for Financial Year 2015-2016 to 2017-2018 showing the TDS deducted by the Corporate Debtor on payment of interest of each Financial Creditors are annexed to this petition as “Annexure I: Ext.C to Ext.E.

8. The Financial Creditors have suggested the name of **Mr. Kamal Nayan Jain** as the IRP, in case the order of admission is passed in the present case. **Mr. Kamal Nayan Jain** has also filed Form 2, addressing the NCLT, Kolkata Bench that she agrees to accept the appointment as the IRP, if an order admitting the petition is passed. She also affirmed that there are no disciplinary proceeding pending against her with the Board or Indian Institute of Insolvency Professional ICAI.
9. In the reply affidavit filed by the Corporate Debtor through one of its Senior Executives Mr. Nathmal Maheshwari submitted that the instant application is absolutely baseless and harrasive in nature and has been wrongly filed by the Financial Creditors. It is submitted that the application is liable to be dismissed, because it has been filed at a pre matured stage with concocted claims in a hasty manner. The Corporate Debtor has denied that total amount of debt of Rs. 80,00,000/- has been granted by the Financial Creditor No.1. It is submitted that the pleadings made on behalf of the Financial Creditors have failed to provide proper details of the debts granted. It is denied that the Financial Creditor No.1 has claimed Rs. 76,16,174/-
10. It is submitted that the Financial Creditors herein have no valid license under the Bengal Money Lenders Act, 1940 and as such not entitled to place any such claim. It is denied that the Financial Creditors sent a notice to the Corporate Debtor on July 29,2017 to clear the outstanding amount. It is stated that the Corporate Debtor is a bread earner for more than 1000 number of employees. It is submitted that the Corporate Debtor being a genuine and bona fide company and keeping in view, the interest of all its stakeholders agreed to repayment of such amount but it was also agreed that such amount would be repaid in a time bound manner. It is submitted that post dated cheques were issued by the Corporate Debtor to the Financial Creditors and it was agreed that in case the Corporate Debtor was facing any financial difficulty, such PDCs

would be replaced and fresh PDCs would be issued. It is stated that the Financial Creditors have suddenly filed the instant application at pre mature stage claiming the entire amount of money when they were not entitled to receive the said amount at that relevant point of time and as such, it can be safely said that the instant application is pre mature and liable to be dismissed.

11. In the Rejoinder, it is submitted that the Financial Creditors had filed the application under section 7 of the Code in the month of October before the NCLT, Kolkata Bench being CP No. 561/KB/2017. The Corporate Debtor entered into a Memorandum of Understanding dated 30<sup>th</sup> November, 2017 with the applicants on which all the Financial debts have been admitted by them and they have issued several PDCs to pay the debt amount in installments.
12. It is submitted that the debt amount claimed in the petition is admitted by the Corporate Debtor which is reflected in the MOU dated 28<sup>th</sup> August, 2017, and the letters issued by the Corporate Debtor confirming the amount.
13. It is submitted by the Financial Creditors that the Corporate Debtor had requested the Financial Creditors to grant the loan and accordingly Financial Creditors had passed the resolution under the provision of Companies Act to grant the loan amount and the same was transferred to the Corporate Debtors account, which can be seen through the Bank Statement annexed with the petition. The Financial Creditors have denied the allegation made in the reply affidavit that Amit Kumar Surana is not authorised and competent person to file the present application on behalf of the Financial Creditors. It is submitted that the amount of debt granted by the Financial Creditors is detailed in the calculation sheet annexed at pages 21 and 22 of the petition. It is denied in the Rejoinder that the Financial Creditors mandatorily required a

licence under the Bengal Money Lenders Act, 1940 to grant a loan to any body corporate. It is submitted that the Financial Creditors are eligible to grant loan to anybody corporate and have filed this application on the basis of default made by the Corporate Debtor on dishonouring of the PDCs given by the Corporate Debtor.

14. It is submitted that notice dated 29<sup>th</sup> July 2017 addressed to the Corporate Debtor at its registered office address was duly sent and received by the Corporate Debtor and that the Corporate Debtor has replied to the said notice through its Advocate vide letter dated 11<sup>th</sup> August, 2017. It is denied by the Financial Creditors that the loan was given for any social cause because the Corporate Debtor itself has issued Post Dated Cheques for the repayment of the loan along with the interest. It is submitted that even in the MOU executed by the parties on 28<sup>th</sup> August, 2017, debt was admitted by the Corporate Debtor and that PDCs were issued to repay the principal amount and interest. Since the cheque had been dishonoured the lenders i.e. Financial Creditors had to initiate legal proceedings against the Corporate Debtor. It is submitted that the Insolvency and Bankruptcy Code, 2016 envisages **“Financial Creditor either by itself or jointly with (other financial creditors, or any person on behalf of the financial creditors, as may be notified by the Central Government) may file an application for initiating corporate insolvency resolution process against a corporate insolvency resolution process against a corporate debtor before the adjudicating authority when a default occurs”**.
15. It is submitted that the definition of “default” under section 3(12) of the Code states the **“ non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be”**. Therefore, the Financial Creditors had the right to file the present petition against the Corporate Debtor. It is submitted that the new cheques have never been given to the Financial Creditors by the

Corporate Debtor.

16. We have heard Ld. Counsel for the Financial Creditor and seen the averments made in the petition, reply affidavit and rejoinder. It is a clear cut case of financial debt having been sanctioned and disbursed to the Corporate Debtor, for which repayment has not been made by the Corporate Debtor. The date of default has been shown as 1<sup>st</sup> April, 2016 in Annexure Exhibit- B because the Corporate Debtor has not paid the amount on the date of maturity i.e.31<sup>st</sup> March, 2014.
17. We have considered all the documents placed on record by the parties, we are satisfied that this is a good case for admission of the petition because the Corporate Debtor has defaulted in payment of the outstanding amount to the Financial Creditors who had been waiting for their repayment on its maturity and all their hopes have been belied with the non payment. We, therefore, admit the petition with 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 is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 Securitisation 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 rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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 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.
- ix) **Mr. Kamal Nayan Jain**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP- P00029/2016-17/10065**, **Email [knjain@knjainco.com](mailto:knjain@knjainco.com)**, **Mobile No. 9831088801** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) 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.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs. 3,00,000/- (Rupees Three Lakh only )** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 24/01/2022 for filing of the **progress report**.
- xiv) 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 (Technical)**

**(Rajasekhar V.K.)**  
**Member (Judicial)**

Order signed on, this 25<sup>th</sup> day of November, 2021

1. The order admitting the petition and sending the Corporate Debtor into CIRP was pronounced today.
2. **IA(IBC) No. 871/KB/2021** was filed after the matter was reserved for orders by this Bench. Today, after the pronouncement of orders in the main C.P., nothing survives for consideration in **IA(IBC) No. 871/KB/2021**. On both these grounds **IA (IBC) No. 871/KB/2021** cannot be sustained, and the same shall stand dismissed.
3. At this point of time, the Ld. Senior Counsel appearing on behalf of the Corporate Debtor submitted that the order be kept in abeyance for a period of three days to enable him to file an application before the Bench to determine the amount to be paid to the Financial Creditor.
4. We have considered the request and reject the same.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rajasekhar V.K.)**  
**Member (Judicial)**

Order signed on, this 25<sup>th</sup> day of November, 2021

PJ