IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P (IB) No. 834/KB/2020

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:

Majestic Commercial Private Limited, a Company incorporated under the Companies Act, 1956, having its registered office at 57, Burtolla Street 3rd Floor, Kolkata – 700007, West Bengal.

...Financial Creditor

And

In the matter of:

M/s Kharikatia Tea & Industries Limited, a Company incorporated under the Companies Act, 1956 having its registered office at CF-366, Salt Lake City, Sector – I, Kolkata 700064, West Bengal.

...Corporate Debtor

Coram:

Rohit Kapoor	:	Member (Judicial)
Harish Chander Suri	:	Member (Technical)

Appearances (through Video Conferencing)

1. Ms. Tanvi Luhariwala, Advocate } For the Financial Creditor
2. Mr. Durgesh Jha, CS }

1. Ms. Swapna Choubey, Advocate }For the Corporate Debtor
2. Mr. Mohan Ram Goenka, CS }
3. Ms. Sneha Khaitan, CS }

Date of Hearing: 15/11/2021

Date of pronouncing the order: 01/12/2021

ORDER

Per Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Majestic Commercial Private Limited ("Financial Creditor"), a Company incorporated under the Companies Act, 1956, having its registered office at 57, Burtolla Street 3rd Floor, Kolkata – 700007, West Bengal, having CIN - U51109WB2005PTC104314. This Petition has been filed by Mr. Gopal Goenka, Accountant, duly authorised vide board resolution dated 14.08.2020, for initiation of Corporate Insolvency Resolution Process ("CIRP") against Kharikatia Tea & Industries Limited ("Corporate Debtor"), a Company incorporated under the Companies Act, 1956, having its registered office at CF-366, Salt Lake City, Sector – I, Kolkata 700064, West Bengal, having CIN - L70101WB1980PLC032922.

3. The present Petition was filed on 01.10.2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 1,24,95,493/- (Rupees One Crore Twenty Four Lakh Ninety Five Thousand Four

Hundred Ninety Three only) as on 01.01.2018, which is stated to be the date of default.

4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs. 2,00,00,000/- (Rupees Two Crore only), with Paid-up Capital of Rs. 1,10,52,000/- (Rupees One Crore Ten Lakh Fifty Two Thousand only). It is also submitted that Corporate Debtor was in financial stringency and thus had approached Financial Creditor seeking financial accommodation to tideover such financial stringencies. Accordingly, an oral agreement was entered into where it was agreed that an aggregate sum of Rs. 1,00,00,000/- (Rupees One Crore only) would be given as a short-term loan along with agreed interest @ 9% p.a. for a period of 122 days from the date of disbursal of the loan amount, i.e., 01.12.2015.

5. Subsequently, a short-term loan amount of Rs. 1,00,00,000/- (Rupees One Crore only) was given to the Corporate Debtor on 01.12.2015, *vide* Cheque No. 000004 paid through HDFC Bank Limited, Stephen House, 4, B.B.D. Bag-East, Kolkata – 700 001, West Bengal and the same was duly acknowledged by the Corporate Debtor by a letter dated 04.12.2015. On the same day the Corporate Debtor had also given a written confirmation of such oral agreement along with two post-dated cheques dated 28.11.2016, drawn on HDFC Bank for the principal and interest amount[1].

6. The Ld. Counsel for the Financial Creditor further submits that the short-term loan was renewed from time to time upon the request of the Corporate Debtor and was lastly renewed on 01.09.2017 and acknowledgement letter for the same was issued by the Corporate Debtor on 14.09.2017[2].

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[2] Page 61

7. The Ld. Counsel for the Financial Creditor also submits that to the utter shock and surprise on 17.11.2017[3], the Corporate Debtor by a letter asked the Financial Creditor not to deposit the post-dated cheques of HDFC Bank, as the said account was closed, and assured that the Financial Creditor will replace the issued cheques with the cheques drawn on ICICI Bank.

8. It is further admitted that despite several oral intimations and reminders the Corporate Debtor failed to pay the Principal amount along with interest within the stipulated time. Accordingly, the Financial Creditor also tried to deposit the post-dated cheques to its bank, i.e. HBFC, on account of Principal and Interest but the cheques were dishonored with return memos as "Funds Insufficient". However, the Corporate Debtor paid interest from 01.12.2015 to 31.08.2017[4], i.e., an amount of Rs.15,78,081/- (Rupees Fifteen Lakh Seventy Eight Thousand Eighty One only) on the principal sum of Rs. 1,00,00,000/- (Rupees One Crore only).

9. The Financial Creditor in support of its claim has annexed various documents, records and evidence of default, which are enumerated as under :-

SI. No.	*Particulars*
1.	Bank Statement of Majestic Commercial Private Limited for period 01.12.2015 to 01.01.2016
2.	Ledger Account of Kharikatia Tea & Industries Limited in the books of Majestic Commercial Private Limited

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[4] Page – 16 (point 13)

3.	Acknowledgement letter dated 04.12.2015 by Kharikatia Tea & Industries Limited
4.	Confirmation of Account from Kharikatia Tea & Industries Limited to Majestic Commercial Private Limited for the period from 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017
5.	Demand notice u/s 138 of the Negotiable Instrument Act, 1881 from Majestic Commercial Private Limited to Kharikatia Tea & Industries Limited
6.	A petition of Complaint disclosing the facts and circumstances constituting the commission of offences punishable under the provisions of Section 406/409/420 read with 120B of Indian Penal Code, 1860

10. The Corporate Debtor filed their reply affidavit on 11.01.2021 and stated the following in the reply:

  i. It was agreed between the Financial Creditor and Corporate Debtor that the loan provided by Financial Creditor will be renewed from time to time.

  ii. The Corporate Debtor had incurred a huge loss due to the slump in the global tea price, and due to the loss in business the Corporate Debtor was not in condition to make the payment of interest and hence it requested the Financial Creditor to allow more time to payback its dues to the Financial Creditor.

iii. It is also submitted that as per the verbal agreement it was decided by both the parties that the Corporate Debtor will pay back its dues to the Financial Creditor in a span of two years but due to loss of business and with sudden lockdown the business of the Corporate Debtor further deteriorated which resulted in the non-payment.

11. According to the Ld. Counsel for the Financial Creditor, the Corporate Debtor acknowledges and admits the debt and accepts the default in payment of dues to the Financial Creditor and also submits that the Corporate Debtor is suffering from a serious financial crunches and is unable to pay back its dues immediately to the Financial Creditor. Hence, it is clear that the Corporate Debtor has committed default in payment of Rs. 1,00,00,000/- (Rupees One Crore only) as on 01.01.2018. It is further submitted that the total outstanding inclusive of interest calculated from 31.08.2017 to 30.06.2020 is of Rs. 1,24,95,493/- (Rupees One Crore Twenty Four Lakh Ninety Five Thousand Four Hundred Ninety Three only).

12. The Financial Creditor has further proposed the name of **Shri. Birendra Kumar Tripathi**, Insolvency Professional with the registration number **IBBI/IPA-003/IP-N00229/2019-2020/12679,** who has filed FORM-2[5] with this Adjudiacting Authority giving his consent to his appointment as the IRP, if an admission order is passed in the present application. He has further, *inter alia*, menioned that he is serving as liquidator in only one case and no disciplinary proceedings are pending aainst hime either with the Board or with the Indian Institute of Insolvwncy Professional of ICAI.

13. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and have perused the records and the concerned documents annexed to the Petition.

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14. The present petition made by the Financial Creditor is complete in all respect as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, i.e., Rupees One Crore, at the relevant time.

15. It is, accordingly, hereby ordered as follows:-

    a. The application bearing CP (IB) No.834/KB/2020 filed by Majestic Commercial Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Kharikatia Tea & Industries Limited, CIN: L70101WB1980PLC032922, the Corporate Debtor, is **admitted**.

    b. There shall be a moratorium under section 14 of the IBC.

    c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

    d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

    e. Shri. Birendra Kumar Tripathi, registration number IBBI/IPA-003/IP-N00229/2019-2020/12679 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency

Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

g. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

h. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of

Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. **C.P (IB) No. 834/KB/2020** to come up on 25.01.2022 for filing the Progress Report.

17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order dated December 01, 2021

SA, LRA