

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKT BENCH,

KOLKATA

C.P (IB) No.860/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:

M/s Drolia Agencies Pvt. Ltd. a company incorporated under the Companies Act, 1956, having its registered office at 7, B.B.Ganguly Street, 3rd Floor, Kolkata -700012.

... Financial Creditor

Versus

In the matter of:

M/s Nigolice Trading Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its Registered Office at DD 30, 7th Floor, Sector 1, Salt Lake City, Kolkata-700064.

...Corporate Debtor

Date of hearing : 28/04/2022

Order Pronounced on : 15/06/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms. Aparajita Rao, Adv.] For the Financial Creditor
2. Ms.Sanwal Tibrewal, Adv.]

1. Mr. Sourojit Dasgupta, Adv.] For the Corporate Debtor
2. Mr. Sanjay Kumar Baid, Adv.]

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition 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 has been filed by **M/s Drolia Agencies Pvt. Ltd.**, through its authorised signatory Mr. Dilip Kumar Piplwa, vide Board Resolution dated 10.06.2019 (Annexure-B) (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **M/s Nigolice Trading Pvt. Ltd.**, having its registered office having its Registered Office at DD 30, 7th Floor, Sector 1, Salt Lake City, Kolkata-700064 (hereinafter referred to as the Corporate Debtor).
3. It is submitted by the Financial Creditor that the Inter Corporate Deposit was made by GRD Capital Markets Pvt. Ltd. to the corporate debtor. The Company GRD Capital Markets Pvt. Ltd. was merged with Drolia Agencies Pvt. Ltd. vide order of the NCLT, Kolkata Bench on 28.03.2019. Therefore, the present application has been made by the amalgamated company i.e. Drolia Agencies Pvt.Ltd. It advanced a sum of Rs.1,00,00,000/- (Rs. One Crore only) to the Corporate Debtor as Inter Corporate Deposit (ICD) carrying interest in two tranches, first of Rs.50.00 Lacs on 09.01.2012 and second on 14.05.2012 for Rs.50.00 Lacs. The Corporate Debtor paid interest at regular Intervals on the ICD until 31.05.2012 after which its payment became irregular. The Corporate Debtor refunded a sum of Rs. 25.00 Lacs from the said loan of Rs.1,00,00,000/- Lacs on 12.12.2013. The Financial Creditor regularly followed up the Corporate Debtor for the payment but the Corporate Debtor made the last payment as on 01.06.2018 and did not pay any further. The Financial Creditor applied further interest on the said dues up to 31.03.2017

but after 31.03.2017 as the Corporate Debtor had defaulted, the interest was not charged in the books of accounts of the Financial Creditor from the period 01.04.2017 to as on date. A copy of the order dated 28/03/2019 passed by the NCLT Kolkata Bench is annexed as Annexure-A.

4. It is submitted that the total amount claimed to be in default is Rs.1,23,80,860.00 (Rupees One Crore Twenty-three Lacs Eighty Thousand Eight Hundred and Sixty only) including interest as on 31.05.2019. The default occurred after the failure of the payment of the interest as well as principal by the Corporate Debtor from the year 2017 and the last payment made by the Corporate Debtor is on 01.06.2019.

5. It is further submitted that computation of the amount in default and the date of default, is reflected from the books of accounts of the Financial Creditor and also the calculation of unapplied interest thereon, which are annexed as Annexures D & E to the petition respectively.

6. It is submitted that for the purpose of proving the existence of debt and consequent default as per the agreement/understanding, the following documents have been annexed with the petition:-

- a) Copy of the Ledger Account of the Corporate Debtor maintained by the Financial Creditor from the period 01.04.2011 to 31.03.2018 is enclosed as Annexure-C;
- b) Copies of the Bank Statement showing the transaction held with the Corporate Debtor including the disbursement of the financial advances is annexed as Annexure-F.
- c) Copies of 26AS, TDS deduction Statement, showing the TDS deducted by the Corporate Debtor for the interest paid/payable to the financial creditor towards the said financial advances made is annexed as Annexure-G.
- d) Copies of the Last Audited Balance Sheet of the Corporate Debtor downloaded from the MCA website is annexed as Annexure-H.

7. The Financial Creditor has also filed a Supplementary Affidavit of Mr. Dilip Kumar Piplwa, on 31st March, 2022. The Financial Creditor sought leave of this Adjudicating Authority to bring on record certain documents and vide the order dated 31st March, 2022, this Adjudicating Authority was pleased to permit the same. It is submitted that an inter-corporate loan of Rs.1,00,00,000/- was advanced in two tranches on 09.01.2012 and 06.06.2012 by GRD Capital Markets Pvt. (erstwhile company which has since merged with the Financial Creditor) to the Corporate Debtor maintained with HDFC Bank which is reflected in the Bank Statement enclosed at pages 78 and 79 of the petition. The Corporate Debtor paid an aggregate of Rs.63,39,919/- from 31st March, 2012 to 01.06.2018. Since 02.07.2018 the Corporate Debtor failed and neglected to pay the outstanding loan amount. Copies of the Bank Statement reflecting payments received from the Corporate Debtor are enclosed as Letter-A.

8. It is submitted that the payments from the Corporate Debtor was received in intervals though irregular and thus provisions of Limitation Act is not attached in the instant case. Last payment was made on 01.06.2018 and default in repayment thereafter the instant application was filed on 18.06.2019 well within the period of limitation.

9. It is submitted that Form 2 and AFA of the proposed IRP Mr. Neeraj Kumar Kejriwal, are annexed as Letter-B.

10. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

11. The Corporate Debtor filed its reply affidavit through Mr. Mrityunjoy Chanda, who has been authorised by the Corporate Debtor to file its affidavit. It is submitted that the Corporate Debtor disputes and denies each and every allegation made in the application. It is submitted that the present application

is not maintainable as the Financial Creditor has failed to comply with necessary requirements provided and prescribed in the Code.

12. It is submitted that the application is barred by provisions of the Code and laws of limitation as contained in the Limitation Act, 1962. It is submitted that the Financial Creditor has not proposed any IRP along with the said application and therefore, the application is incomplete. It is submitted that the claim is hopelessly barred by Limitation.

13. It is submitted that no default has been committed by the Corporate Debtor and the Financial Creditor has not been able to prove any debt due or payable by the Corporate Debtor. It is submitted that no sums were ever disbursed to the Corporate Debtor against the consideration for the time value of money by any entity whatsoever and there was never any time frame stipulated for repayment of the sum alleged to have been obtained by the Corporate Debtor. It is submitted that the Financial Creditor has failed to produce any cogent and documentary evidence to substantiate the terms and conditions of the purported loan granted to the Corporate Debtor.

14. It is submitted that from the perusal of the order of amalgamation dated 28th March, 2019 passed by this Tribunal, it will be clear that the purported debt is owed by the corporate debtor to one GRD Capital Markets Private Limited, which has not been assigned to the applicant, which is claiming to be the Financial Creditor.

15. It is submitted that no documents have been produced to substantiate the said fact. Therefore, the question of any legal assignment debt does not arise. It is submitted that there has not been any default committed by the Corporate Debtor as regards the amount of Rs.1,23,80,860/- or any other part thereof. It is submitted that no reliance can be placed on the Bank Statements produced by the Financial Creditor as the same is not a document as per the provisions of the Bankers' Book Evidence Act, 1891. It is submitted that the petition is liable to be dismissed.

16. In the Rejoinder to the reply affidavit, the Financial Creditor has filed affidavit of one Mr. Dilip Kumar Piplwa. The Financial Creditor has denied and disputed all the averments of the reply affidavit, which dispute or deny the averments and contentions made in the petition. It is denied that the application is not maintainable or it has not been filed in proper manner or is barred provisions of the Code or laws of limitation as alleged. It is denied by the Financial Creditor that no debt is proved or due or that no default was committed by the Corporate Debtor in repayment of the sums obtained from the Financial Creditor. The Financial Creditor has reaffirmed and reiterated the averments made in the petition and submitted that the CIRP be commenced as against the Corporate Debtor.

17. Ld. Counsel for the Financial Creditor has filed Supplementary Affidavit, wherein in para '6', he has submitted that Financial Creditor has proposed the name of Mr. Neeraj Kumar Kejriwal, as IRP. Copy of Form-2 is annexed as 'Letter B' to this supplementary affidavit.

18. The petition is otherwise complete in all respects.

19. We have heard Ld. Counsel for the parties, during the course of arguments, Ld. Counsel for the Financial Creditor has proved on the basis of Bank Statements that the amount was duly disbursed and all the repayments made from time to time were reflected in the books of accounts. Mrs. Rao, Ld. Counsel for the Financial Creditor has taken us through all the ledgers and the Bank Statements and explained each and every entry which tally with the Bank Statements.

20. We are fully convinced that the Financial Creditor has been able to prove its case, the amount of financial debt due and outstanding, and payable by the Corporate Debtor. The Financial Creditor has also proved the default of the Corporate Debtor in repayment of the debt and the interest due thereon. After the arguments were complete, Ld. Counsel for the Corporate Debtor

however, sought some time to settle the matter after admitting the liability of the Corporate Debtor but this Adjudicating Authority declined the request and reserved the orders in this matter.

21. We are convinced that this petition has to be admitted because the disbursement financial debt and the default have been proved by the Ld. Counsel for the Financial Creditor.

22. We, therefore, pass the following orders:-

O R D E R S

- 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 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 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. Neeraj Kumar Kejriwal, IRP** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00392/2017-18/10710**, 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 Lac 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 03/08/2022 for the 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)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 15th day of June, 2022

Pj