



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA**

CP (IB) No. 159/KB/2022

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Sree Polytraders Private Limited
[CIN : U25200WB2010PTC142736]

...Financial Creditor

Versus

Jelenta Polytraders Private Limited
[CIN: U51909WB2010PTC142740]

...Corporate Debtor

Order reserved on: 27/07/2023

Order pronounced on: 04/08/2023

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Financial Creditor : Ms. Meenakshi Manot, Advocate
: Ms. Shreya Choudhury, Advocate

For the Corporate Debtor : None

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by Sree Polytraders Private Limited, represented by

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Shri Bibhakar Jha, authorized *vide* a Board Resolution dated 28.03.2022¹ seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Jelenta Polytraders Private Limited (“Corporate Debtor”).

3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor. Part-III contains particulars of the Proposed Interim Resolution Professional.
4. Part –IV of the Petition contains details Financial debt for an amount of **Rs.2,55,35,000/- (Rupees Two Crore Fifty Five Lakh and Thirty Five Thousand only)** as on 31.03.2019. The date on which default occurred is 01.04.2019.
5. The Corporate Debtor was incorporated on 26 February 2010, having CIN: 51909WB2010PTC142740, under the Companies Act, 1956. It’s registered office is at 16B, Shakespeare Sarani, B.K. Market, Flat Nos. 19 and 20, Kolkata-700071. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 17 May 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of **Rs.2,55,35,000/- (Rupees Two Crore Fifty Five Lakh and Thirty Five Thousand only)** as on 31.03.2019.

Submission of the learned Counsel appearing for the Financial Creditor

7. The Ld. Counsel for the Financial Creditor submitted that One Gajjraj Agency Private Limited, incorporated on 25.11.2011 was in requirement of financial assistance for their business. In the month of August, 2018, the said Gajjraj Agency Private Limited requested to grant a loan for a sum of Rs. 1,75,00,000/- .The Financial Creditor agreed to give such loan by way of transfer in the bank account of the said Gajjraj Agency Private Limited. The Corporate Debtor thereafter made part payments towards the said loan rendering to a sum of Rs. 1,61,50,000/-² due and payable to the Financial Creditor.

¹ Annexure B at Page 21 of the Petition.

² Annexure-E, Page 27 of the Petition

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8. Thereafter, the said Gajjraj Agency Private Limited along with other transferor companies amalgamated to the transferee company namely Jelenta Polytraders Private Limited *vide* an Order dated 21.02.2019.
9. Pursuant to the above Amalgamation, the Financial Creditor entered into an agreement dated 25.02.2019³ with the Corporate Debtor wherein it was recorded that Gajjraj Agency Private Limited had approached the Financial Creditor for a loan of Rs. 1,61,50,000/- which was outstanding on 21.02.2019 and the same was now to become payable by Jelenta Polytraders Private Limited. It was further recorded that the Corporate Debtor sought for a financial assistance for a sum of Rs.1,00,00,000/-. The Financial Creditor further granted a sum of Rs.95.30 Lakhs on 25.02.2019 and 01.03.2019, on the terms and conditions as stated in the agreement dated 25.02.2019.
10. It was submitted that it was agreed between the parties that the outstanding loan of Rs. 2,56,80,000/- was to be payable to the Financial Creditor in 3 (three) equal monthly instalments starting from March 2019 to May, 2019.
11. Thereafter, the Financial Creditor from time to time had requested the Corporate Debtor to make payments of the total sum outstanding, however, the Corporate Debtor at several times sought time to repay the remaining sum and made certain part payments aggregating to a sum of Rs. 1,45,000/-. The last payment made by the Corporate Debtor was on 03.06.2020 for an amount of Rs. 30,000/-.
12. It was submitted that pursuant to the above, there were several communications between the Corporate Debtor and Financial Creditor which will be evident from the letters dated 10.05.2019, 15.05.2019, 20.05.2019, 31.05.2019, 27.09.2019, 02.01.2020, 05.06.2020, 24.12.2020 and 20.12.2021.⁴
13. The Corporate Debtor never paid any further sum either towards the principal or towards interest inspite of repeated reminders from the Financial Creditor. The Corporate Debtor only kept reassuring the Financial Creditor that it will repay the said loan with interest but it never came to be paid.

³ Annexure-I, Page 47-49 of the Petition

⁴ Annexure-K, Page 51 to 61 of the Petition

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14. It was submitted that the Corporate Debtor issued confirmation of accounts for the accounting periods 01.04.2018-31.03.2019, 01.04.2019-31.03.2020, and 01.04.2020-31.03.2021⁵ acknowledging and admitting the sum due and payable to the Financial Creditor.

15. The Financial Creditor has placed the following documents on record:

- a. A copy of the Bank statement evincing the loan amount of Rs.1,61,50,000/- give by the Financial Creditor to Gajjraj Agency Private Limited [**Annexure E @Pg 27 of the Company Petition**]
- b. A copy of documents evincing part payment made by Jelenta Polytraders Private Limited [**Annexure F @Pgs. 28-32 of the Company Petition**]
- c. A copy of the Board Resolution dated 08.08.2018 authorizing the Financial Creditor to give loan. [**Annexure G @Pgs. 33 of the Company Petition**]
- d. A copy of the order dated 21.02.2019 sanctioning the Scheme of Amalgamation [**Annexure H @Pgs. 34-46 of the Company Petition**]
- e. A copy of the Agreement dated 25.02.2019 [**Annexure I @Pgs. 47-49 of the Company Petition**]
- f. A copy of the bank statement evidencing the disbursement of further loan of Rs. 95.30 Lakhs [**Annexure J @Pg 50 of the Company Petition**]
- g. Copy of various communications dated 10.05.2019, 15.05.2019, 20.05.2019, 31.05.2019, 27.09.2019, 02.01.2020, 05.06.2020, 24.12.2020 and 20.12.2021 [**Annexure K @Pgs. 51-61 of the Company Petition**]
- h. Copy of confirmation of accounts for the accounting periods 01.04.2018-31.03.2019, 01.04.2019-31.03.2020, and 01.04.2020-31.03.2021 [**Annexure L @Pgs. 62-69 of the Company Petition**]

⁵ Annexure-L, Page 62 to 69 of the Petition

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i. A copy of the statement of due date [**Annexure M @Pg- 70 of the Company Petition**]

16. The Financial Creditor has proposed the name of Mr. Chandra Kumar Jain, registration number IBBI/IPA-001/IP-P00214/2017-2018/10414, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

17. The Corporate Debtor initially appeared in the matter, filed its Reply Affidavit. The Corporate Debtor was directed to file the Balance Sheets of the last 3 (three) financial years *vide* order dated 16.12.2022 and the matter was posted for final arguments.

18. The Balance Sheets have been filed by the Corporate Debtor by way of a Supplementary Affidavit containing stamp of the Auditor.

19. On 26.04.2023 none appeared for the Corporate Debtor and also on 07.06.2023 as well as on 05.07.2023. The Corporate Debtor was set **ex-parte** on 05.07.2023 because of its repeated non-appearance as noted above.

Analysis and Findings

20. Heard the Learned Counsel appearing for the Financial Creditor and perused the records as well as the Reply Affidavit filed by the Corporate Debtor.

21. The matter was **reserved for orders** on 27.07.2023.

22. The Learned Counsel for the Financial Creditor has placed on record the acknowledgment of debt by the Corporate Debtor at Page 59, 60 and 61 of the Petition. Through the medium of these letters dated 20.05.2019, 30.06.2020 and 20.12.2020, the Corporate Debtor appeared to have sought extension of time for the payment of **Rs. 2,56,05,000/- (Rupees Two Crores Fifty Six Lakhs and Five Thousand Only)**.

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23. In para 6 of the Reply Affidavit⁶, the Corporate Debtor has stated as follows:

“From the aforesaid facts, it is clear that there exists a bonafide interest of the Corporate Debtor to make payments of the debts of the financial creditor, however, the corporate debtor is suffering from the financial issues which the corporate debtor is positive of recovering from.”

24. Thus, from the position based on documents as brought on hereinabove and the reply affidavit, it is clear that the Corporate Debtor has committed a default. It is established that there was a ‘debt’ and a ‘default had occurred on the part of the Corporate Debtor in repaying the same. The present petition has been filed within the prescribed period of limitation.

25. The present petition made by the Financial Creditor is complete in all respects as required by law and deserves to be ‘**admitted**’

26. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 159/KB/2022** filed by Sree Polytraders 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 **Jelenta Polytraders Private Limited**, 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

⁶ Page 5 of the Reply Affidavit

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Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. **Mr. Chandra Kumar Jain**, registration number IBBI/IPA-001/IP-P00214/2017-2018/10414, email: ckcacs@yahoo.co.in, 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 the RP, as the case may be, 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 the RP, as the case may be, 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. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. 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.
- i. 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

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public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- j. 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.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, 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.

27. **CP (IB) No. 159/KB/2022** to come up on **4.09.2023** for filing the periodical report.

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

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 4th day of August, 2023.

FA_LRA