NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1339/ND/2018

In the matter

Ganesh Prasad Aggarwal
R/o D-52, Pushpanjali Enclave
Pitampura, New-Delhi-110034

...Applicant/Operational Creditor

Versus

Oswal Industries Private Limited
Registered Office at: Ground Floor,
H.No.4532/12 Jai Mata Market, Tri Nagar
New-Delhi-110035

...Respondent/ Corporate Debtor

Order delivered on: 16.01.2019

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

ORDER
PER SMT. INA MALHOTRA, MEMBER (J)

1. The petitioner as a Financial Creditor has invoked the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 ("the Code") against the Corporate Debtor, claiming a default of a financial debt.

2. As per the averments, it is submitted that the petitioner had advanced loans of Rs. 24 Lakhs, 1 Lakh and 12 Lakhs to the Corporate Debtor on 18th July 2014, 21st July 2014 and 25th July 2014 respectively amounting to Rs. 37 Lakhs. The said amount was transferred to the Corporate Debtor through

Banking Channels. The Corporate Debtor has duly acknowledged this debt in their records year in year out, more specifically vide their Balance Sheets and Annual Returns filed with ROC for the F.Y 2014-15 and 2015-16.

3. A notice dated 05.09.2018 was issued calling upon the Corporate Debtor to repay the loan amount of Rs. 37 Lakhs. Copies of the Notice, Postal receipt are annexed alongwith. Failure to respond has culminated in filing the present petition.

4. On being served with the notice, the Corporate Debtor entered appearance and has filed its reply. It is their case that the loan was an interest free long-term loan given to the Corporate Debtor for a period of seven years. The Corporate Debtor has submitted that the Audited Financial Statements for the year ending 31 March 2015 and 31 March 2016 clearly shows that no interest was payable on the total borrowings.

5. Upon hearing ld. counsels, it is observed that the acceptance of the loan from the petitioner is not denied. The only resistance is that it was a long term loan and was free of interest. Be that as it may, the notice dated 05.09.2018 demanding return of the loan is on record. The said demand notice was not replied to by the Corporate Debtor. In the absence of any written agreement that the loan was for a period of 7 years and therefore has not become due for repayment does not stand corroboration. In view of the same, the loan becomes payable on demand, on issuance of the recall notice.

Failure to return gives rise to a financial default, entitling the petitioner for the prayer made herein. Accordingly the petition is admitted.

A moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:

> *"(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;*
>
> *(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;*
>
> *(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.*
>
> Further,
>
> *(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(3) 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.

(4) Further, the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

"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 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."

6. The Petitioner has proposed Mr. Sunil Prakash Sharma as the Interim Resolution Professional. His Registration No. IBBI/IPA-002/IP-N00551/2017-18/11726. Copy of his certificate of registration with the IBBI alongwith his consent in Form 2 is on record. We accordingly confirm the appointment of Mr. Sunil Prakash Sharma as the IRP in this case.

7. He is directed to take all such steps as are required under the Code. More specifically under Section 15, 17, 18, 20 and 21 of the Code and file his report on or before 24th Feb 2020.

-Sd-

Ina Malhotra
Member (J)