**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

***(Special bench)***

**CP (IB) No. 1568/KB/2019**

*In the matter of:*

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

*In the matter of:*

**Onemax Yarn Merchants Private Limited**
[CIN: U74900WB2015PTC206275]

**… Financial Creditor**

*Versus*

**Nandlal Kamal Kishore Vyapaar Private Limited**
[CIN: U51109WB2006PTC107233]

**… Corporate Debtor**

Order reserved on: 23.12.2020
Order pronounced on: 02.02.2021

*Coram:*

| | | |
|---|---|---|
| Shri Rajasekhar V.K. | : | Member (Judicial) |

*Appearances (through video conferencing):*

| | | |
|---|---|---|
| For the Financial Creditor | : | Mr. Ram Ratan Modi, PCA |

**ORDER**

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

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, the Code) by Onemax Yarn Merchants Private Limited, a company incorporated under the provisions of the Companies Act, 2013 and

represented by its Director, Ms. Namita Das, authorised by a Board Resolution dated 01.08.2019 (hereinafter, the Financial Creditor) seeking to initiate Corporate Insolvency Resolution Process (hereinafter, CIRP) against Nandlal Kamal Kishore Vyapaar Private Limited (hereinafter, the Corporate Debtor).

2. The Corporate Debtor is a company limited by shares incorporated on 12.01.2006, having CIN: U51109WB2006PTC107233, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 1A, Akrur Datta Lane, Kolkata-700012, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 30.08.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 26,42,583/- (Rupees twenty-six lakh forty-two thousand five hundred and eighty-three only) including interest @ 12% p.a. from the date of default i.e. 01.07.2019.

4. The learned Counsel for the Financial Creditor stated as follows:-

    a. On 08.12.2015, the Financial Creditor advanced an inter-corporate deposit to the Corporate Debtor amounting to Rs. 25,00,000/- (Rupees twenty-five lakh only) by way of RTGS from Punjab National Bank. The same was acknowledged by the Corporate Debtor by issuing a money receipt dated 08.12.2015. The relevant portion of bank statement showcasing RTGS transfer to the Corporate Debtor and the copy of money receipt are annexed to the petition and marked as Annexure A-7 and Annexure A-8 at pages 30 and 31 respectively.

    b. The Financial Creditor has received interest at the rate of 12% p.a. on the said amount till 31.03.2019. Detailed working of the principal amount and the interest incurred thereon is annexed to the petition and marked as Annexure A-13 at page 47.

c. The total outstanding inter-corporate deposit fell due for repayment on 01.04.2019. However, with consent of both the parties, it was renewed for a further period of three months. In this regard a letter along with post dated cheque bearing number 064822, dated 01.07.2019 was issued by the Corporate Debtor to the Financial Creditor. The letter is attached to the petition and marked as Annexure A-11 at page 45 and the post dated cheque is attached to the petition and marked as Annexure A-14 at page 50.

d. The aforesaid post dated cheque was returned by the bank to the Financial Creditor with remark "insufficient fund". The return memo issued by the bank is annexed to the petition and marked as Annexure A-12 at page 46.

5. Apart from the aforementioned documents, the Financial Creditor has placed the following documents on record:

   a. Copy of relevant pages of bank statement showing the receipt of interest by the Financial Creditor, is annexed to the petition and marked as Annexure A-15 at pages 51-86.

   b. Copy of ledger of Financial Creditor for the financial years 2015-2016 and 2016-2017 and copy of confirmation of account for the financial years 2017-2018 and 2018-2019, are annexed with the petition and marked as Annexure A-09 at pages 32-35.

   c. Copy of Form 26 AS for the assessment years 2016-2017, 2017-2018 and 2018-2019 showing deduction of TDS and assessment year 2019-2020 showing non-deduction of TDS, annexed with the petition and marked as Annexure A-10 at pages 36-44.

6. Advance Court notice had been served on the Corporate Debtor on 20.09.2019 however, no one appeared on behalf of the Corporate Debtor. This adjudicating

Authority, *vide* order dated 23.09.2019 directed the Financial Creditor to serve notice on the Corporate Debtor once again.

7. On 08.11.2019, nobody appeared on behalf of the Corporate Debtor. This Adjudicating Authority observed that *Vakalatnama* had been filed on behalf of the Corporate Debtor but no reply affidavit was filed. The Adjudicating Authority, therefore, declared the Corporate Debtor *ex-parte* and listed the matter for hearing on 18.12.2019.

8. On 18.12.2019 and on 10.01.2019, the learned counsel representing Corporate Debtor entered appearance, however, it did not file its reply affidavit. On 10.02.2020, this Adjudicating Authority observed that the Corporate Debtor had already been declared *ex-parte*, however, the Adjudicating Authority granted the Corporate Debtor seven days' time to file its reply affidavit and listed the matter for further consideration on 25.03.2020. The matter appeared again on 20.10.2020, however, nobody appeared on behalf of the Corporate Debtor on, neither was reply affidavit filed by them, the matter stood adjourned to 23.12.2020 with direction on both the parties to upload all the documents on the e-portal. There was no representation on the side of the Corporate Debtor even on 23.12.2020.

9. Despite ample opportunities having been granted to the Corporate Debtor, the Corporate Debtor chose not to defend its case. Its attitude has been very casual and lackadaisical towards this Adjudicating Authority.

10. The petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of the minimum amount of one lakh rupees as stipulated under section 4(1) of the Code at the relevant time. Therefore the default stands established and there is no reason to deny the admission of the petition. In view of this,

this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.

11. The Financial Creditor has proposed the name of Mr. Ajay Kumar Agarwal, registration number IBBI/IPA-002/IP-N00608/2018-19/11859, residing at Ambey Garden, Block-1M, Flat No. 3C, 3rd Floor, Bangalaxmi Abasan, Dashadrone Checkpost, Rajarhat Main Road, Kolkata-700136, email: ca.aaa.2014@gmail.com, as the Interim Resolution Professional (IRP) 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.

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

   a. The petition bearing CP (IB) No. 1568/KB/2019 filed by Onemax Yarn Merchants 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 Nandlal Kamal Kishore Vyapaar Private Limited (CIN: U51109WB2006PTC107233), 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. Mr. Ajay Kumar Agarwal, registration number IBBI/IPA-002/IP-N00608/2018-19/11859, residing at Ambey Garden, Block-1M, Flat No. 3C, 3rd Floor, Bangalaxmi Abasan, Dashadrone Checkpost, Rajarhat Main Road, Kolkata-700136, email: ca.aaa.2014@gmail.com, 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 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 a period of 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 reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h. The Financial Creditor shall deposit a sum of Rs. 1,00,000 (Rupees one 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 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.

13. **CP (IB) No. 1568/KB/2019** to come up on 26.04.2021 for filing periodical report.

14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Rajasekhar V.K.**
**Member (Judicial)**
02.02.2021

*SR (LRA)*