In the National Company Law Tribunal
Kolkata Bench
Kolkata

CORAM: 1. Shri Madan B. Gosavi, Member (Judicial)
&
2. Shri Virendra Kumar Gupta, Member(Technical)

CP(IB)No.230/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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:

State Bank of India, a body corporate, constituted under the State bank of India Act, 1955 having its Local head office at Samriddhi Bhavan, 1, Strand Road, Kolkata-700001 and one of its branch office amongst others, at Jeevandeep Building, 1st floor, Middleton Street, Kolkata-700071 commonly known as Stress Assets Management Branch (SAMB-II)

........Financial Creditor

In the Matter of:

M/s Rythem Overseas Trade Limited (formerly known as R. Pyarellal Import And Export Limited), having its registered office at 85, Ballygunge Garden, Kolkata-700019.

.... Corporate Debtor

Counsels appeared:

For Financial Creditor

1. Mr. Debasish Chakrabarti, Advocate
2. Ms. Trisha Saha, Advocate

For Corporate Debtor

1. Mr. Joydeep Guha, Advocate

Date of pronouncement of order: 7th November, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. **State Bank of India** (Financial Creditor) filed this application under Section 7 of Insolvency and Bankruptcy Code, 2016 against **M/s Rythem Overseas Trade Limited** (Corporate Debtor) to start Corporate Insolvency Resolution Process (in short "CIRP") on the ground that the Corporate Debtor as the Corporate Debtor allegedly committed default in paying financial debt of Rs. 180,03,36,083/- (Rupees One Hundred Eighty Crore Three Lakh Thirty-Six Thousand Eighty-Three Only).

2. It is stated that initially in the year 1995, the Financial Creditor granted and disbursed in favour of the Corporate Debtor aggregated loan of Rs. 450 Lakhs including letter of credit facilities. The term of loan and credit facilities were extended and enhanced from time to time. Lastly on 03.06.2013, the Corporate Debtor executed balance confirmation letter

and also undertook to clear outstanding debt but committed default. Its account was declared as NPA on 15.12.2013.

3. On 08.02.2014, the Financial Creditor sent demand notice and called upon the Corporate Debtor to clear outstanding. The Corporate Debtor was formerly known as **Pyarellal Import and Export Limited**. In the year 2015, the Corporate Debtor changed its name as Rythem Overseas Trade Limited and admitted the liability to pay the debt. Since the Corporate Debtor committed default in paying the financial debt, this proceeding is filed.

4. The Financial Creditor suggested name of on one Mr. Yogesh Gupta, having registration no. IBBI/IPA-001/IP-P00349/2017-18/10650 for the appointment of IRP against whom no disciplinary proceeding appears to be pending.

5. Notice of this application is duly served on the corporate debtor by speed post as well as by email. On 04.10.2019, one advocate Mr. Joydeep Guha appeared for the Corporate Debtor on the basis of resolution dated 15.11.2016 passed by the Corporate Debtor. He sought time to file affidavit-in-reply to contest the application. However, in spite of opportunities, the corporate debtor did not file reply.

6. We perused the record. The following facts are uncontraverted on record: -

   (i) Financial debt of more than Rs. 1 Lakh is due and payable by the Corporate Debtor.

   (ii) The Corporate Debtor committed default in paying the same.

   Since, both facts are not in dispute, we have no hesitation in admitting the Corporate Debtor in CIRP. However,

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before that, we also have to consider whether this claim within limitation.

7. As per own assumption of the Financial Creditor, loan account of the Corporate Debtor declared NPA in the year 2013. This application is filed in 2019. In recent ruling in case of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited & Ors. (Civil Appeal No. 4952 of 2019) {MANU/SC/1301/2019}, the Apex Court held that the creditor has to file application under Section 7 & 9 of I & B Code, 2016 against the debtor within 3 years from the date of which right to sue accrues as per Article 137 of the Law of Limitation. In view of this, we called upon the Financial Creditor to state as to how this proceeding is filed within limitation.
8. Ld. Counsel for the Financial Creditor pointed out the balance sheet of the Corporate Debtor for the year ending March, 2017. He pointed out that the Corporate Debtor admitted debt and acknowledged the debt to be payable to State Bank of India more than Rs. 25 Crore. According to Ld. Counsel, it is an acknowledgment of debt within meaning of Section 18 of Law of Limitation. Hence, the Financial Creditor has got right to sue the Corporate Debtor for the default in the year 2017. This proceeding is filed within 3 years thereafter. We considered ld. Counsel's submissions. This Authority has had the occasion to consider this aspect. In the case relating to Punjab National Bank Vs. M/s Jas Infrastructure and Power Ltd. {CP(IB)No.1290/KB/2018}. It was held that presentation of debt in balance sheet is the acknowledgment of the debt within meaning of Section 18 of Law of Limitation. It was held on the basis of some of the rulings of the NCLAT and the Supreme Court. We find that in this case, the Corporate Debtor admitted and acknowledged the above debt in its balance sheet dated 31.03.2017. This application is filed in the year 2019. It is filed well within limitation. The application

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is defect free. No disciplinary proceeding is pending against the IRP. Hence, we admit this application by following order.

ORDER

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, **M/s Rythem Overseas Trade Limited** is hereby admitted.

ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP 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 to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during 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 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) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Mr. Yogesh Gupta, having registration no. IBBI/IPA-001/IP-P00349/2017-2018/10650, residing at 12, Ho Chi Min Sarani, 2nd Floor, Suit 2D & 2E, Kolkata -700071, email id. yogeshgupta31@rediffmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

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xi) The Financial Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **19.12.2019** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd 7/11/19   Sd 7/11/2019

(Virendra Kumar Gupta)
Member(T)

(Madan.B. Gosavi)
Member(J)

Signed on this, the 7th day of November, 2019.

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