

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

CP(IB)No. 232/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:

Bank of India, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking Act, 1970) having its Head Office at Star House-I, C-5, G-Block, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra; and having its Zonal Office, Recovery Department (Howrah Zone) at 5, B.T.M. Sarani, Kolkata-700001 and Branch Office at P-4 Dobson Lane, Howrah-711101, commonly known as Dobson Lane Branch, under Police Station – Golabari.

.....Financial Creditor

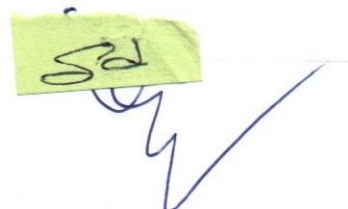
In the Matter of:

M/s Uttoron Engineering Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 5/8, Ashutosh Mukherjee Road, Belurmath, Ward No. 13, Howrah-711202.

..... Corporate Debtor

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





Counsels appeared:

For Financial Creditor

1. Ms. Anindita Das, Advocate
2. Mr. Debashis Chakraborty, Advocate
3. Mr. Trish Saha, Advocate

For Corporate Debtor

1. Mr. Rupak Ghosh, Advocate
2. Mr. Saunak Sengupta, Advocate

Date of pronouncement of order: 3rd October, 2019.

ORDER

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

1. Bank of India (Financial Creditor) filed this application under Section 7 of Insolvency and Bankruptcy Code, 2016 against M/s Uttoron Engineering Pvt. Ltd. (Corporate Debtor) to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying financial debt of Rs. 8,80,38,353/- (Rupees Eight Crore Eighty Lakh Thirty Eight Thousand Three Hundred and Fifty Three Only).
2. The following facts are not in dispute.
 - 2.1. By loan sanction letter dated 29.10.2010, the Financial Creditor granted and disbursed total sum of Rs. 2,40,00,000/- (Two Crore Forty Lakh Only) to the Corporate Debtor as a term loan and cash credit facilities. The term of repayment of loan was extended from





time to time. Firstly, it was extended till 25.08.2012, then it was extended to 13.12.2014 and lastly on 10.03.2016. At every time, the Corporate Debtor executed various documents in favour of the Financial Creditor, there admitting and acknowledging the debt. Lastly, on 04.12.2017, the Financial Creditor revised the loan as per the request of the Corporate Debtor, thereby, raising credit facilities of Rs. 9,51,00,000/- (Rupees Nine Crore Fifty One Lakh Only). The Corporate Debtor executed acknowledgment receipt admitting the debt. It is stated that the Corporate Debtor committed default in paying the loan amount. Its loan account classified as Non-Performing Asset (NPA) on 30.09.2018. Since, the Corporate Debtor committed default in paying the debt, this application is filed to start CIRP of the Corporate Debtor.

2.2. The Financial Creditor filed this proceeding. Financial Creditor suggested name of one Mr. Partha Sarathi De, having registration no. IBBI/IPA-001/IP-P00623/2017-2018/11079 for appointment as the Interim Resolution Professional.

3. The Corporate Debtor is served with the notice of this application. One of this Directors, Mr. Utpal Das, one of the directors of the Corporate Debtor appeared and filed affidavit-in-reply. Although, the reply consists of twenty one long pages, we find the Corporate Debtor's as follows: -

3.1. One M/s. Jiwanram Sheodutrai Industries Pvt. Ltd. Approached the Corporate Debtor with the proposal of investment that the Company was to purchase shares of the Corporate Debtor. Accordingly, on 09.08.2013, the agreement between that company and the Corporate Debtor was executed. That company was to take over liability to pay the debt of the Corporate Debtor, however, that company did not keep its promise. All above facts are within

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knowledge of the Financial Creditor. The Corporate Debtor filed suit in Civil Court against that company and the Bank for declaration that loan sanction letter of the Financial Creditor in favour of the Corporate Debtor and credit facilities at advance from time to time be declared to be void. According to the Corporate Debtor, for this reason, the Financial Creditor cannot file and pursue this application. It may be rejected.

4. We have gone through the material on record. We heard Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length.
5. At the outset, we note that the Financial Creditor was not party to any agreement that was executed in between the Corporate Debtor and M/s. Jivanram Sheodutrai Industries Pvt. Ltd. (copy of that agreement is produced on record by the Corporate Debtor as Annexure-"B") as against this, the Financial Creditor has produced on record an ample evidence to show that the loan was granted and disbursed to the Corporate Debtor only. The Corporate Debtor is the beneficiary of the loan. In view of this, we hold that any dispute in between the Corporate Debtor and that company (M/s. Jivanram Sheodutrai Industries Pvt. Ltd.) has no relevance in baring as far as this application is concerned.
6. Ld. Counsel for the Corporate Debtor submitted that the Corporate Debtor filed suit for injunction against the Bank. Unless the competent Authority decides that suit, this application is not maintainable. We reject this contention of the Corporate Debtor for simple reason that the Bank is not at all concerned with the transaction/agreement in between the Corporate Debtor and any other company. Besides that, in view of Section 238 of the Insolvency and Bankruptcy Code, 2016, a provision of supersedes over any other proceeding which may be filed under any civil law as that would be inconsistent with the provisions of this Code.
7. In this case, the Financial Creditor established all three relevant facts: -

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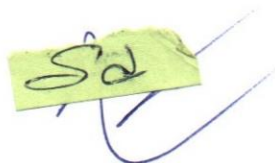
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- (i) That amount more than Rs. 8 Crores is due and payable by the Corporate Debtor to the Financial Creditor.
- (ii) The Corporate Debtor defaulted in paying the debt.
- (iii) Date of default is 30.09.2018 – a date on which the Corporate Debtor has classified as NPA and this proceeding is well within the period of limitation.

8. The Financial Creditor suggested name of one Mr. Partha Sarathi De, having registration no. IBBI/IPA-001/IP-P00623/2017-2018/11079 for appointment as the Interim Resolution Professional. There is nothing on record that any disciplinary proceeding is pending against him. The application is defect free. Hence, we admit the Corporate Debtor in CIRP by following orders.

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 Uttoron Engineering Private 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.

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ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Mr. Partha Sarathi De, having registration no. IBBI/IPA-001/IP-P00623/2017-2018/11079, residing at Dutta Sarkar & Company, Chartered Accountants, 7, Kiran Sankar Roy Road, Kolkata, West Bengal-700001, E-mail ID: **sarathi.parthade@gmail.com** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

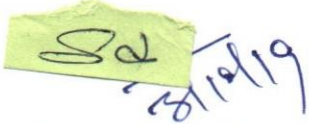
xi) The Financial Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.


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 **15.11.2019** 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.


(Virendra Kumar Gupta)
Member(T)


(Madan B. Gosavi)
Member(J)

Signed on this, the 3rd day of October, 2019.