

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP(IB) No1064/KB/2019

Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

H.B. Traders Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No- U51900WB2008PTC12320 and its registered office at D-147/ 148/ 149, Satyanarayan Park, AC Market, Lower Basement, 141, Utkalmani Gopa Bandhu Sarani, Kolkata- 700007 in the State of West Bengal.

.....Financial Creditor

-Versus-

Shree Bhagirathi Agro Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No-U01409WB2003PTC097459 and its registered office at 46, B.B. Ganguly Street, Kolkata- 700012 in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 25th May, 2022

Date of pronouncing the order: 6th July, 2022

Coram:

Shri Rohit Kapoor, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

Appearances (via video conferencing):

For the Financial Creditor : Ms. Noelle Banerjee, Advocate

Mr. Dipak Dey, Advocate
Mr. Dipanjan Dey, Advocate
For the Corporate Debtor : Mr. Shahrukh Raja, Advocate
Mr. Anindya Chowdhury, Advocate

ORDER

Per :Rohit Kapoor, Member (Judicial):

1. This Court convened through video conferencing.
2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **H.B. Traders Private Limited** (hereinafter referred to as the Financial Creditor), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shree Bhagirathi Agro Private Limited** (hereinafter referred to as the Corporate Debtor).
3. ***Submissions on behalf of the Financial Creditor:***
 - 3.1 The case of the Financial Creditor is that the Corporate Debtor approached the Financial Creditor in or around April 2018 seeking financial assistance of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) to tide over its unseen financial difficulties. Upon deliberations, it was decided that the Corporate Debtor would pay interest @15% per annum on the advance and that the financial assistance would be for a period of 120 days.
 - 3.2 Accordingly, the Financial Creditor, on 23rd April 2018, paid to the Corporate Debtor, a sum of Rs.20,00,000/- through RTGS. A copy of the relevant extract of the Financial Creditor's bank statement evidencing the payment of 23rd April, 2018 is annexed to the petition as Annexure 'A'.
 - 3.3 On receipt of the said sum, the Corporate Debtor issued an acknowledgment receipt dated 23rd April, 2018. A copy of the said receipt dated 23rd April, 2018 is annexed to the petition as Annexure 'B'.

- 3.4 Upon expiry of the said period of 120 days, the Corporate Debtor made default in making payment of the principal amount and pleaded for further 120 days' time to make payment of the same.
- 3.5 The Corporate Debtor on 1st September 2018 issued to the Financial Creditor a cheque bearing No. 013450 for an amount of Rs. 96,000/- (Rupees Ninety-Six Thousand Only) towards the payment of the interest component up to 31st August 2018 upon deducting TDS with a request to deposit the same on 4th September, 2018. Upon presentment on 6th September 2018, the said cheque stood honoured.
- 3.6 Since 4th September, 2018, the Corporate Debtor made default in making payment of both the principal and interest component.
- 3.7 In the circumstances, as on 30th April, 2019 a sum of Rs. 21,98,908/- (inclusive of interest @15% per annum from 1st September 2018 to 30th April 2019) is due and payable by the Corporate Debtor.
- 3.8 Despite issuance of demand notice dated 30th April, 2019 by the Financial Creditor through advocates, the Corporate Debtor failed to make any payment. A copy of the demand notice along with the postal receipt and the acknowledgment evidencing the receipt of the said notice by the Corporate Debtor has been annexed to petition as Annexures 'D' & 'E' respectively.
- 4 Part I of the petition contains the details of the applicant.
- 5 Part II of the petition contains the details of the Corporate Debtor.
- 6 In Part III of the petition, no name for the Interim resolution Professional has been proposed by the Financial Creditor
- 7 Part-IV contains particulars of Financial Debt. In item 2 of this part the amount claimed to be in default and the date on which the default occurred are mentioned.

8 Part-V contains the particulars of financial debt, documents, records and evidence of default.

9 ***Submissions on behalf of the Corporate Debtor:***

9.1 The instant petition is contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and is barred by limitation. The instant petition does not reflect the correct facts as it is necessary under the provisions of section 7 of the Code.

9.2 There has been suppression of material facts and this Adjudicating Authority has been misled on the ground that reliefs as prayed for are on the basis of a debt, which has not even crystallised, and is uncertain in nature.

9.3 There is no indication of any date of default committed by the Corporate Debtor in the said application under Section 7 of the Insolvency and Bankruptcy Code, 2016, although the Financial Creditor has made an absurd claim of Rs.21,98,904/- against the Corporate Debtor.

9.4 The said Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is not maintainable on the ground that the requisite fees for the said application has not been paid as is evident from internal page number 10 of the said application and as such the petition is grossly under-valued and therefore liable to be dismissed.

9.5 Further, the name of the resolution professional proposed to act as an Interim Resolution Professional has also not been submitted by the Financial Creditor.

10 ***Rejoinder on behalf of the Financial Creditor:***

It has been submitted that no grounds have been made in the reply-Affidavit for the rejection of the petition under section 7. All the allegations mentioned in the said reply Affidavit have been denied by the Financial Creditor.

11. Analysis and Findings

- 11.1 Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
- 11.2 Section 186 of the Companies Act, 2013 provides for the loans and investments that can be made by a company. According to section 186(2), no company shall directly or indirectly, give any loan to any person or other body corporate exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more. A perusal of the balance sheet of the Financial Creditor reveals that the free reserves and surplus of the Financial Year for the Financial Years 2017-18 and 2018-19 are Rs.3,09,33,281/- and Rs. 3,80,62,525/- respectively. As such the loan given to the Corporate Debtor is less than 100% of the free reserves of the Company and therefore, the instant petition is not hit by the provision of section 186.
- 10.1 Further, the Financial Creditor has attached an Independent Auditor's report with the rejoinder wherefrom it can be seen that the compliances under section 186 of the Companies Act, 2013 have been carried through.
- 10.2 Further, after the filing of the instant petition, the parties herein had entered into a settlement agreement whereby the Corporate Debtor had agreed to pay a sum of Rs. 22,00,000/- to the Financial Creditor in installments. However, the Corporate Debtor has defaulted in the payment of the said installment and as such, the settlement agreement was not successfully executed.
- 10.3 The Corporate Debtor has acknowledged his liability towards the Financial Creditor, firstly *vide* the acknowledgment receipt dated 23rd April 2018 and thereafter *vide* the settlement agreement.
- 10.4 Further, the Financial Creditor, *vide* Supplementary Affidavit dated 13th February 2020 has proposed the name of the Interim Resolution

Professional in Form No. 2. As such to that extent, the instant petition is complete.

10.5 Further, the loan was granted on 23rd April 2018 and the instant petition has been filed on 31st May 2019. The petition, therefore, is well within the petition of limitation.

10.6 Keeping in view that a default in the payment of a financial debt has occurred by the Corporate Debtor, and there is an acknowledgment of Financial Debt and also that the said application is not barred by limitation, we are of the view that the instant application under section 7 of the Code is complete in all respects.

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

- a) The application bearing **CP (IB) No. 1064/KB/2019** filed by **H.B. Traders Private Limited** (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 **Shree Bhagirathi Agro Private Limited**, CIN: U01409WB2003PTC097459, 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) **Shri Mohan Ram Goenka**, registration number **IBBI/IPA-002/IP-N00288/2017-18/10846**, email: **goenkamohan@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 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.
- 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.2,00,000/- (Rupees Two 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 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.
- 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

In the National Company Law Tribunal,
Kolkata Bench
Kolkata

H.B. Traders Pvt. Ltd. V. Shree Bhagirathi Agro Pvt. Ltd.
C.P (IB) 1064/KB/2019

the Registry of this Court within seven days from the date of receipt of a copy of this order.

- 9. CP (IB) No. 1064/KB/2019** to come up on **22/08/2022** for filing the periodical report.
- 10.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 6th day of July, 2022

SM[LRA]