

302

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram:
Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)

CP (IB) No. 188/KB/2019

In the matter of:

An application to initiate corporate insolvency resolution process under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

~ And ~

In the matter of:

Monotrone Leasing Private Limited, [CIN: U67120WB1995PTC075219], having its registered office at "Oriental House", 6C, Elgin Road, Kolkata - 700 020

... .. **Financial Creditor**

~ Versus ~

B. D. Motors Limited, [CIN: U34103WB2009PLC133634], having its registered office at "Diamond Prestige", 41A, AJC Bose Road, 1st Floor, Room No. 115, Kolkata - 700 017.

... .. **Corporate Debtor**

Counsels on Record:

1. Mr. Arnab Dutta, Advocate
2. Mr. Abhirup Chatterjee, Advocate
3. Ms. Rajashree Bhowmick, Advocate

} For the Corporate Debtor

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1. Mr. Nilay Sengupta, Advocate }
2. Mrs. Swati Agarwal, Advocate } For the Financial Creditor

Date of Hearing: 05th March, 2020

Date of pronouncement: 12th March, 2020

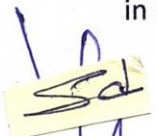
ORDER

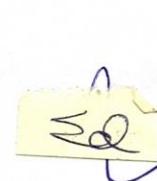
Per Virendra Kumar Gupta (T)

1. This application under Section 7 of IBC, 2016 has been filed by the financial creditor namely Monotrone Leasing Private Limited to initiate corporate insolvency resolution process ("CIRP") against corporate debtor namely B.D. Motors Limited as the corporate debtor has committed default in payment of outstanding debt. The amount claimed to be in default is Rs.28,03,083/- .

2. The facts, in brief, are that the financial creditor claims to have given an inter corporate loan of Rs.25,00,000.00 (Twenty Five Lacs only) on 14th June 2017 through banking channel. The said amount has been given on interest @ 15% per annum. The tenure of such loan has been claimed to be 90 days. These claims are based on a purported letter written by the corporate debtor on 14.06.2017.

3. The Ld. Counsel appearing on behalf of the financial creditor narrated the aforesaid facts and she also drew our attention to the relevant documents in support of her claim. Our attention was also drawn to two post-dated cheques dated 11.06.2018, one is for principal sum of Rs. 25,00,000.00 and the other is for interest of Rs.65,650/-. The amount of cheque for Rs.65,650/- has been claimed to have been arrived at after deduction of TDS. The said cheques were deposited on 24.08.2018; however, same got dishonoured. She further pleaded that by virtue of presenting the cheque, loan has been recalled. It was further brought to our notice that even the corporate debtor had agreed in their letter dated 26.11.2018 that interest was to be paid. She finally concluded that


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Page 2 of 6

there was a debt which has become due and payable and same has not been paid, hence, application under section 7 of IBC, 2016 was liable to be admitted.

4. On the contrary, the Ld. Counsel for the corporate debtor appeared and challenged the very basis of claims made by the financial creditor by stating that purported letter dated 14.06.2017 had been forged and fabricated. Though he acknowledged that loan had been taken but contended that no tenure of repayment was ever agreed upon; hence, the debt was not due and payable in terms of contractual arrangement between the parties. Therefore, no default could be said to have occurred. On a query regarding payment of Rs.2,69,075/- being made as interest, he continued to argue that it was paid towards loan.

5. In the rejoinder, the Ld. Counsel for the financial creditor submitted that different cheques were given for interest and after deduction of tax at source, the balance amount was paid. However, TDS was not deposited though deducted. In this regard, she drew our attention to page no.2 of the rejoinder containing the chart. She further contended that document was genuine and it was an afterthought just not to make the payment.

6. We have considered the submissions made by both the sides and material on record. It is a settled position that we are into summary proceedings, hence, cannot have detailed trial in regard to all the contentions and evidence made and brought on record. It is not in dispute that corporate debtor had received the impugned sum. It is also not in dispute that two cheques had been issued by the corporate debtor, i.e., cheques dated 11.06.2018. In reply, the corporate debtor had also admitted the fact of interest. It is also shown in the said reply that the date of issuance of such cheques has not been disputed. Thus, from the date of issuance of cheques, the repayment tenure could be the maximum period till such cheques were valid for encashment as per RBI norms. Hence, there remains no force in the contention of the corporate debtor that no term was agreed. Even otherwise, having regard to the surrounding circumstances, material on record and considering the real life situations, nobody can give a loan in perpetuity


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Page 3 of 6

particularly when such lender is engaged in the business of financing. We are further of the view that in the letter dated 14th June 2017, interest has been mentioned @ 15% per annum and the cheques have been given accordingly and, therefore, this fact also enables us to reach to a *prima facie* conclusion that genuineness of such letter cannot be disputed. In this view of the matter, we hold that there is a debt which is due and a default had occurred in payment thereof. Therefore, this application filed by the financial creditor is maintainable. We further find that the name of IRP has been proposed, hence, we approve the same. The application is otherwise complete and defect-free, hence, we admit the same and order as under:

ORDER

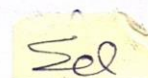
- i) The application filed by the financial creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating corporate insolvency resolution process against the corporate debtor, B.D. Motors Limited, is hereby admitted.
- ii) We declare a moratorium and cause public announcement in accordance 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;


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Page 4 of 6


- 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. Bimal Kanti Choudhury**, Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P01028/2017-2018/11682, of 77A/50, Raja S.C. Mallick Road, 8 S.P.B. Block, Kolkata - 700 092 is appointed as interim resolution professional for

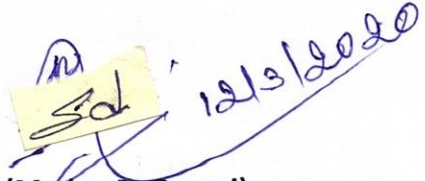

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ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

- xii) The Financial Creditor to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 which shall be adjusted from final bill.
- xiii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiv) List the matter on 20th April, 2020 for the filing of the progress report.
- xv) CP (IB) No. 188/KB/2019 stands disposed of.
- xvi) Registry is hereby directed under section 7(7) of the I & B Code, 2016 to communicate the order to the Financial Creditors, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.
- xvii) 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 (Technical)


(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 12th day of March, 2020.