

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH – I  
(SPECIAL BENCH)  
KOLKATA**

**C.P (IB) No. 299/KB/2022**

*A Petition 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.*

*In the matter of:*

**Rahul Carbon Commercials Private Limited [CIN U51102JH2012PTC000177]**, a Company incorporated under the Companies Act, 1956 having its registered office at 502, Punchwati Plaza, Kutchery Road, Ranchi – 834001.

*...Financial Creditor*

*Versus*

**New Hind Silk House Private Limited [CIN U51909WB2009PTC134564]**, a Company incorporated under the Companies Act, 1956 having its registered office at 111A, Park Street, 2<sup>nd</sup> Floor Kolkata – 700 016.

*....Corporate Debtor*

**Date of Hearing: 13.03.2023**

**Date of pronouncing the order: 26 .04.2023**

**Coram:**

***Smt. Bidisha Banerjee*** : ***Member (Judicial)***

***Shri Rahul Bhatnagar*** : ***Member (Technical)***

**Appearances (through Video Conferencing/hybrid mode)**

***For the Financial Creditor*** : Mr. Aritra Basu, Adv.  
Mr. Debraj Shaw, Adv.  
Mr. Avik Chitta Kundu, Adv.

***For the Corporate Debtor*** : Mr. Shaunak Mitra, Adv.  
Mr. Souvik Sana, Adv.

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**O R D E R**

*Per Bidisha Banerjee, Member (Judicial)*

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Sougata Mukherjee, Authorised Signatory, Rahul Carbon Commercials Private Limited (*‘Financial Creditor’*), for initiation of Corporate Insolvency Resolution Process (*‘CIRP’*) against New Hind Silk House Private Limited (*‘Corporate Debtor’*).
3. The present Petition was filed on 05 November, 2022 before this Adjudicating Authority on the ground that the Corporate Debtor availed financial assistance from the Financial Creditor for a sum of Rs.1,00,00,000/- (Rupees One Crore only). The total amount claimed to be in default by the Financial Creditor is Rs.1,26,35,000/- (Rupees One Crore Twenty Six Lakh Thirty Five Thousand only), including interest. The date of default is stated to be as on **01 April, 2022**.
4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs. 3,40,00,000/- (Rupees Three Crore Forty Lakh only) with paid up Capital as Rs. 3,03,61,510/- (Rupees Three Crore Three Lakh Sixty One Thousand Five Hundred Ten only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor***
  - 5.1 The Corporate Debtor approached the Financial Creditor for availing financial assistance. The Financial Creditor, in view the request of the Corporate Debtor, by a letter dated 02 April, 2018 proposed and intimated the terms and conditions agreeable to the Financial Creditor.
  - 5.2 The Corporate Debtor duly accepted and agreed to the terms and conditions as proposed by the Financial Creditor, as contained in the said letter dated 02 April,

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2018, by issuing a letter dated 03 April, 2018 expressing its acceptance [*Annexure – E*].

5.3 Letter dated 02 April, 2018 and 03 April, 2018 proves that there was a concluded contract between the Financial Creditor and the Corporate Debtor.

5.4 Thereafter, the Financial Creditor disbursed an amount of Rs.1,00,00,000/- in favour of the Corporate Debtor via bank remittance on 03 April, 2018 at carrying interest @10% per annum repayable by or before 31 March, 2022 or on demand.

5.5 The Corporate Debtor in acknowledgment, and partial discharge, of its Liability has made payment/re-payment of an aggregate sum of Rs.12,59,520/- on various dates and lastly on 31 March, 2022.

5.6 The Corporate Debtor in acknowledgement of its liability has also signed, jointly with the Financial Creditor, Confirmation of Accounts [*Annexure – G*]

5.7 The Corporate Debtor was liable to repay the entire amount of Financial Assistance along with interest by or before 31 March, 2022; however, on failure of the Corporate Debtor to do so, a recall of loan letter dated 04 April, 2022 was sent to the Corporate Debtor [*Annexure – K*].

**6. *Per contra, submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor***

6.1 The instant reply affidavit has been filed pursuant to the order dated 05 December, 2022 passed by this Adjudicating Authority.

6.2 It is true that the Corporate Debtor has received and accepted the financial assistance from the Financial Creditor, however, due to the down turn in the business of the Corporate Debtor and the onset of the COVID-19 pandemic, the repayment of the financial assistance as afforded by the Financial Creditor could not be effected.

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6.3 Further, it is stated that there was no intentional or wilful default on the part of the Corporate Debtor in having failed to make repayment of the loan/financial assistance in the manner as had been agreed to and accepted. The fact however remains that the Corporate Debtor has potential to recuperate and revive its business given the opportunity.

***Analysis and Findings***

7. We have heard the Ld. Counsel appearing on behalf of the Financial Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor and perused the records.

8. Upon perusal of the record it is apparent that the relationship between the parties is financial in nature. Further, from the above facts and circumstances it is clear that there is an existence of **debt** and **default**, and the Corporate Debtor acknowledges the same in their reply. Hence, in light of the above facts and circumstances, it is, accordingly, hereby ordered as follows:-

- (a) The application bearing CP (IB) No. 299/KB/2022 filed by **Rahul Carbon Commercials Private Limited**, 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 **New Hind Silk House Private Limited**, 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 &

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Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (e) **Mr. Bimal Kanti Choudhury**, registration number **IBBI/IPA-001/IP-P01028/2017-2018/11682**, email: **bimalkantichoudhury@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 progress 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.3,00,000/-** (Rupees Three 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

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Debtor and the IRP by Speed Post and e-mail 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.

9. *CP (IB) No. 299/KB/2022* to come up on **02.06.2023** for filing the progress report.
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Rahul Bhatnagar**  
Member (Technical)

**Bidisha Banerjee**  
Member (Judicial)

The Order is pronounced on 26<sup>th</sup> day of April, 2023

SA, LRA