

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

TP No. 182/CTB/2019

-IN-

COPET No. 55 of 2016



CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

In the Matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

DHANLAXMI BANK LIMITED, a duly constituted banking company being governed by the provision of Banking Resolution Act, 1949 having its registered office at Dhanalakshami Buildings, Naickanal, Thrissur- 680 001 and having its one of the branch office at Kolkata Branch, 11/1 Sarat Bose Road, Ideal Plaza Building, Ground Floor, Kolkata- 700 020.

.... **Financial Creditor/Applicant**

-Versus-

In the Matter of:

M/S. EMERALD MINERAL EXIM PRIVATE LIMITED, CIN: U51920OR2004PTC007714, having its registered office at Mastan Road, PO-Buxi Baar, Cuttack, Odisha- 753 001.

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.... **Corporate Debtor/Respondent**

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Counsel appears for the Petitioner (S):

1. Mr. Subrat Mishra
2. Mr. S. Mohapatra
3. Mr. B. Swarnakar

Counsel appears for the Respondent (S):

1. Mr. M. J. Sethi



Date of pronouncement of Order: 20th day of February, 2020.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. This application is filed under Section 433, 434 & 439 of Companies Act, 1956 now under Section 7 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process to the Corporate Debtor i.e. **M/s. Emerald Mineral Exim Private Limited.**
2. The application was filed by the applicant before Hon'ble High Court of Orissa numbered as COPET No. 55/2016. The same was transferred of this Adjudicating Authority and re-numbered as TP No. 182/CTB/2019.

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3. The applicant submits that the applicant is a Bank duly constituted under banking company being governed by the provision of Banking Regulation Act, 1949. The Corporate Debtor is a Company incorporated under the Companies Act, 1956 having Registered Office at Mastan Road, PO- Buxi Bazar, Cuttack, Odisha-753001. Hence, this Adjudicating Authority has jurisdiction to entertain this application.

4. The Corporate Debtor approached the applicant for a loan to the tune of Rs. 1,50,00,000/- for purchase of commercial flat at Kolkata, the applicant sanctioned the same vide letter dated 27.06.2011. The loan was disbursed to the tune of Rs.1,34,00,000/- (one crore thirty-four lakhs only). The last instalment towards that loan was paid by the Corporate Debtor on 30.10.2013. Hence, this application is well within the period of limitation.

5. The applicant submits that corporate debtor and builder had entered into agreement for sale dated 06.04.2011 for purchase of flat. The Corporate Debtor approached applicant for loan for purchase of commercial property, the Corporate Debtor also submitted letter of allotment dated 06.04.2011 from builder to the Corporate Debtor. The applicant by letter dated 27.06.2011, in principle agreed to release the loan to the tune of Rs.1,50,00,000/-. A quadripartite agreement dated 29.06.2011 was executed between, the Corporate Debtor, the Applicant

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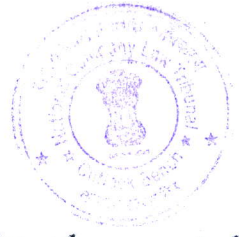


and M/s. Bengal Shrachi Housing Development Limited and West Bengal Housing Infrastructure Development Corporation for purchase of commercial flat. The applicant disbursed the sum of Rs. 1,34,00,000/- based on the letter of disbursement dated 01.07.2011 executed by the Corporate Debtor. The Developer acknowledged the disbursement amount of Rs. 1,34,00,000/- the copy of the same was annexed as Annexure-13. The builder by letter dated 18.07.2011 had issued NO Objection letter for creation of equitable mortgage over the proposed purchase, in favour of the applicant. The loan is secured by equitable mortgage of the proposed construction. On execution of the sale deed and other documentation, the Corporate Debtor ought to complete the formalities of equitable mortgage in favour of the applicant.

6. The corporate debtor, along with builder Bengal Shrachi Housing Development limited executed a nomination agreement dated 31.03.2013, thereby conveyed the rights of the property to and in favour of one M/s. Jupiter Pharmaceuticals limited. The corporate debtor sold the securities of the loan of the applicant bank to third party, and has illegally enriched from the deal, since, the formalities of deposit of original title deeds for completion of the equitable mortgage were not completed. Hence, the secured loan of the applicant has slipped into as an unsecured loan. In the Nomination agreement dated 31.03.2013 clause 5.7 reads as follows:

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5.7. The confirming party in any manner has not encumbered or created any other party's interest in the said unit and the properties appurtenant thereto". UNQUOTE

Hence, the confirming party, i.e. the Corporate Debtor herein has executed false statement in the agreement, in collusion with the builder. Thereby, cheated the applicant bank of its lawful dues.

7. The Corporate Debtor executed Acknowledgement of Liability dated 25.04.2014, the copy of the same was annexed as Annexure-21. Since, the Corporate Debtor defaulted in repayment of the loan. The loan account was classified as Non-Performing Asset (NPA) on 05.07.2014.
8. The applicant submits that the OA -104/16 was filed before the Hon'ble Debts Recovery tribunal (DRT), Kolkata, the same is pending against the corporate Debtor. The Hon'ble DRT, Kolkata also passed an order dated 20.09.2016 and the same is annexed as Annexure-22. The DRT, Kolkata also passed subsequent order dated 22.08.2017 in OA-104/2016, directed builder Bengal Shrichi to deposit a sum of Rs. 1.5 Crore to the loan account and the builder remitted sum of rupees one crore and fifty lakhs. Copy of the order dated 22.08.2017 in OA- 104/2016 has been annexed as Annexure- 23. DRT, Kolkata had passed subsequent, order

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dated 29.01.2019 in OA-104/2016, against the order of the Hon'ble DRT, the applicant had filed appeal before Hon'ble DRAT and same was dismissed for non-prosecution.

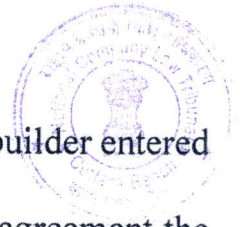


9. Aggrieved by this, the applicant has filed one revision appeal before Hon'ble High Court of Calcutta CO-1019/2018. The applicant had filed an application under Section 7 of Insolvency and Bankruptcy Code, 2016 against the M/s. Bengal Shrachi Housing Development Limited before NCLT, Kolkata Bench which was dismissed vide order dated 05.07.2018. Order of the NCLT, Kolkata Bench was annexed as Annexure-25.
10. The applicant states that the Corporate Debtor availed the loan and failed to repay the same. As on 31.10.2019 a sum of Rs. 3,08,86,374.50 (Three crore eight lakhs eighty six thousand three hundred seventy four rupees and fifty paise only) is due and payable. Hence, the loan account was declared as NPA, therefore, the Corporate Debtor is liable to be initiated for Corporate Insolvency Resolution Process.
11. The respondent has filed CA No. 19/CTB/2020 for dismissal of this application. During the course of the argument the respondent stated that the averments raised in the CA No. 19/CTB/2020 shall be treated as reply to the main application. The quadripartite agreement dated 29.06.2011 was

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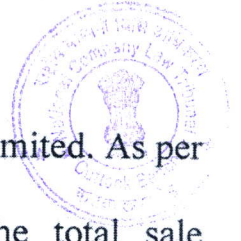
executed among parties. Thereafter, the respondent and the builder entered into an agreement for sale dated 06.04.2011. Based on this agreement the applicant sanctioned loan to the tune of Rs.1,34,00,000/- The respondent had executed various loan documents and undertaken to create equitable mortgage of the proposed commercial flat. Based on the documentation the applicant released the loan to the builder on behalf of the respondent. The respondent states that after compliance and execution of necessary documents sanctioned letter dated 27.06.2011 the sum of Rs. 1.5 crore was sanctioned. However, the sum of Rs. 1.34 crore only disbursed on 01.07.2011 which was directly given to the builder on 13.07.2011 The respondent paid instalments towards the loan amount till 2013. Some of the cheques could not been cleared. The applicant has also initiated the proceedings under 138 NI act, and the same is pending before the concerned courts.

12. We have heard both parties. The applications, documents are perused. The Corporate Debtor, has conveyed the property , under nomination agreement along with the builder dated 31.03.2013 to and in favour of M/s. Jupiter Pharmaceuticals Limited, In other words, the Corporate Debtor having availed the loan for purchase of commercial property from the applicant bank without the knowledge of the bank, illegally has enter into an agreement, with the concurrence of the builders

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and has conveyed the property to Jupiter Pharmaceuticals Limited. As per the Nomination Agreement dated 31st March, 2013, the total sale consideration is sum of Rs. 2,26,77,250/- (Two Crore Twenty-Six Lakh Seventy-Seven Thousand Two Hundred and Fifty). Hence, the property which ought to have been created as an equitable mortgage for the loan availed by the Corporate Debtor in favour of the applicant, without the knowledge of the applicant has been transferred to a 3rd party and the Corporate Debtor has enriched himself by the illegal sale of the commercial property, cheating and defrauding the bank of its lawful dues. Hence, the loan what ought to have been a secured loan of the banker, has become unsecured loan. And by no means the applicant banker could have recovered the lawful dues. The applicant had registered FIR against the Corporate Debtor and its Directors in respect of the illegal cheating of the Corporate Debtor under Section 120B/420 of Indian Penal Code (IPC) and dated 25th April, 2015, same is pending. The cheques which was paid towards the repayment of the loan, were dishonoured by the respondent's banker with an endorsement "funds insufficient". Hence, the applicant bank filed CS No. 00007/2015 before Chief Metropolitan Magistrate at Calcutta against the Corporate Debtor and its Directors, the same is pending on the file of the Hon'ble District Court and another in 13th M.M. Court CC no: 418064/2014 the same are pending on the file of the Hon'ble District Courts. Meanwhile, the applicant bank had also filed application

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for winding up before the Hon'ble High Court at Odisha vide COPET No. 55 of 2016 on 28th September, 2016. After constitution of this Bench, the same has been transferred to this Bench and re-numbered as TP No. 182/CTB/2019 and this application has been taken up under Section 7 of Insolvency and Bankruptcy Code, 2016.

13. The debts and the default are proved beyond reasonable doubt. Financial Creditor has suggested the Name of **Mr. Pratim Bayal** having registration No. **IBBI/IPA-003/IP/-N00213/2018-19/12385** and E-mail id:- pratimbayal@gmail.com residence at 18/1, Tarapukur Road, Ghoshpara, Panihati(m), North 24 Parganas, West Bengal. There is nothing on record to say that any disciplinary proceedings against the proposed Insolvency Resolution Process. This application is defect free. Hence, we ADMIT the 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. Emerald Mineral Exim Private Limited** is hereby admitted.

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- ii) We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the Insolvency & Bankruptcy Code, 2016.
- iii) Moratorium is declared for the purpose referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional 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 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

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including an 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 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 Insolvency & Bankruptcy Code, 2016 may be made.
- x) **Mr. Pratim Bayal** having registration No. **IBBI/IPA-003/IP/-N00213/2018-19/12385** and **E-mail id:- pratimbayal@gmail.com** is appointed as a Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a Resolution Plan.
- xi) The Resolution Professional should convene a meeting of the Committee of Creditors and submit the Resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date. The Interim Resolution Professional is directed to produce **Form -2** and written communication within one week from the date of the receipt of the Order.
- xii) Registry is hereby directed under Section (7) of the Insolvency & Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

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In view of the order passed in TP No. 182/CTB/2019 in COPET No. 55 of 2016, CA No. 19/CTB/2020 is dismissed.



Interim Resolution Professional to file 1st Progress Report on 25.03.2020

List the matter on 25.03.2020.

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

Sd.

**Shri Satya Ranjan Prasad
Member (T)**

Sd.

**Ms. Sucharitha R.
Member(J)**

Signed on this, the 20th day of February, 2020.

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20/02/2020
**Deputy Registrar
National Company Law Tribunal
Cuttack Bench**