IN THE NATIONAL COMPANY LAW TRIBUNANL.

KOLKATA BENCH,

KOLKATA

C.P (IB) No. 96/KB/2021

In the matter of

An application 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

M/S Oval Distributors Pvt. Ltd., a Public Non-Government Company Limited, registered under the provisions of the Companies Act, 1956 bearing CIN: **U51909WB2012PTC189047** and having its registered office at 24, Roy Street, Room No. 4, Kolkata- 700020.

…Financial Creditor

Versus

In the matter of:

Royalpet Vanijya Private Limited , CIN U51909WB2012PTC189048, a company registered under the Provisions of Companies Act, 1956, having its Registered Office at 2, Raja Woodmunt Street Kolkata- 700001.

…Corporate Debtor

Date of hearing: 08/11/2021

Order Pronounced on :01 /12/2021

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. DebabrataGanguly, Advocate] For Financial Creditor
2. Ms. DebaleenaGanguly, Advocate]
3. Ms. B. Gayatri, Advocate]

1. Ms. Urmila Chakraborty, Advocate] For corporate Debtor
2. Mr. Aniket Chaudhary, Advocate]

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The court is convened by video conference today.

2. This 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, has been filed by Oval Distributors Private Limited, having identification **No. U51909WB2012PTC189047**, through its authorized representative Mantu Singh, Director authorised vide Board Resolution passed by Board of Directors of the Financial Creditor dated 2nd of January 2021 against **ROYALPET VANIJYA PRIVATE LIMITED,** another corporate entity, having ID **No. U51909WB2012PTC189048**, seeking initiation of Corporate Insolvency Resolution process of the Corporate Debtor.

3. It is submitted that on the request of the Corporate Debtor the Financial Creditor sanctioned and disbursed a loan of Rs. 1,58,00,000 /- on 26th December 2014 and 29th December 2014 and the outstanding as on 13th January 2020 with 12% interest amounts to Rs. 2,72,64,307 /-.

4. It is submitted that the Corporate Debtor vide letter dated 15th of January 2014 (Annexure-I, Exhibit. C to the petition) had approached the Financial Creditors for business loan of Rs. 1,60,00,000 /-.

5. It is further submitted that pursuant to a Board Resolution (Annexure-I/Exhibit D) dated 28th November 2014, the Financial Creditor sanctioned credit facility/financial assistance of Rs. 1,60,00,000 in the form of unsecured loan for a period of 4 years @ 12% per annum in favour of the Corporate Debtor. The sanctioned letter dated 19/12/2014 is enclosed with the petition as (Annexure-I/Exhibit D). It is submitted that the Corporate Debtor accepted the terms and conditions of the said loan agreement dated 24/12/2014 (Annexure-I/Exhibit F). It is further submitted in the petition that at the request of the Corporate Debtor, the Financial Creditor disbursed Rs. 95,00,000 /- through RTGS on 26th December 2014 and Rs. 63,00,000 /- on 29th December 2014, under intimation to the Corporate Debtor vide letter dated 26th December 2014 and 29th December 2014, annexed with the petition as (Annexure-I/Exhibit G). The Corporate Debtor vide letters dated 26th December 2014 and 29th December 2014 respectively, accepted and confirmed the said loan and these letters are annexed as (Annexure-I/Exhibit G) to the petition. It is submitted that Corporate Debtor also executed the said document whereby they unconditionally promised to pay to the Financial Creditor the said sum of Rs. 95,00,000 /- and Rs. 63,00,000 /- along with the interest payable for the period of 4 years @ Rs. 12% Per Annum. The said unconditional demand promissory notes dated 26th December 2014 and 29th December 2014 are annexed as (Annexure I/Exhibit I). Further submitted by the Financial Creditor that it had been made clear to the Corporate Debtor that the due date for repayment of loan of Rs. 1,25,00,000 along with interest @ 12% Per Annum is 29th December 2018 vide letter dated 27th November 2018 (Annexure-I/Exhibit J) to the petition.

6. It is submitted that the Corporate Debtor started defaulting in repayment of the loan and interest, and vide letter dated 5th March 2019, 14th April 2019 and 15th May 2019, the Financial Creditor intimated to the Corporate Debtor that a sum of Rs. 1,58,00,000 /- along with Interest @ 12% Per Annum has fallen due and requested them to make the said payment. A copy of the said letters dated 5th March 2019, 14th April 2019 and 15th May 2019 are (Annexure-I/Exhibit K). It is further submitted that the Corporate Debtor replied to the

said letters of the Financial Creditor vide its letter dated 28th April 2019 (Annexure-I/Exhibit L) wherein they requested the Financial Creditor to give them some more time to pay the said outstanding amount. The Corporate Debtor further requested the Financial Creditor for waiver of interest on loan of Rs. 1,58,00,000 vide their reply dated 7th June 2019 (Annexure-I/Exhibit M). The Financial Creditor accepted the request for waiver of interest on loan, provided full amount of Rs. 1,58,00,000 /- was repaid within 3 months from the date of receiving this letter dated 10th June 2019 (Annexure-I/Exhibit N). It is further submitted that the Corporate Debtor once again requested the Financial Creditor for further extension of time for 45 days vide its letter dated 4th October 2019, (Annexure-I/Exhibit O). Finally on 3rd January 2020 the Financial Creditor vide its letter dated 3rd January 2020, (Annexure-I/Exhibit P) raised its final demand towards principal and interest and recalled the loan given by them. The Financial Creditor submits that a sum of Rs. 1,58,00,000 along with interest @ 12% Per Annum till the date of repayment of outstanding debt payable by the Corporate Debtor to the Financial Creditor which it has failed to repay as on 29th December 2018 which is the date of the default mentioned in the petition. The financial Creditor has annexed the calculation sheet (Annexure-I/Exhibit Q), whereby the total outstanding comes to Rs. 2,72,64,307 /-.

7. Since the Corporate Debtor had not provided any security to the Financial Creditor, in support its claim the Financial Creditor has placed all the correspondence and documents exchanged between the parties as Annexures to this petition including the record of default. The Financial Creditor has also placed on record bank statements on 26th December 2014 to 10th December 2020 evidencing the payment and non receipt of total financial debt due from the Corporate Debtor (Annexure-I/Exhibit S). On receipt of notice of this petition from this Adjudicating Authority, the Corporate Debtor sought time to file reply.

8. The Financial Creditor has proposed the name of **Sudipta Ghosh**, Interim Resolution Professional **Reg No: IBBI / IPA-001 / IP-P00484 / 2017-18/108728,N.N. Mukharjee 3rd Lane, Uttarpara, Hoogly-712258. Email-ID-** **sudipta_ghosh08@yahoo.com** **Mob.9230823033** who has vide Form-2 filed on 16th March 2021 submitted to the Adjudicating Authority, has stated that she agrees to accept the appointment of IRP if an order admitting the petition is passed and further stated that she is currently qualified to practise as IRP and certified that there are no disciplinary proceedings pending against her with the Board or Institute of Insolvency Professional of ICAI etc. The petition is complete in all respects.

9. In the reply affidavit filed through **Mr. Rajesh Chandra Birana**, one of the Directors of the Corporate Debtor, it is submitted that the present petition is not maintainable in substance and in Form. It is submitted that the allegations and statements made in the petition are denied by the Corporate Debtor except what have been specifically admitted to by the Corporate Debtor. The Corporate Debtor submitted that Adjudicating Authority has to first satisfy itself that the application is maintainable and then to determine that the Corporate Debtor has committed the default. It is submitted that this petition needs to be dismissed in limine.

10. It is submitted that the application is filed in abuse of the process of law and has been filed with fraudulent and malicious intent and for the purposes other than to resolve the Insolvency of the Corporate Debtor. It is submitted that the application is nothing but an arm-twisting tactic by the Financial Creditor. It is further submitted in the reply affidavit that the Financial Creditor is well aware that the Corporate Debtor has sought reasonable time to make the payment which the Financial Creditor has unreasonably refused to accede to the request of the Corporate Debtor. The Corporate Debtor further submits in the reply that the "purported amount claimed to be in default is Rs. 1,58,00,000"/-. The alleged claim of the Financial Creditor is on account of money lent and advanced. It is submitted that the Financial Creditor could not have sanctioned

such loan amount because it is not a banking company or a house finance company or a non banking financial company.

11. The Ld. Counsel for the Financial Creditor in her arguments in reply to those of the Corporate Debtor submitted that this is a case in which the Financial Creditor has sanctioned and disbursed the loan amounts on the request of the Corporate Debtor. The said loans and terms and conditions of the loan have been duly accepted and acknowledged by the Corporate Debtor. It is further argued that the Corporate Debtor has failed to discharge its liability by making repayment of the outstanding debt mentioned in the petition and has thus committed default on 29th December 2018. In the reply affidavit, the Operational Creditor has not been able to give any concrete justification on the basis of which the liability can be denied. Rather the Corporate Debtor has submitted that the Financial Creditor did not give reasonable time to the Corporate Debtor to make due amount and that the Financial Creditor has unreasonably refused to accede to its request. Section 7 of the I.B.C envisages only to provide proof of default and if the Adjudicating authority is satisfied as to the existence of the default of an outstanding financial debt due, and that the application is complete and no disciplinary proceedings are pending against the proposed Resolution Professional, the application has to be admitted. No other criteria for admission of the application is required to be looked into.

12. We have heard Ld. Counsel for the parties and have gone through the petition along with all its documents and the reply affidavit filed by the Corporate Debtor and the documents placed on record, it is clear that the Financial Creditor has been able to prove its case that a sum of Rs. 1,58,00,000 /- along with interest @ 12% Per Annum till the date of payment is due and outstanding which the Corporate Debtor has failed to pay. The date of default is 29th of December 2018 on which date the amount fell due. The Corporate Debtor has failed to clear the outstanding in spite of request letters sent by the Financial Creditor. In view of the aforesaid submissions and arguments of the Ld.

Counsel for the parties, we are fully satisfied that the Corporate Debtor has no defence at all in this matter and the Financial Creditor has been able to prove its case for admission of the petition and initiation of Corporate Insolvency Resolution Professional Process against the Corporate Debtor Royalpet Vanijya Private Limited with the following orders:-

O R D E R S

(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 is hereby **admitted.**

(ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

(iii) Moratorium is declared for the purpose referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under 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 of 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (52 of 2002);

(v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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 the 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) **Ms. Sudipta Ghosh**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBB/IPA-001/IP- P00484/2017-18/108728, Email sudipta_ghosh08@yahoo.com, Mob. 9230823033,** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee or Creditors for evolving a resolution plan subject to production or written consent within one week from the date of receipt of this order.

(x) The Interim 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.

(xi) The Financial Creditor/Applicant is directed to deposit Rs. **50,000/- (Rupees Fifty thousand only)**with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

(xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

(xiii) List the matter on **08/02/2022** for the filing of the **Progress Report**.

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

(Harish Chander Suri)	**(Rohit Kapoor)**
Member (Technical)	**Member (Judicial)**

Order signed on this, the 1st day of December,2021

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