

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1096/KB/2019

IN THE MATTER OF:

An application under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016;

And

In the matter of Oracle Finvest and Consultants Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its office at 13, Crooked Lane, Room No. 402, Kolkata 700069.

Financial Creditor /Applicant

-Versus-

Senioreetaa Designer Ensembles Private Limited, company incorporated under the provisions of the Companies Act, 1956 having its office at 1A, Gorkey Terrace, 1st Floor, Kolkata 700017.

Corporate Debtor / Respondent

Date of hearing 14 January, 2020

Order Delivered on 16 January, 2020

Coram :

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, Member (Technical)

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For the Appellant / Petitioner : Mr. Avik Chaudhuri, Advocate
For Respondent : Mr. Satadeep Bhattacharyya, Advocate
: Mrs. Sonia Sharma, Advocate
: Mr. Saptarshi Mukherjee, Advocate

Per Virendra Kumar Gupta, Member (T)

1. Through this application, the Financial Creditor is seeking initiation of CIRP in respect of the Corporate Debtor. The amount claimed in default is claimed at Rs. 7 lakhs. The date of default has been stated as 23.11.2017. The facts, in brief, are that the Financial Creditor financed Rs. 9 lakhs to the Corporate Debtor on 29.05.2015 on interest. The Corporate Debtor refunded a sum of Rs. 2 lakhs on two different dates. The Corporate Debtor also paid interest up to 31.07.2017. Thereafter neither interest nor amount of loan was received. Hence, this petition.
2. The Ld. Counsel for the Financial Creditor narrated the basic facts and submitted that the loan was repayable on demand. The loan was recalled on 23.11.2017 and the Corporate Debtor didn't reply to the same. The Ld. Counsel also drew our attention to cheque no. 512001 dated 23.11.2017 for Rs. 7 lakhs given by the Corporate Debtor to repay loan. However, the same was not accepted. The correspondence happened between the parties as regards the repayment of loan along with interest and the Ld. Counsel drew our attention thereon to support its claim that it was a case of short term loan.
3. The Ld. Counsel on behalf of the Corporate Debtor, however, claimed that the loan was payable in May 2021 and for this purpose, he drew our attention to page no. 32 paper book wherein it was clearly mentioned. It was also claimed that after the cheque of 23.11.2017, another cheque had been given in 2018 which was received by Financial Creditor and the person who received the cheque of 2017 and this cheque whereas was same though the Financial Creditor denied to have received the other cheque receipt of the earlier cheque was not at all disputed. It was vehemently argued that as per oral agreement,

the tenure of the loan was to expire in 2021. Hence, this petition was not maintainable for the reason it was premature at this stage.

4. In the rejoinder, the Ld. Counsel for the Financial Creditor submitted that neither interest nor tax at source was deducted and deposited from which it can be inferred that the loan had become due and mature. It was further argued that in financial statements of the Corporate Debtor for 2 years, such outstanding loan has been shown under the head short term borrowings, therefore, logical inference can be drawn that it was a case of loan repayable on demand which is short term and not as claimed by the Corporate Debtor.
5. We have considered the submissions made by both parties and perused the material on record. It is not in dispute that the amount has been given on 20.05.2015. It is noted that in financial year 2015-16 itself, the Corporate Debtor has repaid Rs. 2 lakhs. It is also noted that thereafter interest has been paid up to 31.07.2017 net of TDS. It is also noted that except the acknowledgement of loan by way of receipt of Rs. 9 lakhs, no other agreement exists. Further, in such receipt, copy of which has been placed at page 32 of the paper book, even the rate of interest has not been mentioned which has in fact been paid. In the company proceedings, we are not expected to go into deep like a trial court. However, the fact remains that for determination of admissibility of the petition, under Section 7, fact that there is a debt which is due and payable needs to be established. For this purpose, in the absence of any agreement in writing, we have to look into the conduct of the parties and other material on record.
6. As established from the balance sheet that such loan has been shown under head "short term borrowing" which as per established accounting norms indicate that the loan was repayable on demand or its maturity is not beyond 12 months. Further, except making assertion that such loan was payable in May, 2021, no material has been brought to record to corroborate the same by Corporate Debtor whereas facts mentioned earlier show that it could be a case


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of loan repayable on demand or its tenure is not as long as claimed by the Corporate Debtor. Thus, in our considered view, this petition is maintainable.

7. The petition is complete in all respects and defect-free. Financial Creditor has also proposed name of Interim Resolution Professional who has given his consent and it has also been mentioned that no disciplinary proceedings were pending against him. Accordingly, we approve his name. We 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, namely Senioreeta Designer Ensembles Private Limited is hereby admitted.
- ii. We declare a moratorium and 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 judgement, 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


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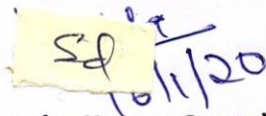
- any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v. The supply of essential 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. Ajay Kumar Agarwal, having registration No. IBBI/IPA-002/IP-N00608/2018-19/11859, contact no. 9883362775, of Plot No. 11d/31/1, Street No. 1111, Ps Qube, Unit Number 1015a, 10th Floor, Beside City Centre 2, Kolkata-700135 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Financial Creditor to pay a sum of Rs. 50,000/- (Rs.Fifty Thousand) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate

Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.

xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

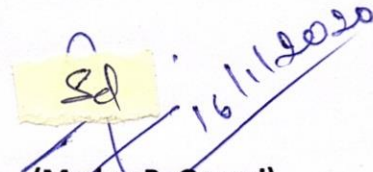
8. List the matter on **06.03.2020** for the filing of the **progress report**.
9. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Virendra Kumar Gupta)

Member (T)

Signed on 16 January, 2020

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(Madan B. Gosavi)

Member (J)