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IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

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Coram:

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, (Technical)

CP (IB) No. 1228/KB/2019

In the matter of:

An application to initiate Corporate Insolvency Resolution Process ("CIRP") 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:

Indus Container Lines Private Limited, having its registered office at 1st Floor, D.C. Silk Mills Compound, Chunawala Estate, Kondivita Road, Andheri (E), Mumbai-400059.

… … … **Financial Creditor**

- And -

In the matter of:

Two Way Container Lines Private Limited, having its Registered Office at Premises No. 28, Ward No.16, Shyama Charan Rakshit Road, Barabazar, Chandannagar, Hooghly, West Bengal, Pin 712136.

… … … **Corporate Debtor**

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Counsel on Record:

1. Mr. Avishek Guha, Advocate	}	
2. Mr. Bikramaditya Ghosh, Advocate	}	For Financial Creditor
3. Miss Trini Joarder, Advocate	}	
1. Mr. Sandip Kr. Bhattacharyya, Advocate	}	For Corporate Debtor
2. Ms. Debanwita Pramanik, Advocate	}	

Date of Hearing: 13th February, 2020

Date of Pronouncement of Order: 18th February, 2020

ORDER

Per Virendra Kumar Gupta (T)

1. This application under Section 7 of IBC, 2016 has been filed by the Financial Creditor namely Indus Container Lines Private Limited to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely Two Way Container Lines Private Limited as the Corporate Debtor has committed default in payment of outstanding debt.

2. The fact, in brief, are that the financial creditor granted loan of Rs. 35,00,000/- in three tranches on 2nd March 2016, 20th March 2016 and 4th April 2016 which has remained unpaid, hence, this application.

3. The Ld. Counsel for the financial creditor drew our attention to the copy of the bank statement to establish his claim of disbursement of the said loan. It was further submitted that loan was repayable within 30 days and interest rate as agreed was 38.4% per annum. The Ld. Counsel further drew our attention to page no. 42 containing company data as per MCA website and submitted that the person who signed the cheques and the agreement was still a director. He specifically pointed out that letter dated 2nd March 2016 had also been signed by Mr Surajit Pattanaik. Thereafter, he also drew our attention to pages 54, 55, 59 and 60 to show that the

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other two letters were also signed by the same person. Our attention was also drawn to page no. 26 to show that cheque dated 5.9.2018 had also been signed by the same person. It was also brought to our notice that the proceedings under section 138 were also initiated and pending.

4. The Ld. Counsel, on behalf of the corporate debtor, drew our attention to the fact that cheque was given as a security and it was wrongly utilised, hence, on this basis, it could not be said that debt was barred by limitation. The Ld. Counsel further submitted that debt was clearly barred by limitation and for this proposition, he placed reliance on the decision of the Hon'ble Supreme Court in the case of *B K Educational Services Pvt. Ltd. V. Parag Gupta & Associates as reported in 2018 SCC Online SC 1921* and in the case of *Khan Bahadur Shapoor Fredoom Mazda vs. Durga Prosad Chamaria & ors.* as reported in *AIR 1961 SC 1236*. It was also contended that considering the place of business of both the parties, the rate of interest charged was beyond the limit prescribed in the Money Lending Act of respective States and for this reason also, the petition was liable to be dismissed.

5. In the rejoinder, the Ld. Counsel for the financial creditor submitted that resolution under section 186 of the Companies Act was duly passed and the loan was granted on the basis of the mutually agreeable condition, hence, now the plea of high rate of interest had no validity.

6. We have considered the submissions made by both the parties and perused the material on record. We find that the cheque dated 5.9.2018 has been presented and such cheque has bounced back, hence, limitation is to be seen from the date of such non-encashment. In our considered view, it is immaterial whether such cheque was given as a security, hence, it could not be presented; rather this fact goes against the corporate debtor itself because security is given only for such situation i.e. when any liability / debt is not discharged and, therefore, the security holder can encash the security. We also do not find any force in the contention of the corporate debtor on account of violation of Maharashtra Money Lending Act as well as of West Bengal Money Lending Act because no such condition exists in the IBC, 2016 which is a

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complete Code in itself. Further, our this view is supported by the provisions of section 238 of IBC, 2016. Thus, from the facts, it is established that the debt is due and payable in law as well as in fact and a default has occurred in repayment thereof, hence, conditions mentioned in provisions of section 7 of IBC, 2016 stand fulfilled. Accordingly, this application is admissible.

6. Further, the name of IRP has been proposed who has given his consent as well and as per records no disciplinary proceedings are pending against such IRP, hence, we approve his name to act as IRP.

7. The petition is otherwise also complete and defect-free.

8. We order as under :-

ORDER

i) The application filed by the operational creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the corporate debtor, Two Way Container Lines Pvt. Ltd., 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:

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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;

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.

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ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Mr. Ajay Kumar Agarwal, IRP Registration No.IBBI/IPA-002/IP-N00608/2018-19/ 11859, Mobile No. 9883362775, E-mail: ajay_agarwal45@yahoo.com, 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 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.

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) List the matter on 8th April, 2020 for the filing of the progress report.

xiv) 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 IRP by Speed Post as well as through e-mail.

xv) 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 (Technical)

(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 18th day of February, 2020.