

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 683/KB/2018

In the matter of:

Bank of India

..Financial Creditor

Versus

M/s. Aeon Manufacturing Pvt. Ltd.

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Financial Creditor:

1. Ms. Anindita Das, Advocate
2. Ms. Trisha Saha, Advocate

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For the Corporate Debtor:

1. Mr. Shaunak Mitra, Advocate
2. Mr. Sayantak Das, Advocate

Date of Pronouncement of the Order:

ORDER

Per Shri Harish Chander Suri, Member(Technical)

1. The CP(IB) No. 683/KB/2018, is an Application filed by Bank of India, through Shri Kartick Chandra Samanta, Chief Manager, C&IC Department, Bank of India, Kolkata Zone, hereinafter referred to as the Financial Creditor, against M/s. Aeon Manufacturing Pvt. Ltd., a Corporate Identity, having its registered Office at Kolkata, hereinafter referred to as the Corporate Debtor, under Section 7 of the Insolvency & Bankruptcy Code, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution process (in short CIRP) as against the Corporate Debtor.



2. It is submitted by the Financial Creditor that on the request of the Corporate Debtor, the Financial Creditor had sanctioned limits of Rs. 70 Crores vide sanction letter dated 20-07-2012 to the Corporate Debtor which were duly disbursed to the Corporate Debtor. To secure its loan, the Financial Creditor had completed all the formalities and had all the requisite documents executed by the Corporate Debtor, which form the part of the record.

3. It is submitted that the Corporate Debtor committed default on 31-03-2016 and the loan account of the Corporate Debtor was classified as NPA on 30-06-2016. It is further submitted that in spite of demand notice dated 08-02-2018, the Corporate Debtor failed to pay a sum of Rs. 74,28,51,444.72. The Corporate Debtor had mortgaged whole of the assets, stocks of raw materials, stocks in process, semi-finished and finished goods, stores and spares, Bills receivables etc., apart from the mortgaged rights of the factory, land and other securities hypothecated with the Financial Creditor and created first charge in favour of the Financial Creditor. As per the CIBIL report filed by the Financial Creditor, along with the Application, the Corporate Debtor has been shown as the willful defaulter. The Financial Creditor has also filed balance confirmation



letter dated 19-12-2015, issued by the Corporate Debtor confirming and acknowledging the indebtedness to the Bank of India, Financial Creditor, and confirmed having created the securities, documents, in favour of the Financial Creditor and acknowledging their liability and obligations under the same. Similar confirmation was also sent by the Guarantors, acknowledging their liability on their agreement of guarantee executed. The Financial Creditor has also filed financial statement for the year ending 31-03-2016 in respect of the Corporate Debtor which reflects the loan owed to the Financial Creditor as loans repayable on demand. The Financial Creditor has also proposed the Name of the Insolvency Resolution Professional, Mr. Raj Singhania, Central Plaza, 5th Floor, Room No. 5A, 41, BB Ganguly Street, Kolkata, West Bengal – 700012, who has given his consent to act as the Insolvency Resolution Professional in the matter, in case the present matter is admitted for CIRP process against the Corporate Debtor.

4. In reply to the Application, the Corporate Debtor, through one of its Directors, Mr. Om Prakash Pandey, submitted that the Application is especially not maintainable in law. It is submitted that on 02-07-2018, the Corporate Debtor had made upfront payment of Rs. 50



Lakh in total, relating to the One Time Settlement proposal, jointly with sister concern, by the name, Shri Balaji Forest Product Pvt. Ltd., and the payment was accepted by the Financial Creditor without any demand, protest or objection and therefore, the Corporate Debtor had materially altered its position to its detriment on the basis of the assurance given by the Financial Creditor that the OTS proposal has been accepted. It is further submitted that the Financial Creditor is now estopped from making any claim against the Corporate Debtor or initiating any proceedings as the OTS proposal has been acted upon which is based on dealings and conduct of the parties.

5. It is submitted that during the pendency of the OTS, this application has been filed.

6. The Ld. Counsel for the Corporate Debtor has submitted that the authorised person of Bank of India has no authority to file this Application because it is not supported by the Board resolution. However, the Ld. Counsel for the Financial Creditor has submitted that the General Manager of Bank of India had authorised various officers who have further authorised this Officer to file the Application under Section 7 of the Insolvency & Bankruptcy

Code, 2016 and that the Board resolution in that regard, is also annexed along with the approval of the Memorandum of the Board, whereby the specific authority has been given to the authorised person.

7. The Ld. Counsel for the Financial Creditor has taken us through all the documents placed on record in support of its claim and has been able to prove its case.

8. It is submitted that the Ld. Counsel for the Corporate Debtor has tried to mislead this Tribunal on the point of forensic Audit. It is submitted that in cases of OTS where the amount is more than Rs. 50 Crores, the matter is subject to forensic audit. It is submitted that after the forensic audit, more than one year has elapsed and the Bank has been pursuing with the Corporate Debtor to make good several discrepancies found by the forensic auditor, but the clarification sought from the Corporate Debtor is not being given and no report for clarification has been received from the Corporate Debtor. It is clarified that the forensic audit is a condition precedent for acceptance of OTS.

9. In the aforesaid circumstances and after hearing both the Counsel at length and perusing the respective

documents on record, we are of the considered view that the Financial Creditor has been able to make out a good case for initiation of CIRP against the Corporate Debtor. The financial creditor succeeds in proving that there is outstanding loan and default on the part of corporate debtor. The application is complete meeting all the requirement to be meted out u/s.7(5) (a) of the Code. We, therefore, admit the Application with the following :-

ORDERS

- 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 Aeon Manufacturing Pvt. Ltd., is hereby admitted.

- ii) 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.

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iii) 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 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

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lessor where such property is occupied by or in the possession of the corporate debtor.

iv) 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.

v) 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.

vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

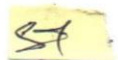
vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the



date of such approval or liquidation order, as the case may be.

viii) **Mr. Raj Singhanian**, Central Plaza, 5th Floor, Room No. 5A, 41, BB Ganguly Street, Kolkata, West Bengal - 700012, **an Insolvency Professional, registered with ICAI Insolvency Professionals Agency, having registration number IBBI/IPA-001/IP-P00188/2017-18/10367, E-mail ID: rajsinghanian ca@yahoo.co.in, Mobile No. 9830227678**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

ix) 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 and follow Regulation 40A strictly.



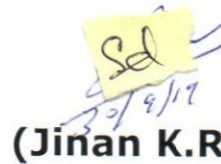
x) Registry is hereby directed under section 7 (7) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

xi) List the matter on 28-11-2019 for filing of the progress report.

10. The free copy/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)
Member(Technical)



(Jinan K.R.)
Member(Judicial)

Signed on this, the 30th day of October, 2019

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