



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I
KOLKATA

C.P. (IB) No. 201/KB/2023

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:

Rajen Sharma

... Financial Creditor

-Versus-

Epitome Plasto Pack Private Limited

[CIN:U25209WB2005PTC103944]

... Corporate Debtor

Date of Pronouncement: 02 May 2024

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/physically)

Mr. Shaunak Mitra, Adv. : For Financial Creditor

Mr. Ritoban Sarkar, Adv.

Mr. Niladri Banerjee, Adv.

Mr. Deepankar Thakur, Adv.

Mr. Ayan Dutta, Adv. : For Corporate Debtor

Mr. Sumit Biswas, Adv.

Ms. Rajashree Bhowmick, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through hybrid mode.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I

Rajen Sharma v. Epitome Plast-O_Pack Pvt. Ltd.
C.P. (IB) No. 201/KB/2023



2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") by Rajen Sharma seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against Epitome Plasto Pack Private Limited ("**Corporate Debtor**").
3. The Corporate Debtor was incorporated on 29 June 2005, having CIN: U25209WB2005PTC103944. It's registered office is 7, Prafulla Sarkar Street, Kolkata-700013. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 08 September 2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 3,72,12,734/- (Rupees Three Crore Seventy Teo Lakh Twelve Thousand Seven Hundred and Thirty Four only) as on 16 August 2023. The date of default has been mentioned as 05 December 2022.

Submission of learned Counsel appearing for the Financial Creditor

5. The learned Counsel appearing on behalf of the Financial Creditor submitted that the Financial Creditor was appointed on 29 June 2005 as a Director of the Corporate Debtor and resigned on 06 January 2022.
6. It is submitted that the Corporate Debtor had availed a loan from the State Bank of India but was unable to repay its dues and the account of the Corporate Debtor was classified as NPA. Several proceedings were initiated by the State Bank of India. The loan was settled between State Bank of India and the Corporate Debtor at a sum of Rs.5,90,00,000/- (Rupees Five Crore Ninety Lakh only) on 27 July 2018.
7. The learned Counsel submitted that pursuant to the Settlement Agreement dated 27 July 2018, the Financial Creditor gave credit of Rs.2,50,89,863/- (Rupees Two Crore Fifty Lakh Eighty-Nine Thousand Eight Hundred and Sixty Three only) in the following manner:
 - a. Rs.2,44,51,533/- through realisation of Fixed Deposit being EM/TDR/A/No. 926714 on 07 December 2018;
 - b. Rs.5,48,467/- through RTGS transfer on 13 December 2018;
 - c. Rs.89,863/- through NEFT transfer on 15 December 2018.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I

Rajen Sharma v. Epitome Plast-O_Pack Pvt. Ltd.
C.P. (IB) No. 201/KB/2023



8. Initially a sum of Rs.2,50,00,000/- was financed @ 10% per annum, which was repayable within four years for the purpose of settling the pending dues. If the loan amount was not paid within four years the amount would accrue interest calculated @12% per annum till realisation.
9. Thereafter, a further sum of Rs.89,863/- (Rupees Eighty Nine Thousand Eight Hundred and Sixty Three only) was given by way of realising Fixed Deposit and Bank Transfer to the State Bank of India on behalf of the Corporate Debtor.
10. The learned Counsel submitted that the debt fell due and payable on the expiry of four years i.e. 05 December 2022.
11. It is submitted that the Corporate Debtor has acknowledged the debt in its balance sheet.
12. The Financial Creditor sent a notice on 16 August 2023 for payment of the loan amount of Rs.2,50,89,863/- (Rupees Two Crore Fifty Lakh Eighty Nine Thousand Eight Hundred and Sixty Three only) and interest calculated @10% per annum from 05 December 2018 till 05 December 2022.
13. The Financial Creditor has placed the following documents on record:
 - a. Copies of Agreement dated 05 December 2018, annexed and marked as Annexure E;
 - b. Copy of Fixed Deposit Certificate and Bank Statement are annexed and marked as Annexure F;
 - c. Copies of audited balance sheets for the Financial Year 2018-2019 and 2019-2020 are annexed to the Supplementary Affidavit dated 17 November 2023.
 - d. NeSL Report is annexed to the Supplementary Affidavit dated 17 November 2023.
14. The Financial Creditor has proposed the name of **Mr. Swapnil Jain**, registration number IBBI/IPA-001/IP-P02498/2021-22/13872, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under

rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Counsel appearing for the Corporate Debtor

15. The learned Counsel raised the following contentions:
- a. The Company Petition is barred by the laws of limitation;
 - b. The Financial Creditor is using the Code as a recovery tool;
 - c. It is due to the dealings of the Financial Creditor that the Corporate Debtor had defaulted in repaying the loan of the Bank.
 - d. The amount given is not a financial debt.
 - e. There is no record of default in the information utility filed by the Financial Creditor.
16. It is submitted that there is no default on the part of the Corporate Debtor and the demand made by the Financial Creditor is malafide and baseless.
17. It is further stated that the entry in the balance sheet in any event does not amount to admission for the purposes of extending limitation and nor can the default be established. There is no acknowledgement of the outstanding debt.
18. It is further submitted that the balance sheet is of no assistance to the Financial Creditor and the same cannot and does not extend the limitation so as to revive a time barred claim.

Analysis and Findings

19. When this petition was taken up for hearing on 14 December 2023, Learned Counsel for the Corporate Debtor has restricted his argument on the plea of limitation. No other argument was pressed into. This statement on behalf of Learned Counsel for the Corporate Debtor is duly recorded in the order dated 14 December 2023.
20. Learned Counsel for the Corporate Debtor while pressing the plea of limitation states that;-
- i. The balance-sheet relied upon by the Financial Creditor in its supplementary affidavit at page 34 and 49 is of 31st of March, 2020 whereas this petition was admittedly filed before this Adjudicating

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I

Rajen Sharma v. Epitome Plast-O_Pack Pvt. Ltd.
C.P. (IB) No. 201/KB/2023

Authority on 8th of September, 2023. Therefore, this petition, of the face of it, is time barred.

21. Learned Counsel appearing for Financial Creditor in rebuttal stated that while determining the limitation period in question, this Adjudicating Authority is to consider the Suo Motu Civil No.3 of 2023 and therefore, the period of lockdown due to COVID-19 is liable to be excluded while including the limitation period and in view of the exclusion granted by the Hon'ble Supreme Court in the above referred matter, this petition falls within the limitation. Therefore, the argument of Learned Counsel appearing for the Corporate Debtor could not be correct. This petition is well within limitation.
22. The date of default as per the loan agreement was not controverted by Learned Counsel for the Corporate Debtor. This statement of Corporate Debtor has also been recorded in order dated 14 December 2023.
23. Taking into consideration, the direction issued by the Hon'ble Supreme Court on Suo Motu Civil No. 3 of 2023, the period of Covid i.e. from 15 March 2020 till 28 February 2022 is required to be excluded and therefore this petition is within limitation.
24. The Loan Agreement¹ has been made on 05 December 2018 wherein it has been stated that the disbursal is recognised as an unsecured loan and is to be repaid at one go on the expiry of four years from the date of last disbursement of funds by the Financial Creditor. Thus, calculating four years from December 2018, the payment date would fall on December 2022. Hence, the petition is not barred by limitation.
25. Further, the debt is substantiated as the amount has been acknowledged in the Financial Statement for the year 2019-2020 as unsecured debt. The Corporate Debtor has not been able to furnish any document in support of the rebuttal to the default as contended by the Financial Creditor.
26. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than

¹ Page 34 of the C.P.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I

Rajen Sharma v. Epitome Plast-O_Pack Pvt. Ltd.
C.P. (IB) No. 201/KB/2023

the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

27. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application bearing *CP (IB) No. 201/KB/2023* filed Rajen Sharma, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against *Epitome Plast-O-Pack Private Limited*, the Corporate Debtor, is *admitted*.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Swapnil Jain**, registration number IBBI/IPA-001/IP-P02498/2021-22/13872, email id: swapniljain88@gmail.com, phone no. 9830031124, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I

Rajen Sharma v. Epitome Plast-O_Pack Pvt. Ltd.
C.P. (IB) No. 201/KB/2023



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- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- COURT I

Rajen Sharma v. Epitome Plast-O_Pack Pvt. Ltd.
C.P. (IB) No. 201/KB/2023

the Registry of this Court within seven days from the date of receipt of a copy of this order.

28. **CP (IB) No. 201KB/2023** to come up on **21 June 2024** for filing the periodical report.
29. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 2nd day of May 2024.

GGRB_LRA/Zia_steno