IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.132/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;
And

In the Matter of:

Bank of India .....Financial Creditor

And

In the Matter of:

Wellman Carbo Metalicks India Ltd. ..... Corporate Debtor

Order Delivered on 7th August 2019

For the Applicant/Petitioners : 1. Ms. Urmila Chakraborty, Advocate
2. Mr. Shibendu Patri, Advocate

O R D E R

Madan B. Gosavi, Hon'ble Member (Judicial)

Bank of India (Financial Creditor) has filed this application under Sec.7 of the Insolvency & Bankruptcy Code, 2016 against Wellman Carbo Metalicks India Ltd. (Corporate Debtor) to start corporate insolvency resolution process of the corporate debtor as the corporate debtor committed default in paying financial debt of Rs.68,47,67,025.22.

2. On 26/4/2011 the financial creditor granted and disbursed in favour of the corporate debtor various amount of loan and cash credit facilities. The corporate debtor utilised the loan and facilities for their benefit.

3. The corporate debtor had executed in favour of the bank various security

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documents. The loan was renewed time to time thereafter. The corporate debtor also executed letter of acknowledgment of the outstanding debt. Last such acknowledgment letter is dated 23/8/2014. As the account became NPA, the bank sent the corporate debtor notice dated 9/5/2017 under Sec.13(2) of the SARFAESI Act, 2002 and filed recovery proceedings against them in Debts Recovery Tribunal, Kolkata.

4. On 17/1/2018 this proceedings is filed to start CIRP. The corporate debtor served notice of this application. One of its Directors Buddhdeb Chattopadhyay appeared and filed affidavit in reply. The corporate debtor did not dispute the facts that the financial debt more than a sum of Rs.65 crore is due and payable to the bank and there is default in paying the debt. Their only defence is that Shri Kartickchandra Samanta, the officer of the bank has not been duly authorised to start this proceedings.

5. Record reveals that since filing of this proceedings either financial creditor or the corporate debtor sought adjournments on the ground of settlement. When the matter was lastly taken out for hearing, none appeared for corporate debtor.

6. We have perused the case record. It is pertinent to note the fact that the corporate debtor did not dispute that the financial debt more than Rs.65 crore is due and payable by them and they committed default in paying the same.

7. Upon perusal of the record, we find that Shri Kartickchandra Samanta has been duly authorised by the bank to file this proceedings. We deny this defence of the corporate debtor.

8. The financial creditor has suggested the name of Shri Santosh Choraria having registration No.IBBI/IPA-001/IP-P00549/2017-2018/10979 e mail id schoraria@gmail.com for appointment of IRP. There is nothing on record that he

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is facing any disciplinary proceedings. This application is defect free. Hence, We admit the same by following order.

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, Wellman Carbo Metalicks India Ltd. 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 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.

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

x. Shri Santosh Choraria having registration No.IBBI/IPA-001/IP-P00549/2017-2018/10979 e mail id schoraria@gmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

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xi. The Financial Creditor to pay sum of Rs.50,000/- as advance fees as per Regulation 33(2) 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. 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.

9. List the matter on 26/9/2019 for the filing of the progress report.

10. 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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7/8/19

(Madan B. Gosavi)
Member (J)

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7/8/2019

(Virendra Kumar Gupta)
Member (T)

Signed on 7th August 2019