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IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB-238/ND/2019

In the matter of :
BANK OF INDIA
4/6, DESHBANDHU GUPTA ROAD,
PAHARGANJ,
NEW DELHI – 110 055.

.. PETITIONER

Vs.
CAREWAY AGRO PROCUREMENT PVT. LTD,
PLOT NO.143, SWAAN PARK,
NEAR RAJDHANI METRO STATION PILLAR NO.491,
MUNDKA,
DELHI – 110041.

..RESPONDENT

SECTION
UNDER SECTION 7 OF IBC, 2016

Order delivered on 02.9.2019

Coram :
Sh. R. Varadharajan,
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble member (Technical)

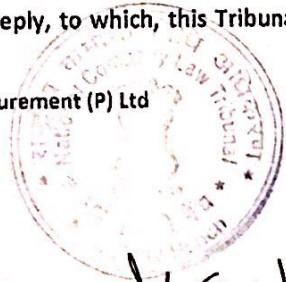
For the Petitioner/Op. Creditor : Mr. Vipin Jai, Advocate
For the Respondent/Corporate Debtor :
For the Intervener : Mr. Abhay Kaushik, Advocate

ORDER
(Order dictated in the open Court).

Ld. Counsel for the Petitioner is present. The Corporate Debtor (CD) is being represented by Mr. Abhay Kaushik, Advocate. Even though, 10 days' time was granted by this Tribunal to the Corporate Debtor to file its reply, however, on behalf of CD, today further time is sought for filing reply, to which, this Tribunal is not in a position to grant

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further time as the IBC being a time bound process prescribed under Section 7 of IBC, 2016 and in view of the Legislative Mandate by virtue of the Amendment Act, 2019 made effective from 17.8.2019, hence right to file reply is closed. Heard the oral submissions made by Ld. Counsel for the Petitioner. An opportunity was granted to the CD to make submissions from the documents, on the basis of documents filed by the Petitioner and in view of the pleadings therein. However, the CD is seeking some time for making submissions as well on behalf of the CD which is not entertained and we are unable to grant further time.

Ld. Counsel for the Petitioner took us through the Application filed under the prescribed Format, namely, Form-I as provided under the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016. From the said Application, it is evident that the petition has been filed by Bank of India, being the Financial Creditor (FC). It is further seen from Part-I of the petition that one Mr. Rameshwar Dayal had filed this application before this Tribunal against the CD.

In Part-II of the Application, it is evident that the CD is a Company registered under the provisions of Companies Act, 1956, the nominal capital of the Company is Rs. 5,00,00,000/- and the registered office of the CD is situated at Plot No. 915-916, Third Floor, Rithala Industrial Area, Delhi-110085 which Ld. Counsel for the Petitioner points out is the same as co-related with Page-57 of the Master Data of the CD as filed at Annexure P-2 along with the petition. From Part-III, it is evident that the Petitioner has proposed the name of one Mr. Naresh Munjal having Registration No.IBBI/IPA-001/IP-P00362/2017-18/10620 (e-Mail id Naresh.munjal@almondzipre.com) to act as Insolvency Resolution Professional (IRP). As per the Application, the details of financial debt extended to the CD is as follows :

"Initially cash credit (Hypothecation) for Rs. 4 crores was sanctioned on 27.12.2012. Thereafter, on 25.9.2013 existing credit facilities were enhanced to 15.00 crores and amount claimed is Rs.13,46,59,953.00 as on 15.12.2018 along with pendentelite interest and other charges till the payment.

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Account-wise defaults :

1. Cash Credit Amount :

Date of default : 31.12.2015

Amount in default : Rs.14,15,73,713/-

2. Overdraft Account :

Date of default : 31.12.2015

Amount in default : Rs.2,10,79,777/-

and in relation to both the facilities, the date of default is stated to be 31.12.2015. During the course of submissions made by Ld. Counsel for the Petitioner brings to the notice of this Tribunal that the charges are registered with the Registrar of Companies (ROC) as evidenced from Annexure P-5 of the typed set filed along with the petition.

The certificate of charges as issued by the ROC dated 25.9.2013 shows that the amount secured as per modification of enhancement stands to Rs.4 crores. Ld. Counsel for the Petitioner also points to the Financial statement as filed by the CD for the year ending 10.10.2013 wherein it is evident that the amount as availed from the Petitioner Bank has been disclosed and classified as Secured Loan by the CD in support of the claim. Ld. Counsel for the Petitioner also brings to the notice of this Tribunal that a notice was issued on 01.1.2016 as per the account of the CD which was declared NPA on 12.12.2015 wherein an outstanding of Rs.15,31,36,490/- has been claimed. Annexure P-29 as filed along with the petition is also pointed out by Ld. Counsel for the Petitioner in relation to the acknowledgement by the CD, the amount outstanding and payable is disclosed as follows :

Nature of Facility	Amount outstanding and payable	Further interest due from	Rate of interest
Cash credit	141473109.53 + interest		4.85 ABR presently 14.50%
Overdraft	20079776.70 + Interest		4.85 ABR, presently 14.50%

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All the above facts averred in the petition as well as in the documents are pointed out by Ld. Counsel for the Petitioner clearly points out to the existence of a financial debt defined under Section 5 (8) of IBC, 2016 and the default on the part of CD to pay money, availed as the financial debt as contemplated under Section 3 (12) of IBC, 2016. It is further seen that name of the IRP who has been proposed, namely, one Mr. Naresh Munjal has also filed his consent as prescribed under I&B (Application to Adjudicating Authority) Rules, 2016 as Annexure P-3. Further, the Certificate of IBBI in support of Form-2 has also been filed by the proposed IRP as on 7th May, 2018. As already stated the Company is located in the Jurisdiction of this Tribunal and the financial debt is in excess of Rs. One Lakh, there is a default committed on the part of CD, this Tribunal does not have any hesitation in unfolding the CIR process in relation to CD and the proposed IRP Shri Naresh Munjal is appointed as IRP who will conduct the process of CIRP under IBC, 2016.

A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

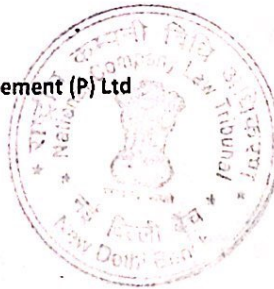
(b) transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

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(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

The interim resolution professional ("IRP"), as proposed Mr. Naresh Munjal has also filed his consent as prescribed under I&B (Application to Adjudicating Authority) Rules, 2016 as Annexure P-3. Further, the Certificate of IBBI in support of Form-2 has also been filed by the proposed IRP as on 7th May, 2018. D

The IRP appointed shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

A copy of this order shall be communicated to the Financial Creditor and Corporate Debtor by the Registry of this Tribunal in addition to the IRP appointed. IRP to communicate this order at the earliest to the ROC, NCT of Delhi and Haryana who will update the particulars as maintained by it in relation to the corporate debtor for the benefit of all concerned.

-Sol-

(K.K. Vohra)
MEMBER (TECHNICAL)

-Sol-

(R. VARADHARAJAN)
MEMBER (JUDICIAL)

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[Signature]
29/1/19
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003