

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1219/KB/2018

IN THE MATTER OF:

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.

-And-

IN THE MATTER OF:

Asset Reconstruction Company(India) Limited, incorporated under the Companies Act, 1956 and having its registered address at The Ruby, 10<sup>th</sup> Floor, 29, Senapati Bapat Marg, Dadar(West), P.O. & P.S. Dadar(West), City and District Mumbai -400028, Maharashtra and regional office at Room No. A-11, 8<sup>th</sup> Floor, Chatterjee International Centre, 33A, Jawarharlal Nehru Road, Kolkata – 700 071, West Bengal

... Applicant/Financial Creditor

-Versus-

IN THE MATTER OF:

M/s. Barnaparichay Book Mall Private Limited, a company incorporated under the provisions of Companies Act, 1956, having its Registered Office at 83, College Street, Kolkata, West Bengal – 700007, IN

...Respondent/ Corporate Debtor

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Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)

For the Financial Creditor :

1. Mr. Vikram Wadehra, Advocate
2. Ms. Vidushhi Chokhani, Advocate

For the Corporate Debtor :

1. Ms. Jayati Chowdhury, Advocate
2. Ms. Ranjana Seal, Advocate

Date of pronouncement of the Order : 09.08.2019.

#### ORDER

Per Shri Jinan K.R., Member(Judicial)

1. This is an Application filed by Asset Reconstruction Company(India) Limited/ Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Barnaparichay Book Mall Private Limited/Corporate Debtor alleging that the Corporate Debtor herein committed default in repayment of r5s. 48,39,19,222/- (Rupees Forty eight Crore thirty nine lakh nineteen thousand two hundred twenty two only) and thereby the Financial Creditor has been compelled to file this Application for initiation of Corporate Insolvency resolution process(in short CIRP).

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2. State Bank of Patiala (in short SBP) had assigned the debt due from the Corporate Debtor to the Asset Reconstruction Company(India) Limited/ the Financial Creditor as per a deed of Assignment dated 26-03-2014. The Financial Creditor contends that subsequent to the assignment of debt in favour of the Financial Creditor, the Corporate Debtor approached the Financial Creditor for settlement and restructuring of debt assigned by SBP as per a letter dated 29-06-2017, Annexure 'JJ', That settlement proposal being found not satisfactory, the Financial Creditor, rejected the proposal for settlement and restructuring of debt as requested by the Corporate Debtor and requested the Corporate Debtor to improve the offer substantially. But the Corporate Debtor failed in improving the offer for settling the claim of the Financial Creditor. Therefore, the Financial Creditor filed this Application for initiating CIRP.

The Financial Creditor further alleged that as per Annexure 'E', all the charges created by the Bank upon availing the loan from the SBP has been charged in favour of the Asset Reconstruction Company(India) Limited. As per Annexure 'E', creation of the charge has been registered with the Ministry of Corporate Affairs as per the loan agreement executed by the Corporate Debtor with the SBP. The Corporate Debtor, being defaulted in repayment of the loan, the SBP declared the amount as NPA on 31-03-2011. Subsequent to the default, the SBP filed OA 238/2014 before the Debt Recovery Tribunal-III, Kolkata for

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recovering the due amount and it is pending for consideration before the Debt Recovery Tribunal and in the meanwhile, this Application has been filed. As litigation is continuing, there is continuity of cause of action, and therefore, filing of this Application is not barred by limitation. All the requirements under Section 7 of the Insolvency & Bankruptcy Code, 2016 has been meted out by the Applicant and therefore, this Application is liable to be admitted. Submitted by the Counsel for the Financial Creditor.

3. This Application was filed on 24-08-2018. Upon receipt of the notice, the Corporate Debtor entered appearance on 31-10-2018. This case was adjourned time to time from 31-10-2018 up to 13-02-2019. Repeated directions were issued to the Corporate Debtor for filing reply affidavit but not chosen to file reply affidavit. When this case was taken up on 13-02-2019, despite the warning that no further opportunity will be granted, the Corporate Debtor again sought for further time to file reply affidavit. In order to have a decision on merits, three days further has been granted to the Corporate Debtor, warning the Corporate Debtor that if not filed within three days from the date of the order, no further opportunity to file the reply affidavit shall be granted to the Corporate Debtor. Even after repeated warning, the Corporate Debtor did not chose to file the reply affidavit.

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This case when came up for consideration on 09-04-2019, without offering any explanation, again the Corporate Debtor, sought time for filing reply affidavit. That prayer was declined by this Bench for the reason stated above and for want of satisfactory explanation as to non-filing of the reply affidavit, upon giving several opportunities to the Corporate Debtor. Being closed the opportunity of filing reply affidavit, the Application was posted for hearing on 24-06-2019. This case could not be heard on the said day for want of time and hence adjourned to 06-08-2019. In the meanwhile, as directed, this case was included in the priority list and advanced to 22-07-2019 for hearing after publishing the case in the cause list but without giving individual notice to the Corporate Debtor or the Financial Creditor. On 22-07-2019, nobody turned up on the side of the Corporate Debtor and since the case was already posted for hearing on 06-08-2019, we adjourned the case to 06-08-2019 and heard the case on the said day.

5. Heard the Ld. Counsel for the Financial Creditor. The Ld. Counsel appearing for the Corporate Debtor did not offer any argument though we permitted her to submit her argument despite filing of reply affidavit. Perused the records.

6. This is an Application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP by an Assignor on the strength of assignment

Deed, Exhibit 'H'. The Financial Creditor has successfully established that the loan, as alleged, has been availed by the Corporate Debtor by executing various loan agreements, Exhibit 'J', 'K' and Deed of Guarantee, Exhibit 'N', 'O', 'P' and also executed other documents referred to in the Application. On a reference to the above said Agreement, it has come out in evidence that the original loan in question was granted by a group of Bank in which State Bank of India is the consortium Lead Bank. SBP is one among the lenders in the consortium banks. The loan in question evidently availed by the Corporate Debtor was granted by the SBP. The SBP granted various credit facilities being the Consortium member of the Banks upon creating security interest in favour of the Banks. The Corporate Debtor, had granted hypothecation of moveable fixed assets and mortgage by way of deposit of title deeds creating security interest in favour of the Bank. The documents relating to such mortgages are also referred to in the Application. The Corporate Debtor also acknowledged subsistence of the liability in respect of the credit facilities by executing confirmation of balance and revival letters and other documents referred to in the Application from time to time.

The Consortium Banks issued a demand notice under Section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) on 20-11-2012. The Corporate Debtor, having failed to pay the amount in demand as per the demand notice under

Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), Annexure 'GG', the SBP has filed OA referred to above and in the meanwhile, by way of Assignment Deed dated 26-03-2014, the debt has been assigned to the Applicant herein.

The Corporate Debtor, though turned up, has not challenged any of the documents evidently executed by it in favour of SBP. Evidence was led in on the side of the FC, to prove that the assignment of debt in favour of the Financial Creditor has been consented by the Corporate Debtor and that the Corporate Debtor approached the Financial Creditor herein, by way of Annexure 'JJ', a letter requesting to have settlement and restructuring of debt. According to the Ld. Counsel for the Financial Creditor the settlement was rejected by the Financial Creditor and filed this Application contending that the Corporate Debtor committed default and there was no repayment on the side of the Corporate Debtor and that the requirement to be meted out has been complied by the Financial Creditor and therefore, this Application is liable to be admitted.

7. According to the Ld. Counsel for the Financial Creditor, the Corporate Debtor being committed default in repayment of the debt due to the Financial Creditor, this application is liable to be allowed. To prove that there is default the Financial Creditor relied upon Annexure-JJ. It is the copy of a letter issued by the Corporate Debtor requesting to settle and restructuring of debt assigned

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by SBP in favour of the Financial Creditor. Annexure 'JJ' proves the default as alleged. So also the statement of Bank account produced to prove that there was no repayment. Annexure Y is the statement of Bank account issued by the SBP. Being satisfied that the debt, as claimed by the Financial Creditor, is found due and there is occurrence of default and the claim is not barred by limitation and the requirement to be meted out under Section 7 of the Insolvency & Bankruptcy Code, 2016 being found meted out, this Application is liable to be allowed.

8. The Applicant also has proposed the name of a Resolution Professional, Mr. Vishal Sharma, AAA Insolvency Professionals LLP., Unit 508, 5<sup>th</sup> Floor, The Chambers, Rajdanga Main Road, Kolkata- 700107 as the Interim Resolution Professional and Form 2 and written communication also annexed with the Application which proves that no disciplinary proceeding is pending against the Insolvency Resolution Professional.

9. In view of the aforesaid facts and circumstances we are of the considered view that this is a fit case for admission. Accordingly, an order of admission is passed upon the following directions :

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## **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. Barnaparichay Book Mall Private Limited , 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.
  
- 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 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. Vishal Sharma**, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, **Registration No. IBBI/IPA-001/IP-P00264/2017-18/10508**, **E-mail** **ID:**

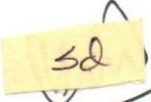
vishal@dvaonline.in , Mobile No. 9830038176, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan **subject to production of written consent within one week from the date of receipt of this order.**

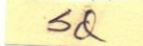
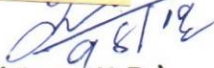
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Financial Creditor is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP.
- xi) Registry is hereby directed under section 7 (4) 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.
- xii) List the matter on **3<sup>rd</sup> September, 2019** for filing of the progress report.

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- xiii) 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 (T)

  
  
(Jinan K.R.)  
Member (J)

Signed on this, the 9<sup>th</sup> day of August, 2019.