

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III

IB- 1463/(ND)/2018

In the matter of:

ORIENTAL BANK OF COMMERCE
SUB-CLUSTER, SOUTH DELHI
92-E, R.K.MARKET,
POST - J.N.U.
MUNIRKA, NEW DELHI - 110067

..FINANCIAL CREDITOR

VRESUS

SHREE SWASTIC SALES CORPORATION PRIVATE LIMITED
4261/3, FIRST FLOOR,
ANSARI ROAD, DARYA GANJ,
NEW DLEHI - 110002

..CORPORATE DEBTOR

CORAM:

MR. R. VARADHARAJAN, MEMBER (JUDICIAL)

Counsel for Financial Creditor - Mr. S.K.SHARMA (Advocates)

16.8.19



ORDER

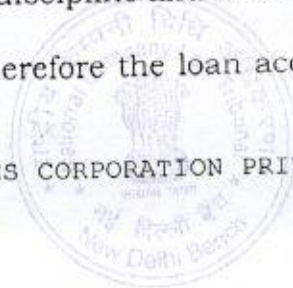
Delivered On : 06.08.2019

1. The present petition has been filed under the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC,2016) by Oriental Bank of Commerce (for brevity "Financial Creditors/Applicants"), against M/s. Shree Swastic Sales Pvt. Ltd (for brevity "Corporate Debtor").
2. It is represented by the Financial Creditor that the Corporate Debtor for its business requirement and expansion availed various financial limits, including cash credit Limit from the Financial Creditor.
3. It is further represented that in order to secure the existing financial assistance, the Corporate Debtor had created security interest by way of hypothecation of all its current assets, movable assets and mortgage of all its immovable properties as securities for due repayment of the facilities availed by the Corporate Debtor. That, further the financial creditor has renewed the Cash Credit Limit of Rs. 45.75 Crore in favour of the Corporate Debtor vide Sanction Letter dated 31.12.2014.
4. Further, that the corporate debtor has executed balance security confirmation on 06.05.2015, whereby they have acknowledged their liability of Rs. 47,66,54,559.22 (Rupees Forty Seven Crore Sixty Six Lac Fifty Four Thousand Five Hundred Fifty Nine and paise Twenty Two Only) as on 06.05.2015. That the Corporate Debtor did not maintain proper financial discipline and also not adhering to banking norms laid down by RBI, therefore the loan account has become irregular which

Page 2 of 6

IB-1463/ND/2018

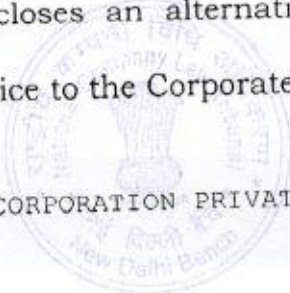
SHREE SWASTIC SALES CORPORATION PRIVATE LIMITED



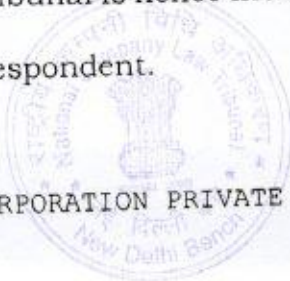
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the Corporate Debtor has failed to regularize even after repeated request made by the Financial Creditor, thus the Financial Creditor was constrained to classify the accounts of the Corporate Debtor as Non-performing Asset on 31.12.2015. Further, for the purpose of encashment of the security interest, the Financial Creditor issued Recall notice u/s 13(2) of the Securitization Act, 2002 to defendants on 02.01.2016 and asked them to pay the dues of Rs. 49,86,31,117.57 with interest within 60 days.

5. The Financial Creditor has placed on record the true copy of Supplementary Agreement to secure credit / Loan Facility dated 09.07.2014, the true copy of the agreement dated 09.07.2014 and a copy of the balance and security confirmation letter dated 09.07.2014. Further as seen from Part V of the application, the financial Creditor has also provided a list of securities held by it.
6. The Tribunal directed a notice to be sent to the corporate debtor seeking as to why the petition should not be admitted against it vide order dated 16.11.2018, consequent to which an affidavit of service is also filed by the petitioner. Further from the record it is seen that the registered office of the corporate debtor as reflected in the master data is in possession of the Financial Creditor himself. Ld. Counsel for the petitioner represents that a notice has been issued as pointed out at annexure I/F at page no. 92 of the application filed by the financial creditor which discloses an alternative address and this tribunal further directed notice to the Corporate Debtor to the said address.



7. Further, it is seen that as represented by the applicant attempts were made by the Financial Creditor to serve the corporate debtor at various addresses and to its directors addresses but could not be completed. This Tribunal further vide order dated 08.03.2019 ordered service by publication in the newspapers in English as well as in vernacular. In compliance of the said order, an affidavit is filed dated 01.04.2019 and a copy of the newspaper, "The Financial Express" in English dated 26.03.2019 and "Rajdhani" in Hindi, dated 26.03.2019 is also annexed.
8. In the circumstances mentioned above and since the Corporate Debtor despite repeated attempts have not appeared before this Tribunal, the tribunal hence was constrained to proceed in the absence of the corporate debtor.
9. Upon perusal of the documents as filed by the Applicant and hearing the submissions as put forth by the Applicant's counsel. The Applicant, it is seen, has provided all the documents to prove that there is a default committed on the part of the Respondent as contemplated under Section 3(12) of IBC,2016, in relation to a debt in existence owed to the financial creditor which is in excess of Rs. 1,00,000/-being the minimum threshold limit fixed for the exercise of pecuniary jurisdiction as the amount claimed is a sum of Rs. 43,16,67,732/-. Considering the circumstances this Tribunal is hence inclined to admit this petition and initiate CIRP of the Respondent.



10. 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;

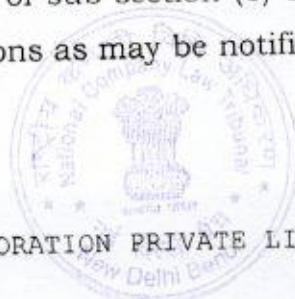
(b) transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(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.

(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.”
11. The interim resolution professional (“IRP”), proposed by the applicant, is one Mr. Rakesh Takyar, registered with ICAI Insolvency Professionals Agency having IP registration number IBBI/IPA-001/IP-P00160/2017-2018/10329 who has also filed his consent in Form 2 with necessary declarations and hence he is being confirmed by this Bench. 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.
12. 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. The IRP to communicate the intimation of the CIRP in relation to the Corporate Debtor to the ROC, NCT of Delhi and Haryana for the purpose duly bring forth the same in its records and update of the Master Data.

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U.D. Mehta/K

IB-1463/ND/2018
SHREE SWASTIC SALES CORPORATION PRIVATE LIMITED

Sd -
06/08/2019
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

Page 6 of 6
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003