

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 139/KB/2019

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:

UNION BANK OF INDIA, Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai 400021, Maharashtra, Nodal Regional Office: 225/C, Alepe Court, A.J.C. Bose Road, Kolkata 700020 and Branch Office – Asset Recovery Brfanch, 15 India Exchange Place, Kolkata 700001.

Applicant/Financial Creditor

VERSUS

In the matter of:

M/S. K.K. GIFTS PRIVATE LIMITED, 6A, S.N. Banerjee Road, Futnani Chambers, Gate No. 9, 2nd Floor, Kolkata 700087.

Corporate Debtor

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

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record:

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|--------------------------------------|---|----------------------|
| 1. Mr. S.K. Singhi, Advocate |] | |
| 2. Ms. Ankur Singhi, Adv. |] | For the Financial |
| 3. Ms. Riti Basu, Adv. |] | Creditor |
| 4. Mr. Prashant Kumar Tripathi, Adv. |] | |
| | | |
| 1. Mr. Shashi Agarwal, Pr. CS |] | For Corporate Debtor |

Order pronounced on: 06/09/ 2019.

ORDER

Per Harish Chander Suri, Member (T).

1. This Petition has been filed by Union Bank of India, hereinafter referred to as the 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, through its Authorised Representative Mr. Hareesh Kumar Kolichala, Chief Manager (Law), Regional Office, against M/s. K.K. Gift Private Limited, a Corporate Entity, having its registered office at Kolkata, hereinafter referred to as the Corporate Debtor, for seeking initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

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2. It is submitted that the Financial Creditor had sanctioned cash credit limit amounting to Rs.4,00,00,000/- (Rupees Four Crores Only) at an interest of 13.25% per annum to the Corporate Debtor on the terms and conditions mentioned in the sanction letter dated 27th March, 2014, which was renewed to Rs.4,00,00,000/- after taking over sanctioned working capital cash credit limit of Rs.2,85,00,000/- (Rupees Two Crore Eighty Five Lacs Only) existing with State Bank of India, Bhowanipore Branch, Kolkata. A copy of the said sanction letter dated 27th March, 2014 is enclosed as **Annexure "D"** to the petition and copy of release of enhanced cash credit limit dated 07.11.2014 is enclosed as **Annexure "E"**.
3. It is submitted that the Corporate Debtor defaulted in repayment of the dues, due to its inability and failure to repay the loan facility availed by the corporate debtor, and therefore the said facility was classified as a Non Performing Asset on 30.01.2016, compelling the Financial Creditor to issue a recall notice dated 05.02.2016 to the corporate debtor, demanding a sum of Rs.4,11,04,970.15 (Rupees Four Crore Eleven Lacs Four Thousand Nine Hundred Seventy and Paise Fifteen Only). Copy of the said recall notice has been enclosed as **Annexure "F"**.
4. It is worthwhile to mention here that the Financial Creditor had, with a view to secure its loan disbursement, got various documents executed by the Corporate Debtor. These documents include

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Hypothecation of Stock and Book debts, Collateral Securities, Personal Guarantees and the charge was also registered with the Registrar of Companies, West Bengal. With a view to prove its case, the Financial Creditor has also filed copy of the Commercial Credit Information record dated 31st July, 2017 and CIBIL Consumer Credit Information Report dated 4th October, 2018 which indicate that the Corporate Debtor is a willful defaulter. The Financial Creditor has also filed Bank statements regarding the account of the Corporate Debtor which indicates that an amount of Rs.3,15,61,525.15 was disbursed as on 20th May, 2017.

5. On the failure of the Corporate Debtor to clear its dues, the bank issued possession notice for immovable properties under Rule 8(1) to the Corporate Debtor and also for the information of the general public that the Bank had taken possession of the property i.e. the (i) stocks at Office and Godown at Futnani Chambers, 6A, S.N. Banerjee Road, Kolkata 700087 and Book debts of the Firm and (ii) All that piece and parcel of 99 years leasehold property of Western facing Eastern side office room No. 202 on 2nd Floor of the G+6 storied RCC Commercial building situated at Room No. 202, Diamond Arcade, 68, Jessore Road, Municipal holding No. 1/72 adjacent to Shyamnagar High School, Kolkata 700055, Premises No. 68, Jessore Road, Ward No. 27, South Dum Dum Municipality.

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6. The Financial Creditor had also issued notice dated 6th February, 2016 under Section 13(2) of the Scrutization and Reconstruction of Financial Assets and Information of Security Interest Act, 2002 and the matter is stated to be still pending in DRT, Kolkata. The Corporate Debtor had sent reply to the notice of the Financial Creditor dated 6th February, 2016 and put across its view point to the Bank. The relevant portion thereof is mentioned as under:-

"After the said loan was advanced, we had maintained the schedule regarding terms of payment. We had not defaulted in making payment of interest and principal as and when the same became due and payable including timely submission of stock and book debts statements and other documents and details as required by you from time to time.

After the grant of said sanction, we were in the process of investing funds in the concerned business. Vide our letter dated 07.11.2014 (after the end of six months from date of sanction) requested your goodself for the release of balance of fund sighting the upcoming festival and new year season in line with your assurance at the time of sanction that balance fund of Rs. 115 lacs would be disbursed on satisfactory performance pof the account. Accordingly we had planned for the festive season 2014 (Durga Puja, Diwali, X-Mas & New Year) which is prime business period in our line of activity. But everything was done at your end at a very slow pace and the balance of fund was disbursed only in April, 2015, thus defeating the very purpose of the fund. The resulting consequences were that we were not able to meet our targets for the FY 14-15 for what we had planned.

Then vide our letter dated 19.09.2015 in response to your letter dated 02.08.2015 received by us on 12.08.2015 had pointed out and/or provided various data and information pertaining to the renewal of credit limits for the months of August 2015 as sought by you under reference of your letter dated

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02.08.2015 in order to suffice your need and further requested to trouble us again, in case any, additional information is required by you.

Further more, we vide our letter dated 24.09.2015 in reply to your letter dated 05.09.2015 had denied that account is overdrawn with an amount of Rs.4,75,839/- and no amount had been paid since 24.07.2015. It was also pointed out that the interest charged on our account as on 24.07.2015 by Rs. 4,75,839/- was fully paid on 19.08.2015. Not only that the interest charged on 24.08.2015 by Rs.4,86,463/- to which Rs. 1,11,525/- was paid on 19.09.2015 and the balance of interest of Rs. 3,74,938/- was due, which we had undertook to pay as soon as possible”.

7. We have heard the Ld. Counsel for both the parties at length. The argument advanced by the Corporate Debtor that the Bank had not given disbursement of the amount in terms of the sanction letter and the Corporate Debtor therefore could not utilize the money sanctioned by the Bank for its timely need and use of the money sanctioned by the Financial Creditor. Therefore he had to face a lot of in convenience.
8. It would be seen that the reasons put forth by the corporate debtor in its failure to make repayment of the amounts owed by it and outstanding are baseless and untenable and cannot be entertained under the provisions of this Code. No financial creditor can be compelled to make further disbursements to recover the outstanding dues. It is the sole discretion of the financial creditor to withdraw

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the credit limits of the corporate debtor as and when it deems fit and proper, looking at the irregular financial dealings and after assessing its poor and sinking financial status. Therefore, the reason suggested by the corporate debtor with a view to give rise to a dispute and use it as a valid defense cannot win any favorable view from this Tribunal, the same being beyond the purview of the Code.

9. We are however, not satisfied with the defense taken by the Corporate Debtor. The argument of the Financial Creditor is more than convincing and satisfying. The Financial Creditor has complied with all the requirements of law and the Code. The main ingredients that are required to be fulfilled under the IBC Code in the case of this nature are that the debt is owed to the Financial creditor by the Corporate Debtor and the default has been committed by the Corporate Debtor and it has failed to repay the debt on being demanded and all the relevant documents and evidence have been placed on record by the Financial Creditor, and the application filed under section 7 is otherwise complete as per rules. We have gone through the documents placed on records. We are, therefore, fully convinced that it is a good case for initiation of Corporate Insolvency Resolution Process.

10. The Financial Creditor has proposed the name of **Mr. Sachin Gopal Jathar, a Resolution Professional**, having Registration No. IBBI/IPA-002/IPN00640/2018-2019/11968 registered with ICSI Institute of Insolvency Professionals, to act as Interim Resolution Professional. Vide Form 2 Shri Sachin Gopal Jathar certified that he is duly qualified and agrees to accept

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the appointment as the IRP if an order of admission is passed in the case of the present application. He has further mentioned that he is currently not serving in any other proceedings and there are no disciplinary proceedings pending against him with the Board of ICSI Institute of Insolvency Professionals.

11. We have heard the Ld. Counsel for the Financial Creditor and after going through all the relevant papers and documents placed on record by the Financial Creditor, we are satisfied that since the Corporate Debtor has committed default in making payment of the debt due to the Financial Creditor and the application is complete in all respects, this application deserves to be admitted and Corporate Insolvency Resolution Process may be initiated. We therefore pass the following orders/directions:-

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. K.K. Gifts 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.

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- 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.
- iv) 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.

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- v) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vi) 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.
- vii) **Mr. Sachin Gopal Jathar, a Resolution Professional**, of AAA Insolvency Professionals LLP, Unit – 508, 5th Floor, The Chambers, Rajdanga Main Road, Kolkata 700 107, having **Registration No. IBBI/IPA-002/IPN00640/2018-2019/11968** E-mail ID sgjathar@gmail.com 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.
- 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.

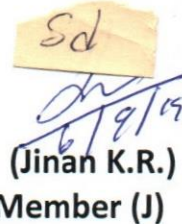
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- x) Registry is hereby directed under section 7(4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xi) List the matter on **14th October, 2019** for filing of the progress report.
- xii) 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 6th day of September, 2019.

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