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In the National Company Law Tribunal
Kolkata Bench
Kolkata

CORAM: Shri Madan B. Gosavi, Member (Judicial)
Shri Virendra Kumar Gupta, Member(Technical)

CP(IB)No.1444/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:

Syndicate Bank, a body Corporate constituted under the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Manipal in the State of Karnataka and carrying on business through including one at 6, N.S. Road, P.S.- Hare Street, Kolkata-700001 commonly known as Syndicate Bank, MID Corporate Branch, Kolkata.

.... Financial Creditor

In the Matter of:

M/s Transafe Services Limited, a company having its registered office at 27, Balmer Lawrie House (Rear Building) 6th Floor, 21, NS Road, Kolkata, West Bengal – 700001.

.... Corporate Debtor

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Counsels appeared:

For Operational Creditor

1. Mr. N. Sriniwas, Advocate
2. Mr. M.K. Singh, Advocate

For Corporate Debtor

1. Mr. VVV Sastry, Advocate
2. Mr. Tridib Bose, Advocate

Date of pronouncement of order: 21st November, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. This application under Section 7 of Insolvency and Bankruptcy Code, 2016 is filed by the Financial Creditor – **Syndicate Bank** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor – **M/s. Transafe Services Limited** on the ground that the Corporate Debtor committed default in paying financial debt of Rs. 83,67,98,337/- (Rupees Eighty-Three Crore Sixty-Seven Lakh Ninety-Eight Thousand Three Hundred and Thirty-Seven Only).

2. The following facts are not in dispute: -

   2.1. By sanction letter dated 17.01.2008, the financial creditor granted and disbursed in favour of the Corporate Debtor term loan and cash credit facilities of sum of Rs. 60 crore and 50 crore respectively. The terms of loan and cash credit facilities were extended and enhanced from time to time. On 02.05.2014, the

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loan account of the Corporate Debtor declared NPA because of irregular repayment. On 21.05.2018, the Financial Creditor served the Corporate Debtor notice of demand and recalling the loan facilities.

2.2. According to the Financial Creditor, since Corporate Debtor defaulted in paying the financial debt, this proceeding is filed to start CIRP of the Corporate Debtor.

2.3. The Financial Creditor suggested name on one Mr. Anil Agarwal having registration no. IBBI/IPA-001/IP-P00270/2017-18/10514 for the appointment of IRP. No disciplinary proceeding appears to be pending against him.

3. Corporate Debtor served with the notice of this application. It appeared though one Mr. Proadyot Kumar Ghosh, Company Secretary of the Corporate Debtor. He filed affidavit in reply.

4. We have perused the reply. It is seen that Corporate Debtor raised three defenses to contest application: -

   (i) The officer signed and verified the application on behalf of the Petitioner is not authorized to initiate this proceeding under IBC.

   (ii) Time barred and is sought to be recovered by way of this proceeding.

   (iii) This application is not maintainable in view of the Supreme Court's Ruling in "Dharani Sugars And Chemicals Vs. Union of India & Ors." in T.P.C No. 1399/2018.

5. We heard Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length. We have gone through the material record.

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On the basis of pleading of the parties, we concluded that there is no dispute regarding to two facts that there is debt due and payable by the Corporate Debtor to the Financial Creditor more than Rs. 1 Lakh (reference Section 4 IBC) and the Corporate Debtor committed default in paying the same. In fact, these are two facts, this Authority has to consider while admitting or rejecting the application under Section 7 IBC.

6. We have seen the record. This application is signed and verified by one Mr. Bansi Gopal Pujari, the Chief Manager of Syndicate Bank on the basis of Power of Attorney executed by Deputy General Manger who had been authorized to execute the power of attorney by board of directors of the Bank. The power of attorney was executed on 09.06.2003. The Petitioner also produced on record resolution passed by the board of directors in meeting dated 28.05.2018 authorising the Chief Manager of the Bank to initiate proceeding under Section 7 of IBC, 2016. In this case, Syndicate bank, the body corporate is the Financial Creditor. Mr. Bansi Gopal Pujari, Chief Manager presented this application on behalf of the Bank. From the evidence on record, we found that Mr. Pujari has been duly authorized to verify and file this application. In our considered opinion, while dealing with such proceeding under economic legislation like Insolvency and Bankruptcy Code, which is basically enacted to resolve insolvency of the Corporate Debtor, such application should not be rejected on such technical ground. No doubt, one has to see whether there is a proper authorization to file application. In this case, we find that Mr. Pujari has been properly authorized to initiate this proceeding against the Corporate Debtor.

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7. It is not in dispute that the Corporate Debtor committed default in paying the debt in the year 2014. Its account declared NPA. The Corporate Debtor has admitted that debt in its balance sheet for the year 2015-16. This application is filed within 3 years thereafter. It is filed within period of limitation.

8. Although the Corporate Debtor contended that this proceeding is not maintainable, in view of Supreme Court ruling in Dharani Sugars And Chemicals Vs. Union of India & Ors. in T.P.C No. 1399/2018 we find that the Bank has not filed this proceeding on the basis of RBI Circular dated 12.02.2018. This proceeding is filed independently without intervention/consultation of RBI. Hence, Supreme Court ruling in Dharani Sugars And Chemicals Vs. Union of India & Ors. in T.P.C No. 1399/2018 is not applicable herein.

9. This is the only defense raised by the Corporate Debtor and we find that it is not considerable. The application is defect free. No disciplinary proceeding is pending against the IP whose name has been proposed for appointment of IRP. Hence, this application is defect free. Hence, we admit this application by following order.

ORDER

i) The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Transafe Services Limited** is hereby admitted.

ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

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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.

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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) Mr. Anil Agarwal, IP Registration No. IBBI/IPA-001/IP-P00270/2017-18/10514, E-mail ID: anil@dvaonline.in is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

xi) The Financial Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP 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) In case, further funds are required by IRP/RP and in the event of non-provision thereof, IRP/RP can approach this Tribunal so that CIRP would not be hampered for want of funds.

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xiii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiv) 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.

List the matter on **08.01.2020** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/- 21/11/2019

(Virendra Kumar Gupta)
Member(Technical)

Sd/- 21/11/2019

(Madan B. Gosavi)
Member(Judicial)

Signed on this, the 21st day of November, 2019.

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