IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)

(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)

CP (IB) No. 180/KB/2019

In the matter of:
An application for initiation of Corporate Insolvency Resolution Process under Section 7(1) 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:
ATO(I) Limited, registered under the provisions of Companies Act, 1956 bearing CIN U63090BW1983PLC035817 and having its registered office at 60C, Colootola Street, Kolkata- 700 073, West Bengal;

...**Applicant/Financial Creditor**

-Versus-

In the matter of:
Gandhamardhan Sponge Industries Private Limited, registered under the provisions of Companies Act, 1956 bearing CIN U27102WB1977PTC030909 having its registered office at P-3, New CIT Road, 2nd floor, Kolkata- 700 073, West Bengal;

...**Respondent/Corporate Debtor**

Counsel appeared:

1. CS Siddhartha Murarka] For Financial Creditor
2. CS Abhijit Nagee]

1. Mr. Saunak Mitra, Advocate]
2. Ms. Shwetank Nigam, Advocate]

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Date of Pronouncement of Order: 04.10.2019

ORDER

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

A T O (I) Limited- the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Gandhamardhan Sponge Industries Private Limited** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.99,41,096/-.

2. The following facts are not in dispute.

3. On 11.08.2015, Financial Creditor has lent sum of Rs.75,00,058/- to the corporate debtor as a loan. The amount was disbursed by the cheque. The corporate debtor was to repay the loan within 60 days. The corporate debtor paid interest as per agreed rate from time to time. Amount of interest was lastly paid by the corporate debtor on 25.08.2018. Thereafter, corporate debtor committed default in paying the debt. Hence, this application is filed to start CIRP of the corporate debtor.

4. Financial Creditor suggested name of one Mr. Pradeep Kumar Goenka of C/o- AV Insolvency Professionals Private Limited, Bajrang Kunj, Room No.412 & 413, 2B Grant Lane, 4th floor, Kolkata- 700 012, having registration no. IBBI/IPA-002/IP-N00294/2017-2018/10851 and email Id. goenka.pradeep@gmail.com for appointment as the IRP. Mr. Goenka has given consent in writing for the same.

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5. Corporate Debtor served with notice of this application. They appeared through one Mr. Raj Kumar Agarwal- one of the directors. He filed affidavit-in-reply. It is contended that since this authority did not dispose off this application within 14 days as per section 7(4) of IBC, this authority has now become *functus officio* to adjudicate this application. It is also contended that financial creditor is not a bank or financial creditor. It does not have money-lending licence. Hence, they cannot file such application. It is prayed that application may be rejected.

6. We heard the Ld. Counsel for the Financial Creditor as well as Ld. Counsel for the Corporate Debtor at length. We perused the records.

7. In this proceeding, corporate debtor was served notice on 22.03.2019. Advocate, Ms. Shewtank Nigam of Chowdhury's Law Officer put her appearance on behalf of the corporate debtor on 25.05.2019 and sought time to file affidavit-in-reply. The corporate debtor did not file affidavit-in-reply till 17.07.2019. It shows that this authority could not dispose off this application within 14 days only because the corporate debtor sought time to file affidavit-in-reply. Now corporate debtor cannot take advantage of their own wrong. It cannot be said that this authority becomes *functus officio* to decide this application. Moreover, provision of section 7(4) of IBC are directory in nature. The statute allows this authority to dispose off this application beyond period of 14 days, provided the authority notes reasons in writing for the delay caused. It has been done in this case. Hence, this contention of the corporate debtor shows lack of proper understanding of the law.

8. Be that as it may, in this case, there is no dispute to the fact that financial creditor lent the corporate debtor loan of Rs.75 lakhs and Corporate Debtor committed default in not paying the loan as agreed. Hence, corporate debtor has

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to be admitted in CIRP. However, corporate debtor raised contention that the financial creditor is not bank or financial institute. It has no money-lending licence. It cannot file such proceeding.

9. We have considered the above-said contention of the corporate debtor. There is no evidence on record to show that the financial creditor doing business of money-lending illegally. Section 186 of Companies Act, 2013 permits the company to give loan to other company/persons subject to condition laid down therein. We find that financial creditor gave inter-corporate deposit of the corporate debtor after complying all conditions stated under section 186 of Company Law, 1986. Hence, we reject this contention of the corporate debtor.

10. The Financial Creditor proposed the name of Resolution Professional, Mr. Pradeep Kumar Goenka for appointment of IRP. The IRP has also submitted his consent in Form 2 dated 23.01.2019, wherein he has declared that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professions of ICAI.This application is defect-free. Hence, we admit the corporate debtor in CIRP and pass the following order:

ORDER

(i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Gandhamardan Sponge Industries Pvt. Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

(ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public

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announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.104 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 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 or suspended or interrupted during the moratorium period.

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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 affect 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 Sec.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.

viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(ix) As per proposal given by the Financial Creditor, Mr. Pradeep Kumar Goenka (Mob. No. 98301 19363) of C/o- AV Insolvency Professionals Private Limited, Bajrang Kunj, Room No.412 & 413, 2B Grant Lane, 4th floor, Kolkata-700 012, having registration no. IBBI/IPA-002/IP-N00294/2017-2018/10851 and email Id. goenka.pradeep@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

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

xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **18.11.2019** for filing progress report.

Sd 4/10/2019

(Virendra Kumar Gupta)
Member (T)

Sd 4/10/2019

(Madan B. Gosavi)
Member (J)

Signed on this, the 4th day of October, 2019.