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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.1178/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:

JM Financial Asset Reconstruction Company Ltd., a company incorporated under the Companies Act, 1956 having its registered address at 7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025, Maharashtra and amongst others also branch office at 8th Floor, Kankaria Estate, 6, Little Russel Street, Kolkata-700071, West Bengal, hereinafter referred to as "JMFARC".

..... Financial Creditor

In the Matter of:

M/s Aditi Health Oils Private Limited, a company having its registered office at Vill. & P.O. Kuchut, Ground Floor, PS Memari Burdwan, Near Rajbari Bardhaman, West Bengal – 713407.

..... Corporate Debtor





Counsels appeared:

For Financial Creditor

1. Mr. Vikram Wadehra, Advocate
2. Mr. Vidushi Chokhani, Advocate
3. Mr. Soumava Ghosh, Advocate
4. Mr. Pankaj Kejriwal, (Sr.VP JMFARC)
5. Mr. Ratnanko Banerji, Sr. Advocate

For Corporate Debtor

1. Ms. Manju Bhuteria, Advocate
2. Mr. Ajit Keshari, 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 – **JM Financial Asset Reconstruction Co. Ltd.** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor – **M/s. Aditi Health Oils Private Limited** on the ground that the Corporate Debtor committed default in paying financial debt of Rs. 87,76,61,337/- (Rupees Eighty-Seven Crore Seventy Six Lakh Sixty One Thousand Three Hundred and Thirty-Seven Only).
2. The following facts are not in dispute: -
 - 2.1. On 30.06.2012, UCO bank had granted and disbursed loan of Rs. 39,25,000/- (Rupees Thirty Nine Crore Twenty Five Lakh Only) in

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favour of the Corporate Debtor. Corporate Debtor executed number of documents in favour of the Bank having received loan amount. Corporate Debtor did not pay back the loan as credit. Hence, on 31.10.2012, UCO Bank declared loan account as NPA. On 31.03.2014, UCO bank assigned the right of recovery of above loan amount along with interest in favour of the Financial Creditor. Deed of assignment is on record.

- 2.2. According to the Financial Creditor, UCO Bank after serving notice under Section 13(2) of SURFAESI Act, 2002 has filed recovery proceeding against the Corporate Debtor in DRT, Kolkata. That proceeding is still pending.
- 2.3. Since the Corporate Debtor committed default in paying the loan, this proceeding is filed to start CIRP of the Corporate Debtor.
3. Corporate Debtor served with the notice of this application. It appeared though one Mr. Ajay Kr. Agarwal, Director of the Corporate Debtor. He filed affidavit in reply.
4. We have perused the reply. It is seen that Corporate Debtor raised three defenses: -
 - (i) The claim is barred by limitation.
 - (ii) Application is not filed by duly authorized person of the Financial Creditor.
 - (iii) Since, recovery proceeding is still pending before Hon'ble DRT, Kolkata, the debt cannot be said to be due and payable.
5. We heard Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length. We have gone through the record and proceeding.
6. As noted above, most of the facts are not in dispute particularly the existence of the debt and its non payment by the Corporate Debtor. However, we have to consider whether the claim is time barred and

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whether application is filed by properly authorized person. We have also to consider whether the debt is due and payable on law and facts.

7. It is not in dispute that loan amount of the Corporate Debtor declared NPA in December, 2012. UCO Bank assigned right to recover the loan in favour of the Financial Creditor in March, 2014. It was accepted from the Financial Creditor to file this proceeding within 3 years from December 2012. This proceeding is filed on 20.08.2018. Upon our query to Ld. Counsel for the Financial Creditor as to how this proceeding is said to be within limitation. He submitted that Corporate Debtor admitted and acknowledged the debt in its balance sheet for the year ending March 2016. Hence, this proceeding is within limitation.
8. According to the Ld. Counsel for the Corporate Debtor, it is a time barred debt. He relied two Rulings of the Apex Court – "Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. and Ors." And "Jignesh Shah and Ors. Vs. Union of India (UOI) and Ors." He also relied on order passed by this Tribunal, Bench-I in CP(IB)N.129/KB/2019 – Oriental Bank of Commerce Vs. M/s. MSP Metallica Limited.
9. We have gone through the rulings and orders relied on. In all above cases, there was no acknowledgment of the debt on the part of the Corporate Debtor. Hence, it was held that claim was time barred. Here in this case, Financial Creditor pointed out that the Corporate Debtor has acknowledged the debt in its balance sheet for year ending March, 2016. This Authority has occasion to consider this aspect in one of the proceeding in CP(IB)No.522/KB/2018, "State Bank of India-Vs-Silverton Spinners Ltd", after considering some of the rulings of the Apex Court and order passed by Hon'ble NCLAT, we have held that acknowledgment of the debt by the Corporate Debtor in its balance sheet is valid acknowledgment within Section 18 of Law of Limitation. In this case, Corporate Debtor has acknowledged the debt in it balance sheet for

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March 2016. This application is filed within 3 years. Thereafter, we held that Ruling relied are not applicable on facts. We also held that it is not time barred claim as contended by the Corporate Debtor.

10. The Corporate Debtor raised point that officer filing this application was not properly authorized. We have seen the record. The application is filed by Mr. Rahul Das, Senior Analyst working with the Financial Creditor. He has produced on record the resolution passed by board of directors of the Financial Creditor in their meeting dated 27.04.2018 (Annexure A). Mr. Rahul Das is duly authorized to file this application. Hence, we find no merit in contention of the Corporate Debtor.
11. The Corporate Debtor contended that this application is not maintainable because recovery proceeding is still pending before DRT, Kolkata. For this, we held that pendency of recovery proceeding against the Corporate Debtor is not a ground to reject this application. The recovery proceeding and this proceeding for resolution of insolvency of the Corporate Debtor are separate and distinct and can be proceeded simultaneously. Hence, we reject this defense of the Corporate Debtor.
12. We find that there is debt due and payable by the Corporate Debtor to the Financial Creditor and the Corporate Debtor committed default. Financial Creditor suggested name of one Mr. Debashis Nanda, having registration no. IBBI/IPA-003/IP-N00040/2017-18/10316 for the appointment of IRP against whom no disciplinary proceeding appears to be pending. The application is defect free. Hence, we admit the same by following order.

ORDER

- i) The application filed by the Operational Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate

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Insolvency Resolution Process against the Corporate Debtor, **M/s Aditi Health Oils Pvt. Ltd.** is hereby admitted.

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

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;

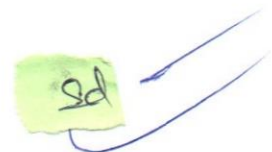
c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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.

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- 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.
- 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. Debashis Nanda, having registration no. IBBI/IPA-003/IP-N00040/2017-18/10316, E-mail ID: dnanda.cma@gmail.com 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.

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.


21/11/2019

(Virendra Kumar Gupta)
Member(Technical)


21/11/2019

(Madan B. Gosavi)
Member(Judicial)

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

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