IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 1503/KB/2018

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:

PHOENIX ARC PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and incorporated as an Asset Reconstruction Company pursuant to Section 3 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) having its registered office at 5th Floor, Dani Corporate Park, 158, C.S.T. Road, Kalina, Santacruz (E), Mumbai 400 098 acting in its capacity as trustee for Phoenix Trust FY 16-18, hereinafter referred to as "Phoenix ARC".

... Applicant/Financial Creditor

-Versus-

IN THE MATTER OF:

M/S. SUNITTI PAPERS PRIVATE LIMITED, a Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at 8, Canning Street, 3rd Floor, Room No. 312, Kolkata 700001.

... Respondent/Corporate Debtor

Sd Sd

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

Counsel on Record:

1. **Mr. Vikram Wadehra**]
2. **Ms. Vidushi Chokhani**] **For Financial Creditors**
3. **Mr. Soumava Ghosh**]

1. **Ms. Shreya Chaudhary, Adv.**]
2. **Mr. Manish Shukla, Adv.**] **For Corporate Debtor**

Date of pronouncement of Order: 06/11/2019.

ORDER

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

1. This Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **M/s. Phoenix ARC Private Limited** (hereinafter referred to as the "Financial Creditor") through its Authorised Representative **Mr. Ajit Kewinto,** duly authorized by Board Resolution passed at the meeting of Board of Directors of the Company on 30th January, 2018 seeking orders to initiate Corporate Insolvency Resolution Process against **M/s. Sunitti Papers Private Limited**, a Corporate Entity having CIN:

Sd Sd

U21090WB2002PTC094377 and its registered office at Kolkata (hereinafter referred to as the "Corporate Debtor").

2. It is submitted that on the request of the Corporate Debtor the Financial Creditor had sanctioned a loan of Rs. 7,48,18,000.00 (Rupees Seven Crore Forty Eight Lacs Eighteen Thousand Only) vide sanction letter dated 14th February, 2013 which was disbursed under various heads. It is further submitted that the Corporate Debtor committed default in payment of the outstanding debt and it was declared as NPA on 31st October, 2013.

3. It is however, submitted that to secure the debt of the Financial Creditor a number of documents and securities/mortgages were created and executed by the Corporate Debtor, apart from personal guarantees and Corporate Guarantees. The Corporate Debtor owed certain sums to Allahabad Bank and it mortgaged some title deeds for availing credit facilities which debt was taken over by the Financial Creditor vide Assignment Deed dated 30th December, 2015.

4. It is submitted that the account of the Corporate Debtor was admittedly declared as an NPA on 31st October, 2013. The Corporate Debtor entered into the settlement of debt with the Financial Creditor whereby the assigned debt of Rs. 7,95,00,923.67 with further interest @ 12.70% p.a. as on 4th November, 2015 till payment

Sd

Sd

was acknowledged by the Borrowers and Guarantors jointly and severally in favour of the Financial Creditor.

5. It is submitted that the Corporate Debtor had not adhered to and complied with the schedule of payments and other terms and conditions enumerated in the letter of acceptance dated 15th July, 2016. The Financial Creditor has proposed the name of Mr. Jitendra Lohia to act as Interim Resolution Professional if the petition is admitted.

6. In the reply affidavit filed by One of the Directors of the Corporate Debtor it is submitted that the application has been filed in abuse of the process of law and is barred by laws of limitation and is thus not maintainable under the provisions of the Code. It is denied in the reply that Mr. Ajit Kewin has been authorized by the Financial Creditor to represent the Applicant and there is no authorization in that regard. It is submitted that the Applicant has also instituted proceedings before DRT against SPPL and the Applicant is guilty of forum shopping.

7. In the Rejoinder affidavit Mr. Ajit Kewin, the Authorised Representative of the Financial Creditor has submitted that he is the Authorised Signatory of the Financial Creditor. He denied all the allegations made in the reply by the Corporate Debtor. It is submitted that the Corporate Debtor has admitted and

SD

SD

acknowledged its liability for a sum of Rs. 7,95,00,923.67 as on 4th November, 2015 in its letter dated 15th June, 2016 and denied that the claim of the Applicant is barred by time.

8. We have heard the Ld. Counsel for both the parties and perused the records/documents filed by both the parties. We find that the Application of the Financial Creditor is complete in all respect, the grounds in the reply affidavit are completely vague and cannot provide any support to the case of the Corporate Debtor. This is an admitted and acknowledged financial debt owed by the Corporate Debtor to the Financial Creditor and the Corporate Debtor has committed default and the only consequential order would be to initiate Corporate Insolvency Resolution Process against the Corporate Debtor as prayed for by the Financial Creditor.

9. We have, therefore, no hesitation in holding that the petition succeeds. We, therefore admit the petition with the following direction/orders:-

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. Sunitti Papers Private Limited** is hereby admitted.

Sd

Sd

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.

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.

Sd/-

Sd

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.

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 have effect from 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 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.

viii) **Mr. Jitendra Lohia, of 2, Lal Bazaar Street, Room No. 204 & 205, 2nd Floor, Kolkata 700001**, an Interim Resolution Professional having **Registration No. IBBI/IPA-001/IP-P00170/2017-2018/10339,** Email: jitulohia@knjainco.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

Sd

Sd

resolution plan subject to production of written consent within one week from the date of receipt of this order.

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 and follow Regulation 40A strictly.

x) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy 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 **9th December, 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.

Sd Sd 6/11/19

(Harish Chander Suri) **(Jinan K.R.)**
Member (T) **Member (J)**

Signed on this, the 6th day of November, 2019.

VC