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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA**

CP (IB) No.162/KB/2019

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:

Priya Enclave Private Limited, having registered office at 5/5, Clive Row, 4th Floor, Room No.110, Kolkata - 700 001.

.....Applicant/Financial Creditor

And

In the Matter of:

India Forms Centre Private Limited, having its Registered Office at 2, India Exchange Place, Room No.12, 2nd Floor, Kolkata - 700 001.

..... Respondent/Corporate Debtor

Date of Hearing 19th November 2019

Order Delivered on 20th November 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Kumar Gupta, Member (T)

For the Financial Creditor : Mr. Kunaljit Bhattacharjee, Advocate

For the Corporate Debtor : 1. Ms. Minakshi Manot, Advocate
2. Mr. Niladri Khanna, Advocate

ORDER

Per Virendra Kumar Gupta, Member (Technical)

This application has been filed under Sec.7 of Insolvency & Bankruptcy Code, 2016 by the financial creditor, viz., Priya Enclave Private Limited to initiate corporate insolvency resolution process against the corporate debtor,

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viz., India Forms Centre Private Limited. The amount of default has been stated in the application at Rs.10,00,000/- and interest thereon.

2. The facts, in brief, are that the financial creditor gave Rs.10 lakh to the corporate debtor on 18/11/2015 for a period of 135 days as inter corporate loan bearing of interest @12% per annum. The corporate debtor paid some interest, however, did not pay the principal amount.

3. Ld. Counsel appearing on behalf of the financial creditor narrated the facts and drew our attention to page 9 of the application to show the amount outstanding as on 31/3/2018 which had been duly confirmed by the corporate debtor and on this basis, pleaded that there has been undisputed debt due and payable and a default had occurred in payment thereof, hence, this petition was liable to be admitted. He also drew our attention to the relevant pages of bank statement to show interest which had been paid by the corporate debtor from time to time. Ld. Counsel also drew our attention to the audited financial statement of the corporate debtor as on 31/3/2018 wherein unsecured loan from the financial creditor has been shown as outstanding.

4. Ld. Counsel for the corporate debtor submitted that the financial creditor was not a Non-Banking Financial Corporation (NBFC) nor the resolution of the Board of Directors had been obtained under Sec.186 of the Companies Act, 2013, hence, for these reasons, the petition filed by the financial creditor was not maintainable.

5. We have considered the submissions made by both the sides and have also perused the material on record. As far as the facts of disbursement of loan, interest payable thereon and amount being due are not disputed. The only contention which has been raised by the corporate debtor is that the financial creditor is not a NBFC and resolution under Sec.186 of the Companies, 2013 has also not been provided for. Therefore, the loan transaction was not

enforceable of law. As far as proceedings under Sec.7 of the Insolvency & Bankruptcy Code, 2016 are concerned in our view, the requirements are that there should be a debt which is due and payable and a default has occurred in payment thereof. This factual position, as stated earlier, exists in the present case. Further, provision of Sec.3(6) of Insolvency & Bankruptcy Code, 2016 make a claim enforceable under Insolvency & Bankruptcy Code, 2016 on equitable ground and legal technicalities regarding compliance to regulatory requirements of Companies Act, 2013 and other laws for granting of loan are not applicable to proceed under Insolvency & Bankruptcy Code, 2016. Provisions of Sec.238 of Insolvency & Bankruptcy Code, 2016 also provide that contrary provisions to the scheme and object of Insolvency & Bankruptcy Code, 2016, of any other law/instrument will not be applicable. Ld. Counsel relied on the earlier decision of this Tribunal in this regard, however, subsequently a common judicial approach has emerged whereby such technicalities have been held as in-applicable to the proceedings under Sec.7 of Insolvency & Bankruptcy Code, 2016. In regard to our view that such technicalities are not applicable, we also referred to our decision in the case of Religare Finvest Ltd. vs. Bharat Road Network Ltd. in CP (IB) No.540/KB/2018 as well as in the case of Allied Broad Band Services Pvt. Ltd. vs. Manthan Broad Band Services Pvt. Ltd. in CP (IB) No.1634/KB/2018. The application is otherwise complete in all respects and also defect free. It complies to the requirements of provisions of Insolvency & Bankruptcy Code, 2016 and Regulations made thereunder.

6. It reveals from the record that the financial creditor has proposed the name of Shri Ajay Goyal, Registration No.IBBI/IPA-001/IP-P01083/2017-18/11783 email aaa3india@yahoo.com as Interim Resolution Professional who has has given his consent in Form 2. It further appears from the records that no disciplinary proceedings are pending against the proposed IRP. Accordingly, we

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approve his appointment as IRP.

7. The petition is otherwise complete in all respects and defect free. Accordingly, we admit the same and order as under:-

ORDER

- 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, India Forms Centre Private Limited is hereby admitted.
- ii. We 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;

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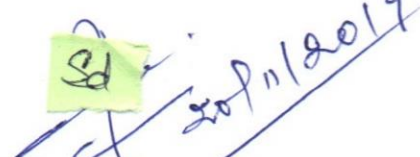
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any 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.
- 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 Sec.15 of the IBC, 2016 may be made.
- x. Shri Ajay Goyal, Registration No.IBBI/IPA-001/IP-P01083/2017-18/11783 email aaa3india@yahoo.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors

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and convening a Committee of Creditors for evolving a resolution plan.

- xi. The Financial Creditor to pay a sum of Rs.50,000/- (Rupees Fifty thousand only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
 - xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xiii. 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.
8. List the matter on 3/1/2020 for filing of the progress report.
 9. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (T)


(Madan B Gosavi)
Member (J)

Signed on 20th November 2019