

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP(IB) No. 174/KB/2018

IN THE MATTER OF

An application Under Section 7 read with rule 4 of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process.

And

IN THE MATTER OF

Oriental Bank of Commerce ,Having its Corporate office at Plot No. 5, Institutional Area, Sector- 32, Gurgaon-122001 and also carrying on business at 27/1A, C.I.T. Road, Scheme- IV, Park Circus, Kolkata-700014.

.....Financial Creditor

Versus

IN THE MATTER OF

M/s Atlantic Projects Ltd. having its registered office at 8, Camac Street, Shantiniketan Building, 9th Floor, Room No. 17, Kolkata- 700017.

.....Corporate Debtor

Date of Hearing : 03.10.2019

Delivered on : 15.10. 2019

Coram:

Madan B Gosavi, : Member (J)

Virendra Kumar Gupta, : Member (T)

For the Financial Creditor : Mr. Sajib Dawn, Advocate

For the Corporate Debtor : 1.Mr. Ratnanko Banerji, Advocate

2.Mr.Sidharth Sharma , Advocate

4.Mr.Ujjan Chaterjee, Advocate

5.Mr. D. Thakur, PCS

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ORDER

Per Virendra Kumar Gupta, Member (Technical)

This application has been filed under section 7 by the Financial Creditor namely Oriental Bank of Commerce to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely M/s Altantic Projects Ltd. The amount of default has been claimed at Rs. 45,35,02,872.14 (Rupees Forty Five Crores Thirty Five Lakhs Two Thousand Eight Hundred Seventy Two and fourteen Paisa) and the date of default has been stated as 28.02.2017.

2. The facts, in brief, are that credit facilities were granted in 2013 which were renewed from time to time. However, the Corporate Debtor did not fulfil its commitment for repayment. Hence, this petition is filed.

3. Learned counsel appearing on behalf of the Financial Creditor drew our attention to pages 399 and 400 of the paper book to show that the balance as on 11.08.2015 was confirmed by the Corporate Debtor. The account had been declared as NPA on 30.06.2016 and this petition was filed on 18.01.2018. Hence, this petition was well within the limitation time.

4. The learned counsel appearing on behalf of the Financial Creditor narrated basic facts and filed the copy of record of default/ debt authentication as submitted to and held of NESL which is one of the established mode of proof of debt and due and payable as per the provisions of IBC, 2016. He further submitted that the petition had been filed on 15.10.2018, which was well within the limitation period. In this regard, he drew our attention to page 1021 and 1030 containing copies of balance confirmation certificates duly acknowledged by Corporate Debtor as on 29.03.2016 and 30.03.2017.

5. On the other hand, the learned counsel for the Corporate Debtor mainly argued on the aspect of lack of proper authorization of the person, who filed this petition. In this regard, he particularly referred to the Board resolution attached with the petition and drew our attention to relevant clauses to say that such Board Resolution was in connection with the policy of the Bank in

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regard to recovery of non performing assets and processes to be adopted in such cases and not for authorization of person who filed this application, hence, for this reason alone the petition was not maintainable.

6. In the Rejoinder, learned counsel for the Financial Creditor submitted that standard resolution were passed and General Manager, RRL had been specifically authorised to appoint/ authorize competent person to initiate and file application under section 7 of IBC, 2016. On this basis, he pleaded that there was no merit in the contention of the learned counsel for the Corporate Debtor.

7. We have considered the submissions made by both the sides, matter of record as far as the admissibility of this petition on merit is considered, that cannot be disputed in view of the facts narrated hereinabove. The application under section 7 of IBC is complete in all respects. As regard to the lack of competency of the person to file the petition. It is noted that as per memorandum dated 7th December, 2017 deliberations took place regarding how to empanel I.P and carry out the amendments in the recovery policy of the Bank pertaining to Insolvency and Bankruptcy Code, 2016. Memorandum dated 16.08.2017 and 07.12.2017 is attached. The objection of the Corporate Debtor is that, this is in regard to the designing the determination of the recovery policy for Insolvency and Bankruptcy and not for authorization of General Manager but under the heading Corporate Insolvency Resolution Process, it is observed that General Manager has been authorised to issue authority letter on case to case basis. The said authorization is reproduced as under :-

“GM- RRL shall be the competent authority to issue authority letter for filing of application under section 7 of IBC on case to case basis”.

8. Thus, in our view, when the General Manager, having requisite power, has authorized the person to file this petition, there is no lack of competency or any defect so as to make this petition not maintainable. It is worthwhile to note that no standard format of Board Resolution to authorise person has been prescribed under the IBC regulations, hence, what is to be looked upon that prima-facie the Board resolution delegates the power to file petitions under IBC,2016. We are further of the view that it is substance rather than

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form which matters. In the present application, in our view, proper authority exists. Thus, we reject this contention of the Corporate Debtor.

9. The Financial Creditor has proposed the name of IRP namely Anil Anchalia, whose consent has been enclosed with the petition, wherein it has also been claimed that no disciplinary proceeding are pending. Hence, we approve the same.

10. Having admitted this petition, we 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, M/s Altantic Projects Ltd. 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;
 - 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

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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 Section 15 of the IBC, 2016 may be made.
- x. Shri Anil Anchalia, having registration No.IBBI/ IPA-001/IP-P00049/2017-18/10123 email id anilachalia@yahoo.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 a sum of Rs. 1,00,000/- (Rupees One Lakhs) 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.

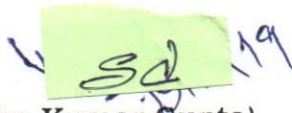
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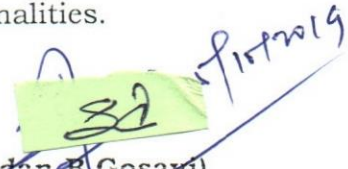
xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

11. List the matter on 05.12.2019 for the filing of the progress report.

12. 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 15th October 2019