

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 909/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:

AXIS BANK LIMITED, having its registered address at Trishul, 3rd Floor, Opp. Samartheshwar Temple, Law Garden, Ellis Bridge, Ahmedabad – 380 006, Gujarat, India and branch at SME Department Eastern Zonal Office, 1, Shakespeare Sarani, 3rd Floor, AC Market Building, Kolkata 700071, West Bengal, India.

... Financial Creditor

-Versus-

IN THE MATTER OF:

M/S. MAXIMUM AGENCY PRIVATE LIMITED, having its registered office at 127/A, Sarat Bose Road, Kolkata 700026 also at 22B, Manoharpukur Road, 1st Floor, Kolkata 700029.

... Corporate Debtor

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In the matter of:

AXIS BANK LIMITED] Financial Creditor
M/S. MAXIMUM AGENCY PRIVATE LIMITED] Corporate Debtor

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

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

Counsel on Record:

1. MR. SAUBHIK CHOWDHURY, Advocate]
2. MR. UTSAB BISWAS, Advocate] For the Financial Creditor
3. MR. JISHNU CHOWDHURY, Advocate]

1. MR. MANIK DAS, Advocate] For Corporate Debtor

Order pronounced on: 02/08/ 2019.

ORDER

Per Harish Chander Suri, Member (T).

1. This Petition under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by Axis Bank Limited, a Non Government Public Company incorporated on 3rd December, 1993 having an authorized capital of Rs. 850,00,00,000/- (Rupees Eight hundred Fifty Crores), having its Registered Office in

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Ahmedabad, Gujarat and the Branch office at Kolkata, hereinafter referred to as the Financial Creditor, against M/s. Maximum Agency Private Limited, a Corporate person having its registered office at Kolkata, hereinafter referred to as the Corporate Debtor.

2. It is submitted by the Financial Creditor that on the request of the Corporate Debtor the Financial Creditor had granted a Term Loan to the tune of Rs. 4,70,00,000/- (Rupees Four Crore Seventy Lakh Only) by way of sanction letter dated 25th November, 2009 under the **“Power Rent” scheme**, pursuant to which a Loan Agreement dated 8th December, 2009 was entered into between the Corporate Debtor and the Financial Creditor. There-after by way of Sanction Letter No. AXISB/KOL-2/SME/SEG/2014-15/351, this credit facility was revised to Rs. 4,55,00,000/- (Rupees Four Crore Fifty Five Lakh Only) and the Loan Agreement dated 18th December, 2014 was executed, which was further modified by a letter dated 20th December, 2014, with an interest as mentioned in the agreement. A repayment plan by payment of monthly instalment was agreed upon between the parties.
3. It is further submitted that by the Sanction Letter dated 31st December, 2009, a Term Loan was approved by the Financial Creditor to one M/s. Quantum Minerals & Metals Private Limited (hereinafter referred to as “Quantum”) to the tune of Rs. 1,00,00,000/- (Rupees One Crore Only) for which the Corporate Debtor herein agreed to be the Corporate Guarantor in respect of the said loan. In terms of the

said Sanction Letter a Loan Agreement dated 31st December, 2009 was executed by and between the Financial Creditor and Quantum and the Corporate Debtor herein executed a Deed of Guarantee on 31st December, 2009 guaranteeing the repayment of loan obtained by Quantum to the Financial Creditor. Thereafter on persuasion of Quantum, a further Term Loan of Rs. 2,00,00,000/- (Rupees Two Crore Only) was sanctioned vide Sanction Letter dated 1st February, 2011 by the Financial Creditor in favour of Quantum and here too, the Corporate Debtor agreed to be the Corporate Guarantor followed by another Loan Agreement between Quantum and the Financial Creditor on 15th February, 2011 along with a Deed of Guarantee of even date guaranteeing the repayment of the loan to the Financial Creditor. The Corporate Debtor further executed a Declaration Deed for the Extension of Mortgage in favour of the Financial Creditor on 16th February, 2011 along with an Irrevocable Power of Attorney in favour of the Financial Creditor on 18 February, 2011.

4. It is further submitted that similarly Quantum further requested for a Term Loan of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) and here also this Corporate Debtor agreed to be the Corporate Guarantor in respect of the said loan sanctioned to the Quantum vide Sanction Letter dated 5th July, 2012 which was duly accepted by the Financial Creditor.
5. The Corporate Debtor thus executed a Deed of Guarantee dated 10th July, 2012 to the extent of Rs. 5,00,00,000/- (Rupees Five Crore Only)

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along with a Declaration Deed for the Extension of Mortgage dated 11th July, 2012.

6. It is further submitted that a further term of Rs.3,35,00,000/- (Rupees Three Crore Thirty Five Lakh Only) was sanctioned by the Financial Creditor in favour of the Quantum on the Deed of Guarantee executed by the Corporate Debtor in favour of the Financial Creditor on 6th March, 2012 along with a Declaration Deed and this credit facility was reduced to a sum of Rs. 5,31,00,000/- (Rupees Five Crore Thirty One Lakh Only) by the Financial Creditor in favour of Quantum which was duly agreed to be guaranteed by the Corporate Debtor.
7. It is submitted that the loan facility obtained by the Corporate Debtor from the Financial Creditor as on June 30, 2018 is Rs. 5,86,87,913/- (Rupees Five Crore Eighty Six Lakh Eighty Seven Thousand Nine Hundred Thirteen Only) which is overdue. Similarly, a sum of Rs. 10,07,84,642.91 (Rupees Ten Crore Seven Lakh Eighty Four Thousand Six Hundred Forty Two and Paise Ninety One Only) is due from the Corporate Debtor for having agreed to be the Corporate Guarantor in respect of the loan facilities obtained by M/s. Quantum Minerals and Metals Private Limited.
8. The Board of Directors of the Corporate Debtor as passed Resolution in its AGM held on 20th December, 2014 authorizing its Board of Directors to borrow any sum of money from any one or more Companies, Bankers etc., and pursuant to that authorization Deeds of

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Guarantee in favour of the Financial Creditor were executed on 20th December, 2014.

9. It is further submitted that the Corporate Debtor had deposited the Title Deeds against the mortgage of their land admeasuring approximately 8,827 sq.ft. with building thereon at 127A, Sarat Bose Road, P.S. Tollygunge, Kolkata 700026 along with personal guarantees of Mr. Indraneel Bhan, Director & Mrs. Papiya Bhan, Director.
10. It is further submitted that the proceedings before the Debt Recovery Tribunal (DRT)-1, Kolkata were filed by the Financial Creditor on 20th June, 2017 which are still pending against the Corporate Debtor.
11. It would be seen that the Corporate Debtor has taken loan for itself for which following 5 documents were executed:-
 - a) Sanction Letter dated November 25, 2009,
 - b) Loan Agreement dated December 8, 2009,
 - c) Revised sanction letter dated December 13, 2014,
 - d) Loan Agreement dated 8th December, 2009, and
 - e) Modified sanction letter dated December 20, 2014.
12. Similarly, the Corporate Debtor has agreed and executed Deed of Guarantee in favour of the Financial Creditor for the loan facilities

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obtained by Quantum and the following documents have been executed by the Corporate Debtor:-

- a) Sanction letter dated December 31, 2009,
- b) Loan Agreement dated December 31, 2009,
- c) Sanction letter dated February 1, 2011,
- d) Loan Agreement dated February 15, 2011,
- e) Sanction letter dated July 5, 2012.

13. The Financial Creditor has further filed on record various documents to prove the existence of Financial Debt which are as under:-

- a) Title Deed dated July 14, 2004 being No. 3647 of the mortgaged property of the Corporate Debtor,
- b) Board Resolution of the Corporate Debtor dated December 3, 2009 in connection with the Term Loan facility,
- c) Deeds of Guarantee dated December 8, 2009 of Indraneel Bhan and Papiya Bhan, Directors of the Corporate Debtor;
- d) Deeds of Guarantee dated December 18, 2014 of Indraneel Bhan and Papiya Bhan, Directors of the Corporate Debtor,
- e) Irrevocable power of Attorney and Declaration cum Undertaking of Indraneel Bhan dated December 18, 2014,
- f) Deed of Hypothecation of Lease Rentals or receivables dated December 18, 2014,

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- g) Declaration deed dated December 19, 2014 for the extension of mortgage by the Corporate Debtor,
- h) Record of mortgage by deposit of Title Deed dated December 19, 2014,
- i) Board Resolution of the Corporate Debtor dated December 20, 2014 in connection with the Term Loan facility,
- j) Deeds of Guarantee dated December 20, 2014 of Indraneel Bhan and Papiya Bhan, Directors of the Corporate Debtor,
- k) Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 served upon the Corporate Debtor on January 4, 2016,
- l) Valuation Report dated December 15, 2016.

14. Similarly, the Financial Creditor has placed on record documents relating to the loan facility availed by Quantum which are as under:-

- a) Acknowledgement of Debt dated May 4, 2015 tendered by the Corporate Debtor,
- b) Board Resolutions of the Corporate Debtor dated February 11, 2011 and July 9, 2012 in connection with the Term Loan facility,
- c) Demand Notice invoking the personal/corporate guarantees of Indraneel Bhan, Papiya Bhan, Vishal Bhan and Maximum Agency Pvt. Ltd.

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15. The Financial Creditor has authorized Mr. Bipradas Ghosh, the Deputy Vice President of the Financial Creditor to submit the present application and to do all other things required to be done in connection with the application filed before this Tribunal. The Financial Creditor had served notice dated November 4, 2016 on the Corporate Debtor under Section 13(2) of SRFAESI Act, 2002, before filing proceeding before the DRT.
16. Similarly, notice dated 20th December, 2016 was issued by the Bank to Quantum and to the Guarantors.
17. As per the documents placed on record by the Financial Creditor the date of default is 12th July, 2016, pursuant to which a demand notice was issued on December 20, 2016. This application was filed on 6th July, 2018 so the contention of the Corporate Debtor that the application is barred by time is baseless and is rejected.
18. The matter was listed before this Tribunal for admission on 17th July, 2018 and notice was issued to the Corporate Debtor and on receipt of the notice the Corporate Debtor filed its reply/affidavit in opposition on 8th February, 2019. Shri Vishal Bhan, one of the Directors of the Corporate Debtor submitted that the application is not maintainable and barred by time.
19. It is submitted by the Corporate Debtor that the credit facility initially granted to the Corporate Debtor was Rs. 4,70,00,000/- in the form of

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Term Loan under “Power Rent” Scheme against hypothecation of lease rentals and mortgage of the property which was revised to Rs. 4,55,00,000/-.

20. It is further submitted that the Financial Creditor should not be allowed to club the credit facilities provided to the Corporate Debtor with the credit facilities provided to Quantum Minerals and Metals Private Limited. The Corporate Debtor disputed and denied the computation of claims of the Financial Creditor and submitted that the Financial Creditor has already initiated process for recovery of its dues from the Corporate Debtor under the Recovery of Debts due to Banks and Financial Institutions Act, 1991 as well as under the SRFAESI Act, 2002 and those proceedings are still pending for adjudication. The Financial Creditor who is seeking liquidation of the Corporate Debtor should not be allowed to have a contradictory stand than taken by it in the O.A. 271/2017 before DRT.

21. This contention of the Corporate Debtor has no substance because that the Corporate Debtor cannot be allowed to have the benefit of its own wrong because the Corporate Debtor has not only availed the credit facilities and loan for its business purposes from the Financial Creditor but has also stood guarantee for its business Associate “Quantum” and executed various documents and deposited title deeds of its properties as per the requirement of the Financial Creditor. Therefore, the Financial Creditor is free to consolidate both the loans and credit facilities availed by the Corporate Debtor for itself and for Quantum as its Guarantor. The

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Bank can proceed against both of them and is free to recover its outstanding amounts from either of them or both of them whichever is convenient to it as per its choice and discretion. This objection of the Corporate Debtor also has no legs to stand and has to be rejected.

22. It is submitted that the Valuation Report placed on record by the Financial Creditor mentioning the value of the property to be Rs. 15,76,78,000/- in the year 2014 which should have been increased in the span of next 4 years but the Financial Creditor has got the said property valued in 2016 to be at Rs. 11,00,00,000/- which does not give the true picture of the prime property in Kolkata. Since the Financial Creditor is relying on the Valuation Reports of the qualified Valuers, this objection cannot be of any help to the Corporate Debtor.

23. The Financial Creditor has proposed the name of Mr. Hrisikesh Dasgupta, an Interim Resolution Professional of AV Insolvency Professionals Private Limited, Bajrang Kunj, 4th Floor, Room No. 412, 2B Grant Lane, Kolkata 700012 having Registration No. IBBI/IPA-003/IP-N00082/2017-2018/10705. The proposed IRP has sent a written communication dated 18th June, 2018 in Form No. 2 to the NCLT, Kolkata Bench that he agrees to accept the appointment as the IRP if order admitting the present application is passed and that he is qualified to practice as an Insolvency Professional registered with Insolvency Professional Agency of Institute of Cost Accountants of India. He further disclosed that he was serving only in one proceedings and that there are no disciplinary proceedings pending against him.

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24. During the course of arguments the Ld. Counsel for both the parties were heard at length. The Ld. Counsel for Financial Creditor took us through each and every documents placed on record and successfully proved the existence of financial debt, duly secured by Loan Agreements and Deed of Guarantees including personal guarantees of the Directors. The Ld. Counsel for the Financial Creditor further proved the default in making payment by the Corporate Debtor. The Ld. Counsel has been successfully able to make out its case for initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor. The Ld. Counsel for the Corporate Debtor however could not point to any document disputing or proving the falsity of the claim or amount owed by the Corporate Debtor to the Financial Creditor.

25. In view of the aforesaid facts and circumstances and in the light of the documents placed on record by the Financial Creditor and the reply of the Corporate Debtor we are of the considered view that there should be no hesitation in ordering the initiation of CIRP in respect of the Corporate Debtor and we accordingly pass an order of admission upon the following:-

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

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Debtor, M/s. Maximum Agency Private Limited is hereby admitted.

- 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

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such property is occupied by or in the 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, 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. Hrisikesh Dasgupta**, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, **Registration No. IBBI/IPA-003/IP-N00082/2017-2018/10705**, **E-mail ID: hkdaspt@gmail.com**, **Mobile No. 9432207517**, is hereby appointed as Interim Resolution Professional by this Tribunal

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for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a 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.
- x) The Financial Creditor is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP.
- xi) Registry is hereby directed under section 7 (4) 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.

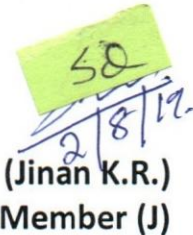
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- xii) List the matter on **3rd September, 2019** for filing of the progress report.
- xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 2nd day of August, 2019.

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