IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 535/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:

M/S. LIMTEX TEA & INDUSTRIES LIMITED, having registered office at 25A, Shakespeare Sarani, 2nd Floor, P.S. Park Street, Kolkata 700017.

... Financial Creditor/Applicant

-Versus-

IN THE MATTER OF:

M/S. SHRI BIHARIJI COLD ROLLERS (P) LIMITED, having its registered Office at Village – Baniara, P.O. Begri, Howrah – 711 405 and Corporate Office at 4A, N.C. Dutta Sarani, Kolkata 700001.

... Corporate Debtor

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

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

Sd/-

Sd/-

Counsel on Record:

1. Mr. N. Islam, Advocate] For petitioner
(For Hema Mukherjee, Adv.)

1. Mr. Avirup Chatterjee, Advocate]
2. Mr. Prasenjit Paul, Advocate] For Corporate
3. Mr. Rishav Das, Advocate] Debtor

Date of pronouncement of Order: 21/11/2019.

ORDER

Per Harish Chander Suri, Hon'ble Member (T).

1. This application 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 M/s. Limtex Tea & Industries Limited, through its Authorised person Mr. Girijesh Kumar Singh, who has been authorized by the Chairman of M/s. Limtex Tea & Industries Limited, hereinafter referred to as the "Financial Creditor" against M/s. Shri Bihariji Cold Rollers (P) Ltd, a Corporate Entity, having its registered office at Kolkata, hereinafter referred to as the Corporate Debtor, seeking Corporate Insolvency Resolution Process of the Corporate Debtor on the ground that a loan of Rs. 25,00,000/- (Rupees Twenty Five Lacs Only) was given by the Financial Creditor to the Corporate Debtor through bank on 6th June,

Sd/- Sd/-

2011 which was duly acknowledged by the Corporate Debtor vide letter dated 6th June, 2011, i.e. loan on interest for short time and the Corporate Debtor was paying interest on the said loan.

2. It is submitted that on being demanded, the Corporate Debtor had paid the said sum of Rs. 25,00,000/- to the Financial Creditor vide account payee cheque bearing No. 930562 dated 27.04.2015 drawn on State Bank of India. When the said cheque was presented for payment, the same was dishonored and returned with the remarks "Fund insufficient".

3. It is submitted that the Financial Creditor issued a demand notice dated 29th June, 2015 intimating the Corporate Debtor regarding the dishonor of the aforesaid cheque, and demanding the sum of Rs. 25,00,000/- within 15 days from the receipt of the notice, sent through speed post, the same was received by the Corporate Debtor on 30th June, 2015.

4. It is submitted that in spite of the demand notice, the Corporate Debtor has neglected to pay the said sum, thereby compelling the Financial Creditor to file a case under Section 138/141 of N.I. Act, against the Corporate Debtor and its Directors.

5. It is submitted that on 23rd February, 2018, the Financial Creditor again sent a letter requesting the Corporate Debtor to pay

Sd- Sdtheir loan amount of Rs. 25,00,000/- but the Financial Creditor has received nothing till date.

6. In Form 1 part III, the Financial Creditor has proposed the name of Mr. Manish Jain to be appointed as the IRP, who has also vide letter dated 14th April, 2018 declared his eligibility for the appointment along with certificate of registration, if the application is admitted.

7. It is submitted that the loan of Rs. 25,00,000/- was a loan given on interest @ 15% p.a. In support of the application the Financial Creditor has filed a copy of the money receipt dated 6th June, 2011 duly acknowledged by the Corporate Debtor, a copy of the Bank statement issued by Syndicate Bank indicating that a sum of Rs. 25,00,000/- was transferred to Shri Bihariji Cold Rollers (P) Limited on 6th June, 2011. The Financial Creditor has also placed on record copies of the ledger account from 1st April, 2011 onwards to show that the amount of interest was being received by the Financial Creditor on the interest due from the Corporate Debtor.

8. As regards limitation, it is submitted that since the cheque dated 27th April, 2015 was returned back by the Syndicate Bank on 22nd June, 2015 and a notice under Section 138/141 of the N I Act was issued on 29th June, 2015 which was duly received by the Corporate Debtor followed by a reminder on 23rd February, 2018 and the

Sd/- Sd/-

present application has been filed on 17th April, 2018, i.e. very much within the period of limitation.

9. We have heard the Ld. Counsel for the parties who have taken us through various documents placed on record by them. We find that the application is complete in all respect and fulfils all the requirements under Section 7 of the Code. The Financial Creditor has been able to prove that a sum of Rs. 25,00,000/- was disbursed to the Corporate Debtor as a loan on interest for a short time which the Corporate Debtor failed to repay although interest was being paid from time to time. The Corporate Debtor has unsuccessfully disputed the claim without any concrete evidence to prove the same. We find the application in order and are of the considered view that the application of the Financial Creditor deserves to be allowed, thereby initiating Corporate Insolvency Resolution Process against the Corporate Debtor. We, therefore, admit the application upon the following directions/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. Shri Bihariji Cold Rollers (P) 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. Manish Jain**, an Interim Resolution Professional having **Registration No. IBBI/IPA-001/IP-P00582/2017-18/11023, Mobile No. 9830248684,** 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 resolution plan.

Sd/-

Sd/-

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 Registry is hereby directed under section 7(7) 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 **30th 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
21/11/19

(Harish Chander Suri)
Member (T)

(Jinan K.R.)
Member (J)

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

VC