

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : Shri Madan B. Gosavi,
Hon'ble Member (J)
&
Shri Harish Chander Suri,
Hon'ble Member(T)

CP (IB) No. 621/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:

Corporation Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its Head Office at Mangla Devi Temple Road, Pandeshwar, Mangalore- 575001 and one of its regional office at 8, Lenin Sarani, Kolkata- 700 013;
U32200MH1994PL080907

... Petitioner/Financial Creditor

-Versus-

In the matter of:

M/s. Shakambari Rubber Private Ltd., a company incorporated under the provisions of Companies Act, 1956, having its registered office at Room No.320, Bala Bhawani Bhawan, 3rd floor, 51, Vivekananda Road, Kolkata- 700 007, India
CIN : U25190WB2011PTC163624

... Respondent/Corporate Debtor

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Counsel appeared:

1. Mr. Vikaram Wadehra, Advocate] For Financial Creditor
2. Ms. Vidushi Chokhani, Advocate,]

Date of Pronouncement of Order: 14.01.2020

ORDER

Per Shri M. B. Gosavi, Member(J):

Corporation Bank - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **M/s. Shakambari Rubber Private Ltd.** – Corporate Debtor (CIN : U25190WB2011PTC163624) to start Corporate Insolvency Resolution Process (in short, “CIRP”) of the Corporate Debtor on a ground that Corporate Debtor committed default in paying the financial debt of Rs.7,14,19,605/-.

2. It is stated that initially on 06.06.2013, the bank guaranteed and disbursed in favour of the corporate debtor the term loan and CC facilities to the extent of Rs.4.60 crores. Term of the loan and the CC was extended and enhanced on 27.09.2014. Corporate Debtor committed default in paying the loan in time. When its loan account declared to be NPA on 30.01.2016. On 26.06.2016, the bank called upon the corporate debtor to clear the outstanding debt. This notice under section 13(2) of SARFAESI Act, 2002. Since the corporate debtor committed default in paying the loan, this application is filed to start CIRP of the corporate debtor. Notice of this application was duly served on the corporate debtor but none appeared on its behalf at earlier point of time. Later on, the corporate debtor appeared and made a request to set aside the ex parte order. It was allowed by the Bench on 26.11.2019. In spite of that, corporate debtor did not file affidavit-in-reply. Hence, hearing of this application proceeded *ex parte*.

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3. We have perused the record and heard the Ld. Counsel for the Financial Creditor.

4. Financial Creditor produced required evidence to establish the fact that amount of Rs.7,14,19,605/- is due and payable by the corporate debtor of which the corporate debtor committed default. It is now settled law that in enquiry of application under section 7 of IBC, this authority has to see whether financial creditor established two facts that (i) debt of more than Rs.1 lakh is due and payable by the corporate debtor and (ii) whether corporate debtor committed default in paying the sum. In this case, facts are proved by evidence on record. Hence, we have no hesitation in admitting the corporate debtor in CIRP.

5. Financial Creditor suggested name of Ms. Sonu Jain of Poddar Court Gate No.2, 18, Rabindra Sarani, Suit no.327, Kolkata-700 001 having registration no. IBBI/IPA-001/IP-P00575/2017-18/11016 for appointment as the IRP. Proposed IRP has submitted written communication in Form-2 dated 09.04.2019, wherein it is declared that there is no disciplinary enquiry pending against her. The application is defect-free. In view of the facts and evidence on record, we hold that the application deserves to be admitted. We admit the same by passing the following order:

ORDER

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of Corporate Debtor, **M/s. Shakambari Rubber Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

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- (ii) The 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.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 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 or suspended or interrupted during the moratorium period.

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- 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 affect 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 Sec.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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- ix) As per the suggestion of the Financial Creditor for appointment of IRP Ms. Sonu Jain of Poddar Court Gate No.2, 18, Rabindra Sarani, Suit no.327, Kolkata-700 001 having registration no. IBBI/IPA-001/IP-P00575/2017-18/11016 and Email Id. casonujain@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. The IRP has filed her consent in form no.2 alongwith the declaration that no disciplinary proceeding is pending against her.
- x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency

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Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

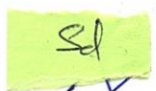
xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) Registry is hereby directed to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email as per provisions of IBC.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **24.02.2020** for filing progress report.


(Harish Chander Suri)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 14th day of January, 2020.