

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court– II)  
KOLKATA**

C.P. (IB)172/KB/2022

*A petition 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*

***In the matter of:***

**State Bank of India**, a nationalized public sector bank under Reserve Bank of India, having its registered office at 16<sup>th</sup> Floor, Madam Cama Road, Mumbai-400021.

..... *Financial Creditor*

*-versus-*

**Vishwatma Merchandise Private Limited**, a company within the meaning of Companies Act, 2013 having CIN U01403WB2010PTC154589 and having its registered office at 5/53 Jagatipota, Krishan Market Road, P.O- Dhalua, Kolkata- 700152

..... *Corporate Debtor*

**Date of Pronouncement of the order:** 29<sup>th</sup> December, 2022

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via video conferencing/physical):**

*For the Financial Creditor:*

Mr. Ajay Gaggar, Adv.

Mr. Uttiyo Mallick, Adv.

Ms. Trini Joarder, Adv.

**ORDER**

***Rohit Kapoor, Member (Judicial):***

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **State Bank of India**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Viswatma Merchandise Private Limited**, CIN:U01403WB2010PTC154589 hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 10 November 2010. The authorized share-capital of the company ₹1,70,00,000/- and the paid-up share capital of the company is ₹90,00,000/-.
4. The total amount claimed to be in default as on 31<sup>st</sup> August 2021, by the Financial Creditor, is ₹86,84,28,087.52/- including interest. The account was classified as Non-Performing Asset (herein after referred as “NPA”) on 27<sup>th</sup> June 2013.
5. Part – I of this petition contains particulars of the Financial Creditor. Part- II of this petition contains the particulars of the Corporate Debtor. Part – III of the petition caters to the particulars of proposed Interim Resolution Professional. Part – IV of this petition provides the particular of Financial Debt and Part -V of this petition contains the particulars of the Documentations, Record and Evidence of Default.
6. The Financial Creditor has relied on the various documents in support of its claims, including:
  - a) Master Data of the Corporate Debtor, marked with Exhibit “**B**”;
  - b) Memorandum of Deposit of Title Deeds and Memorandum related to Deposit of the Title Deeds for creation of charge for Term Loan/Overall Limit, annexed as Exhibit “**E**” **Colly**;

- c) The Final Order dated 28<sup>th</sup> January 2020, passed by the Ld. Debt Recovery Tribunal – I, Kolkata in O.A. No. 142 of 2015, annexed as Exhibit “G”.
- d) Copy of letter of arrangement dated 9<sup>th</sup> March 2011, annexed as Exhibit “H”;
- e) Agreement of Loan cum Hypothecation dated 19<sup>th</sup> march 2011, annexed as Exhibit “I”;
- f) Supplementary agreement of Loan cum Hypothecation dated 19<sup>th</sup> march 2011, annexed as Exhibit “M”;
- g) Copies of Balance Sheets/ Financial Report as annexed hereto and marked as Exhibit “N”;
- h) Notice dated 12<sup>th</sup> February, 2015, issued under section 13(2) read with section 13(3) of the SARFAESI Act, 2002, annexed as Exhibit “Q”.

**7. Submissions on behalf of the Financial Creditor:**

- 7.1 At the request of the Corporate Debtor, the Financial Creditor sanctioned various credit facilities in form of cash credit Account limit of ₹1550 Lakh, stand by line of Credit Account limit of ₹80 Lakh, term loan account limit of ₹600 lakh and open term loan account limit of ₹250 Lakh, at an aggregate limit of ₹2480 Lakh, with interest @ 14.75% per annum on working capital and @ 14.75% per annum on Term loan, in consonance with the above adjustment a letter of arrangement was issued on 9<sup>th</sup> March 2011 to the Corporate Debtor.
- 7.2 It is submitted that Mr. Sanjoy Agarwal, Anand Agarwal and Suresh Kumar Poddar, being the directors of the Corporate Debtor, were acting as the personal guarantors for the Corporate Debtor.
- 7.3 An agreement for Loan cum Hypothecation along with Guarantee Agreements was executed by and between the Financial Creditor and the Corporate Debtor on 19<sup>th</sup> March, 2011. The Corporate debtor also

deposited title deeds, of property, the particulars whereof are described below. Owing to such credit facility the Financial Creditor filed Forms. No. 8 with the Registrar of Companies, West Bengal, on 19<sup>th</sup> March 2011, and accordingly the Charge had been created and registered by the Registrar of Companies West Bengal in favor of the Financial Creditor upon the Assets and properties mortgaged by the Corporate Debtor.

- 7.4 Subsequently, on or about 31<sup>st</sup> December, 2012, at the request of the Corporate Debtor, the Financial Creditor agreed to enhance the sanction in various credit facilities. Simultaneously, a Supplemental Agreement of Loan cum Hypothecation along with a Guarantee agreement was executed by and between the Financial Creditor and Corporate Debtor.
- 7.5 Meanwhile, the Financial Creditor intimated the Corporate Debtor mentioning its irregularities in repayment of the Loan amount. In spite of repeated demands and requests of the financial creditor the Corporate Debtor failed and/or neglected to make payments and or, maintain the said loan account. Accordingly as per the RBI guidelines, the said Loan account was classified as Non-Performing Assets (NPA) on 29 June, 2013.
- 7.6 The Corporate Debtor has through its directors deposited with the Financial Creditor an audited balance sheet of the company as on 31 March 2014 duly signed by the directors of the Corporate Debtor, wherein the Corporate Debtor has admitted their liability. Having no other alternative the Financial Creditor issued a notice on 18<sup>th</sup> December, 2014, through its Advocate, demanding payment of the outstandings.
- 7.7 However, the Corporate Debtor, in spite of such notice, failed to make payments. Accordingly, the Financial Creditor issued a notice under section 13(2) read with section 13(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (SARFAESI Act) dated 12<sup>th</sup> February 2015 demanding a sum of ₹31,14,72,941/-, as well as interest accrued till such time.

- 7.8 Subsequently, proceedings under the provisions of Recovery of Debts due to Bank and Financial Act 1993 (RDBFI Act), were also initiated on 18<sup>th</sup> March, 2015 being OA No. 142 of 2015 before the Learned Debts Recovery Tribunal - 1, Kolkata (DRT). The Ld. Tribunal was pleased dispose of the said matter *vide* an Order dated 28<sup>th</sup> January, 2020.
- 7.9 As such, this application is being filed by the financial creditor for initiating the Corporate Insolvency Resolution process against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016.
- 7.10 The total outstanding amount payable by the Corporate Debtor is of ₹86,84,28,087.52/- as on 31<sup>st</sup> August 2021. The date of declaration of NPA is 27<sup>th</sup> June 2013.

#### 8 **Analysis and Findings:**

- 8.1 Heard the Ld. Counsel on behalf of the Financial Creditor and perused the record.
- 8.2 It is noted that despite being given multiple opportunities, no one appeared on behalf of the Corporate Debtor, nor has any Reply-Affidavit been filed on its behalf. In compliance of this Adjudicating Authority's order dated 29<sup>th</sup> August, 2022, Notice of institution of the instant petition had been published by the Financial Creditor on 2<sup>nd</sup> September 2022 in "***Business Standards, Kolkata***" (English) and "***Ekdin***" (Bangla). In spite of the same, no representation on behalf of the Corporate Debtor was made. As such, on 17<sup>th</sup> November 2022, the matter was reserved for final orders.
- 8.3 Coming to the merits of the petition, the account of the Corporate Debtor became NPA on 28<sup>th</sup> January 2013 and the Ld. Debt Recovery Tribunal – I, Kolkata gave the final order in OA. No. 142 of 2015 on 28<sup>th</sup> January

2020. The Financial Creditor has filed the instant petition on 3<sup>rd</sup> March 2022.

- 8.4 Regarding the issue of limitation, we would like to refer to the decision of the Hon'ble Supreme Court of India in the matter of **Dena Bank vs. C. Shivakumar Reddy and Another**<sup>1</sup> wherein the Hon'ble Apex Court made the following observation:

*“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings Under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”*

- 8.5 In light of the aforementioned judgment, this Adjudicating Authority is satisfied that due to the DRT's order dated 28<sup>th</sup> January, 2020, a fresh cause of action will arise, which in turn will give rise to a fresh limitation period. As such the instant petition, filed on 3<sup>rd</sup> March 2022, is well within the limitation period.
- 8.6 The account of the Corporate Debtor was declared NPA on 27<sup>th</sup> June 2013. The DRT admitted the application for recovery of dues by the Financial Creditor and afterwards, allowed for recovery of the claim to the tune of ₹40,08,96,748/-, vide order dated 28<sup>th</sup> January 2020. It is

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<sup>1</sup> MANU/SC/0502/2021, decided on August 4, 2021

noted that the said DRT order was *ex-parte*. Further, the statement of accounts for the period ranging from 1<sup>st</sup> March 2011 to 1<sup>st</sup> May 2020 also indicate that no payment was made in compliance of the DRT's order.

- 8.7 It is noted that the amount claimed in the instant petition *i.e* ₹86,84,28,087.52/- is greater than the amount ordered to be recovered by the DRT *i.e* ₹40,08,96,748/-. However, since both the amounts are greater than the minimum pecuniary threshold mentioned under the Code *i.e* ₹1 Crore, the instant petition is maintainable.
- 8.8 In light of the above facts and circumstances, this Adjudicating Authority is satisfied of the insolvency of the Corporate Debtor and that the instant petition should be *admitted*.
- 8.9 The particulars of Interim Resolution Professional (IRP) have been proposed in the petition. The petition is within the period of limitation. As such, the instant petition is complete in all respects.
- 8.10 It is, accordingly, hereby ordered as follows:-
- i) The application bearing **CP (IB) No. 172/KB/2022** filed by **State Bank of India** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Viswatma Merchandise Private Limited**, CIN: U01403WB2010PTC154589, the Corporate Debtor, is *admitted*.
  - ii) There shall be a moratorium under section 14 of the IBC.
  - iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
  - iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of

the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- v) **Mr. Arun Kumar Gupta**, having registration number **IBBI/IPA-001/IP-P00013/2016-17/10037**, email: **guptaarunkumar2001@yahoo.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- vii) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii) The Financial Creditor shall initially deposit a sum of ₹4,00,000/- (Rupees Four lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval

of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.

- ix) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- x) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

**9. CP (IB) No. 172/KB/2022** to come up on **10.02.2023** for filing the progress report.

**10.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**Signed on this, the 29<sup>th</sup> day of December, 2022**

SM(LRA)