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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III**

IB-1443/(ND)/2019 Under Section 7 of
the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

*In the matter of **Growthways Trading Private Limited***

Elite Steels Private Limited

...Financial Creditor

Versus

Growthways Trading Private Limited

...Corporate Debtor

Order delivered on 17.12.2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

For Financial Creditor : *Mr. Rakesh Kumar, Ms. Preeti Kashyap,
Mr. Dhruve Gupta,
Mr. Ravi Kumar, Advocates*
For Corporate Debtor : *Mr. Vinod Kumar Chaurasia, Advocate*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration is an Application filed under Section 7 of the IBC, 2016 r/w Rule 4 of the Insolvency & Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016. The Prayers made in the Application are to admit the Application, initiate Corporate Insolvency Resolution Process

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(CIRP) against the Corporate Debtor viz. *Growthways Trading Private Limited*, declared moratorium and appoint Insolvency Resolution Professional (IRP).

2. The Counsel for the Financial Creditor submitted that an Rent Cum charge Agreement (Agreement) was entered into between the parties on 01.04.2017, by virtue of which, a Security deposit was made by the Financial Creditor (FC) for an amount of Rs. 4,50,00,000/-, towards the inventory of the Corporate Debtor (CD) to be stored at the Warehouse and out of the total Security deposit, the CD had received a sum of Rs. 3,00,00,000/- on signing and the balance amount of Rs. 1,50,00,000/- was to be adjusted from the rent. It is also provided in the Agreement that the security deposit shall carry on interest calculated @ 17% Per Annum, which was to be paid to the FC on monthly basis. However, it is noted that on 01.04.2018 an Addendum (Charge Agreement) forming part of the Agreement dated 01.04.2017 was entered into between the CD and FC. As per the Charge Agreement, the Agreement dated 01.04.2017, was terminated to the extent of the provisions relating to the Rent by providing that all due with respect to the rent shall be recorded and settled by 31.03.2018, and to increase the amount of security deposit from Rs. 3,00,00,000/- to Rs. 3,75,00,000/-. The total charge on the products /inventory and assets stored at the warehouse was increased to Rs. 7,50,00,000/- .

3. Pursuant to the Agreement, the FC has performed and fulfilled its obligation. However, the Corporate Debtor failed to fulfill the commitment. The detailed calculation of the security amount and interest thereon as per the Agreement dated 01.04.2017 is placed at Page-23 of the typed set filed in the Petition, which reflects the principal amount of Rs.402,21,600/-, and interest on security Rs. 83,01,422/-, totaling a sum of Rs.485,23,022/- is outstanding towards the CD. The FC has placed on record the extracts of Ledger with effect from 01.01.2017 to 31.03.2017 and 01.04.2017 to 31.03.2018, in support of

the calculation sheet. The FC has also placed on record the Bank Statement issued by the AXIS Bank in support of his claim.

4. The CD has filed a counter statement, wherein under Para 9, it is submitted that the security amount of Rs. 4,02,21,600/- and an interest of Rs. 83,01,422/- is payable to the FC. It is further submitted that non-payment of the financial debt is not intentional and only because of unfavorable economic conditions. In short, the claim of the FC is admitted by the CD. Further, the FC has placed sufficient documentary evidence on record in order to ascertain the default on the part of the CD, which otherwise is admitted in the reply statement filed by the CD.

5. In the light of facts and circumstances enumerated hereinabove, this authority is satisfied that an amount of Rs 48,523,022/- is due and payable by the CD to the FC. The Financial Creditor has also proposed the name of the IRP viz., Mr. Sunil Kumar Agarwal, whose consent has been sought in Form-2 which is placed on record. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The FC has fulfilled all the requirements for admission of the application. Therefore, the application is **admitted**. The commencement of CIRP is initiated, which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.

6. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:-

- (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 Securitisation 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.

7. The supply of essential goods or services of the CD shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

8. The Resolution Professional viz., Mr. Sunil Kumar Agarwal as proposed by the FC is hereby appointed as IRP and directed to take charge of the CD's management immediately including the Bank Accounts. The IRP is also directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within 3 (three) days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

9. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the CD, its Promoters or any person (s) associated with the management shall extend all assistance and cooperation to the IRP as

stipulated under Section 19, for the purpose of discharging his functions under Section 20 of the IBC, 2016.

10. The FC and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. The e-mail and other details of the IRP are as follows: -

Name: Mr. Sunil Kumar Agrawal

Registration Number:

IBBI/IPA-002/IP-N00081/2017-2018/10222

Address: E-29, South Extension-II,
New Delhi- 110049

E-mail: aggarwalsk21@yahoo.com

Mobile No.: 9811347648

11. The Registry is also directed to communicate this Order to the CD, and the concerned RoC.

12. The Order stands dictated and pronounced in the open court in the presence of the Ld. Counsels for the parties.

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(K. K. VOHRA)
MEMBER (TECHNICAL)
Surjit/V

-sd-

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)