

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram:

1. Shri Madan B. Gosavi, Hon'ble Member (Judicial)
2. Shri Virendra Kumar Gupta, Hon'ble Member (Technical)

C.P. (IB) No. 830/KB/2018

IN THE MATTER OF:

Application by Financial Creditor to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 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:

Sujla Suppliers Private Limited, a company within the meaning of the Companies Act, 1956 and having its Registered office at 86, Raja Basant Roy Road, 1st Floor, Kolkata-700029

... Applicant/Financial Creditor

-Versus-

Barcley Enterprises Limited, a company within the meaning of the Companies Act, 2013 and having its Registered office at 3A, Ripon Street, Kolkata-700016.

... Respondent/Corporate Debtor

For Applicant: Mr Anurag Bagaria and Mr K Thaker, Advocates

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Date of pronouncement of Order: _____ 08/2019

ORDER

Per Virendra Kumar Gupta, Member (T)

1. This is a Petition filed by Sujla Suppliers Private Limited, the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter, "I&B Code") to start Corporate Insolvency Resolution Process against M/s. Barclay Enterprises Ltd., the Corporate Debtor.

2. It appears from the record that the notice of admission was served upon the Corporate Debtor and the Corporate Debtor had entered appearance initially, however, the matter was set *ex parte* on 01.11.2018 with an observation that in spite of several opportunities given, the Affidavit in Reply had not been filed by the Corporate Debtor. The Counsel for Corporate Debtor then entered appearance on 18.02.2019 and sought time to file the Vakalatnama and Affidavit in Reply; no Vakalatnama or Affidavit in reply was filed by them on various occasions however, an Application for vacating the *ex parte* order was made which was allowed and an opportunity to file the Vakalatnama and Affidavit in reply was given again. After the *ex parte* order was vacated, the Corporate Debtor again chose not to appear, neither did they file the Vakalatnama and Affidavit in reply. Since nobody on the side of the Corporate Debtor appeared even after various opportunities being granted, the Corporate Debtor was called absent and declared *ex-parte* again.

3. Heard the Ld. Counsel appearing for the Financial Creditor and perused the records. Various documents have been produced and relied upon by the Financial Creditor.

4. It is submitted that the Corporate Debtor has failed to make repayment towards the sum of Rs. 16,05,094/- (Rupees Sixteen Lakh Five Thousand and Ninety Four only), inclusive of interest, granted to them by the said Financial Creditor in the

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form of inter corporate deposit on 06.09.2013 by way of RTGS UTR No. KKBKH13249792270 and has therefore committed default, thus, the application. The Financial Creditor has annexed the acknowledgement of debit of the said amount as **Annexure-I** to the Petition.

5. It is submitted that the Corporate Debtor has from time to time issued Account Confirmations for financial years from 01.04.2013 to 31.03.2017, copies of which are annexed to the Petition as **Annexure-ii**.

6. It appears from record that the Corporate Debtor has been paying interest on quarterly basis since 28.10.2013 till 04.02.2017. Since no further payment was then being made by the Corporate Debtor, the Financial Creditor had recalled the loan so granted by a letter dated 07.11.2017.

7. The Financial Creditor contends that in spite of recalling the loan and issuing several reminders and requests, the Corporate Debtor has failed to repay any part or portion of the Financial Debt.

8. Apart from the aforementioned annexures, the Financial Creditor has relied upon following documents to prove its case: Letter dated 07.11.2017 issued by Financial Creditor's Counsel on its behalf annexed as **Annexure-iii**, Certificate dated 10.01.2018 issued by Kotak Mahindra Bank confirming non-receipt of any payment from Corporate Debtor after 01.04.2017 annexed as **Annexure-iv**, Certificate dated 15.02.2018 issued by Canara Bank confirming non-receipt of any payment from the Corporate Debtor after 01.04.2017 annexed as **Annexure-v**, print out of 26 AS Statement of the Financial Creditor for period between 01.04.2013 and 31.03.2017 annexed as **Annexure-vi** and Copies of entries in Bankers Book of the Financial Creditor annexed as **Annexure-vii**.

9. Though the Financial Creditor has not proposed the name of Resolution Professional to act as Interim Resolution Professional, a copy of written communication in Form 2 has been filed by the Financial Creditor vide a separate Affidavit. The details of the Interim Resolution Professional are as follows:

Name: Jai Narayan Gupta

Address: YMCA Building, Mezzanine Floor, 25, Jawaharlal Nehru Road, Kolkata-700087

Registration No. IBBI/IPA-001/IP-P00371/2017-2018/10628

10. In the light of the above said discussions, the application is hereby admitted under section 7 of the I&B Code upon the following directions:

- i. The Petition 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 Barclay Enterprises Ltd.
- ii. We hereby declare a Moratorium and cause public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. 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 Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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- 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.
- v. 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.
- vi. 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.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- viii. Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under


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sub-section (1) of Section 31 or passes an order for Liquidation of Corporate Debtor under Sec. 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Mr. Jai Narayan Gupta, Resident of YMCA Building, Mezzanine Floor, 25, Jawaharlal Nehru Road, Kolkata-700087 having Registration No. IBBI/IPA-001/IP-P00371/2017-2018/10628 is hereby appointed as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a Resolution Plan.
- xi. The Financial Creditor shall pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to Interim Resolution Professional as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 which shall be adjusted from final bill.
- Xii. 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.
- xiii. Registry is hereby directed under Section 7(7)(a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.
- ix. List the matter on 15.10.2019 for the filing of the progress report.

- x. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Madan B. Gosavi)
Member (Judicial)


(Virendra Kumar Gupta)
Member (Technical)

Signed on this, 29th day of August, 2019