

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CORAM: Shri V. P. Singh,
Hon'ble Member (J)
&
Shri K.R. Jinan,
Hon'ble Member (J)

Company Petition No. 590/KB/2017

In the matter of:

Premier Enclave Pvt. Limited

...Financial Creditor/Applicant

-Versus-

Balaji Polysacks Private Ltd.

..Corporate Debtor/Respondent

For Applicant : 1. Ms. Urmila Chakraborty, Advocate
2. Mr. Varun Garg, Advocate,

For the Respondent: 1. Mr. Arik Banerjee, Advocate
2. Mr. Rakesh Sarkar, Advocate
3. Mr. Rajib Mullick, Advocate

Order pronounced on 14.12.2017

ORDER

Per: Shri V.P Singh, Member (J)

The Applicant/Petitioner, Premier Enclave Pvt. Limited has filed this petition under section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter to be referred as the I.B. Code), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process

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against the Corporate Debtor, Balaji Polysacks Private Limited CIN:
U51109WB1995PTC075042

Brief facts of the case are mentioned below:-

2. The Applicant/Petitioner is a Non-Banking Financial Institution and in course of its business of lending had extended financial assistance of Rs.25,00,000/- (Twenty Five lakhs) in the form of loan to the Corporate Debtor i.e. Balaji Polysacks Pvt. Ltd. For a period of 120 days interest @ 9% p.a. Dated January 29th, 2013. And also by a letter dated February 4th, 2013, the Corporate Debtor has acknowledged receipt of from the Yes Bank, Kolkata for Rs.25,00,000/- as loan. A copy of the letter dated February 04th,2013 has been annexed and marked as **Exhibit-'D'** at page 16 of the petition.
3. The Applicant/Petitioner has stated that a total outstanding exposure (with the principal amounts, accrued interest and penal interest) as on 15th September 2017 was Rs.29,69,109/-. The details of outstanding dues along with date of default committed by the Corporate Debtor has also been given in the Demand Notice in Annexure 'A-3'.
4. The Applicant/ Petitioner has further stated that the Corporate Debtor has committed total default of Rs. 29,69,109/- including interest 9% per annum. Details of total computed outstanding amount and accrued interest are annexed and marked as **Exhibit-'G'** of the petition.
5. The Applicant/ petitioner in support of its claim has filed the copy of statement of account which is annexed as **Exhibit-'H'** (page 24-49) of the petition.

6. The Applicant/ petitioner has also filed the Authorisation letter/Power of attorney dated 14th September 2017 issued by the Premier Enclave Private Limited which shows that the Mr. Swapan Kumar Ganguly was appointed as the lawful attorney for the initiation of the Corporate Insolvency Process before National Company Law Tribunal on behalf of the Premier Enclave Pvt.Ltd. before the National Company Law Tribunal. The petitioner has also filed the copy of the extract of minutes of the Board Meeting of Premier Enclave Pvt Ltd and marked as **Exhibit-'A'** to the petition.

7. The Applicant/ petitioner also states that under Form 2 of the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 (written communication by the proposed interim resolution professional) (page-14-15) attached to the petition, the name of Shri Manmohan Jhawar as Interim Resolution Professional has been proposed in Form 2. The Applicant/ petitioner has also certified that he is fully qualified and permitted to act as an Insolvency Resolution Professional. Shri Manmohan Jhawar, the proposed Resolution Professional has given his consent in Form 2, which has been annexed as **Exhibit-'C'** (page 14-15) of the petition.

8. Irrespective of repeated demands, the Corporate Debtor/Respondent failed to repay the loan amount and therefore the Petitioner /Financial Creditor has filed this application praying for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor in Form-I of Insolvency & Bankruptcy Code (Application to Adjudicating Rules), 2016 (hereinafter be referred to as the Adjudicating Authority Rules).

9. The Corporate Debtor on receipt of notice entered appearance and filed reply affidavit contending in brief the following: -

i) The petition is not maintainable since the very foundation of filing the petition arose on the basis of false and frivolous claim. He further added that the claim of the financial creditor is without any contemporaneous documentary evidence. Upon the said contention, Corporate Debtor prays for dismissal of the petition.

10. Heard both sides. Perused the documents. Upon hearing the argument, the short point for determination is **whether the objections raised by the Respondent / Corporate Debtor is sustainable under section 7 of Insolvency & Bankruptcy Code, 2016?**

11. Based on documents submitted by the petitioner, it appears that the Corporate Debtor, Balaji Polypacks Private Limited has committed default in making payment of Rs. Rs.29,69,109/-. (Rupees Twenty Nine Lakh Sixty Nine Thousand One Hundred Nine only). Ld. Counsel for the petitioner submits that objections raised by the Corporate Debtor/ Respondent is not at all *bona fide* and raised for the sake of objection.

12. A reading of the objections raised by the respondent in his reply affidavit shows that respondent at one time admitted default but on another point of time he contented that the said money which was granted was by way of inter-corporate deposit and not as a loan in a truest sense which was required to be repaid withing any particular period of time along with the interest and since there was no time period of any nature whatsoever for repayment of any

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sum, the question of default on the part of the said company in repaying the alleged loan as has been claimed or any debt does not and cannot arise.

13. The main contention is that since the Financial Creditor i.e M/S Premier Enclave Private Limited is not a non-banking financial company and has no power to grant loan to any company neither the alleged financial creditor has any license under the relevant provision of Bengal Money Lender Act, 1940.

14. According to the Ld. Counsel for the petitioner the defence raised by the Respondent/Corporate Debtor is not bonafide. Respondent being failed to disprove the existence of default of the loan availed by him a petition of this nature u/s.7 is perfectly maintainable. The petitioner succeeded in establishing existence of default as contended in the petition. The Petitioner has filed documents proving default as provided U/s.7 (3) (a). None of the documents are challenged by the respondent. Therefore, the contention of the respondent is found devoid of any merit.

15. The petition filed by the Applicant/Petitioner is in proper format as prescribed under Adjudicating Authority Rules. The petitioner has proposed the name of Shri Manmohan Jhawar as Interim Resolution Professional, who has also given his consent in Form 2 and he has given declaration that no disciplinary proceeding is pending against him.

16. The petitioner being succeeded in proving that the Corporate Debtor has committed default in repayment of the loan amount evidently received by the Corporate Debtor and amount of default come to Rs. Rs.29,69,109/-. the petition is liable to be admitted.

17. It is thus clear that the application filed by the Applicant/Financial Creditor i.e. Premier Enclave Pvt. Ltd. under section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor is complete in all respects. Existence of default stands proved from the records above-referred. It is also evident from the **Exhibit-'C'** that no disciplinary proceedings are pending against the proposed Resolution Professional, Shri Manmohan Jhawar. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is admitted.

ORDER

18. The petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code, 2016 is admitted. Shri Manmohan Jhawar, Address: M. Jhawar & Co., 203, Mahatma Gandhi Road, 1st floor, Kolkata- 700 007, I.P. Registration No.IBBI/IPA-991/IP-N00334/2017-18/10604,Email:manmohanjhawar@yahoo.co.in is appointed as the Interim Resolution Professional.

19. Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply.

(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

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*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.*

*(2) The supply of essential goods or services to the corporate
debtor as may be specified shall not be terminated or
suspended or interrupted during moratorium period.*

*(3) 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.*

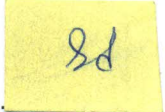
*(4) The order of moratorium shall have effect from the date of
such order till the completion of the corporate insolvency
resolution process.*

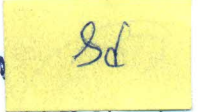
*Provided that where at any time during the corporate
insolvency resolution process period, if the Adjudicating
Authority approves the resolution plan under sub-section (1) of
section 31 or passes an order for liquidation of corporate debtor
under section 33, the moratorium shall cease to have effect
from the date of such approval or liquidation order, as the case
may be."*

20. Necessary public announcement as per section 15 of the IBC,
2016 may be made. Let the copy of the order be sent to the Applicant/
Financial Creditor as well as Corporate Debtor/Respondent and I.R.P.

21. List the matter for the Progress Report on ^{13/1/18}

22. Certified copy of the order may be issued upon compliance of
all requisite formalities.


Jinan, K.R
Member(Judicial)


V.P Singh
Member (Judicial)

^{14/12/17}

Signed on this, the ^{14.12} day of December 2017