

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CORAM

Shri V. P. Singh  
Hon'ble Member (J)

Shri S. Vijayaraghavan  
Hon'ble Member (T)

C.P. (IB) No. 240/KB/2017

In the matter of :

Application under section 7 of the Insolvency and Bankruptcy Code, 2016

And

In the matter of:

M/s. Bank of Maharashtra (Financial Creditor) ... Applicant

-versus-

West Bengal Essential Commodities Supply Corporation Ltd. (Corporate Debtor)

... Respondent

Counsels on Record:

- |                         |                           |
|-------------------------|---------------------------|
| 1. Mr. Arun Gupta, FCA  | ] For the petitioner      |
| 2. Mr. S. M. Gupta, FCS |                           |
| 3. Mr. R. C. Prusti     | ] For Union Bank of India |
| 4. Mr. Esrar Ahmed      |                           |
| 5. Ms. Manini Kabi      |                           |
| 6. Mr. Sanjay Saha      | ] For the Respondent No.1 |

Date of pronouncing the order:

R



Per Shri VijaiPratap Singh, Member (J)

O R D E R

This company petition has been filed under section 7 of The Insolvency and Bankruptcy Code, 2016 by Bank of Maharashtra as a financial creditor against the corporate debtor viz. West Bengal Essential Commodities Supply Corporation Ltd.

Brief facts as stated in the application for initiation of corporate insolvency process under section 7 of the IBC 2016 are as follows.

Petitioner claimed that corporate debtor i.e. West Bengal Essential Commodities Supply Corporation Ltd. owes Rs.27.93 crores, details of which given in **Annexure 1-B**. Petitioner has filed the copy of Ledger Account of Corporate Debtor in **Annexure 1-O**, page no.186-187; copy of Term Loan Agreement with Consortium Bank(s) as **Annexure 1-R** (page no.197-216); copy of CIBIL Report as **Annexure 1-N** (page no.183-185); copy of sanction letter dated 13.12.2004 as **Annexure 1-P** (page no.188-194); agreement relating to opening of an irrevocable without Recourse Import Letter of Credit and Ledger Account of the Corporate Debtor as **Annexure 1-B** (page no.17-23) of the petition which clearly indicates that Corporate Debtor owes ledger balance of Rs.16.07 crores and unpaid interest balance of Rs.11.86 crores and total dues including interest amount before filing the petition is Rs. 27.93 crores. Copy of the Ledger of Bank Account of Corporate Debtor shows that they committed default in making payment of Rs.27.93 crores. It is also pertinent to mention that the account of corporate debtor has become a Non-Performing Asset (NPA) since 18.08.2005 and is still continuing as a NPA account. Corporate Debtor has not made the payment and the amount which was disbursed to the corporate debtor has not been paid by him and the account has become NPA since 2005 and still continuing as NPA account. This clearly indicates that corporate debtor has committed default in making payment of Rs.27.93 crores.

Corporate Creditor has proposed the name of Mr. Anil Goel at page 4 as Interim Resolution Professional and also submitted the consent of IRP in Form 2 under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (page 9 and 10). Petitioner has also filed Authorisation Letter in favour of the Applicant as Annexure 1-A (page no.14-16) to the Petition which



shows that the Petitioner is authorized to initiate Corporate Insolvency Process against the Corporate Debtor.

On the basis of the application filed by the Petitioner for initiation of Corporate Insolvency Process and on perusal of the documents annexed with the Petition, it appears that Corporate Debtor has committed default in making payment of Rs.27.93 crores to the Corporate Creditor and the account of the Corporate Debtor has become NPA since 2005 and still continuing as NPA.

Petitioner has served the copy of the Petition on the Corporate Debtor on 04.05.2017, letting them to know that the Corporate Creditor is going to initiate corporate insolvency process against the Corporate Debtor for realisation of the dues i.e. Rs.27.93 crores.

The petition for initiating the Corporate Resolution Process is admitted. We hereby declare a moratorium and public announcement as stated in section 13 and 14 of IBC 2016 read with Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The relevant sections 13 and 14 are reproduced below for the purpose of convenience.

### **13. Declaration of moratorium and public announcement**

*(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order-*

*(a) declare a moratorium for the purposes referred to in section 14;*

*(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*

*(c) appoint an interim resolution professional in the manner as laid down in section 16.*

*(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.*



## 14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting 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 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 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."

15. (1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:— (a) name and address of the corporate debtor under the corporate insolvency resolution process; (b) name of the authority with which the corporate debtor is incorporated or registered; (c) the last date for submission of claims; (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims; (e) penalties for false or misleading claims; and (f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the

*admission of the application under sections 7, 9 or section 10, as the case may be. (2) The public announcement under this section shall be made in such manner as may be specified.*

Necessary public announcement as per section 15 of the IBC, 2016 may be made by the Company.

Company has also resolved to appoint Mr. Anil Goel, Insolvency Professional, having registration no.IBB/PA-001/IP-00020/2016-17/1623 to be appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for appointment of Resolution Professional and for evolving a resolution plan.

Mr. Anil Goel has submitted his consent in Form-2 under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The applicant/petitioner has also certified the fact that Mr. Anil Goel is fully qualified and permitted to act as an Insolvency Professional in accordance with the Code and the Associated Rules and Regulations.

We hereby appoint Mr. Anil Goel as Interim Resolution Professional for initiating Corporate Insolvency Process and for taking necessary action for declaration and public announcement of moratorium in accordance with section 13, 14 and 15 of IBC 2016.

List the matter on 05.07.2017 for further orders.

*Sd/-*  
(S. Vijayaraghavan)  
Member(T)

*Sd/-*  
(Vijai Pratap Singh)  
Member (J)

Signed on this, the 29 day of May, 2017