

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

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

C.P. (I.B.) No.441/KB/2017

In the matter of:

The Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

Section 7 of the Insolvency and Bankruptcy Code, 2016

Read with Rule 4(1) of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Vistar Financiers Pvt. Ltd, company registered under the
Companies act, 1956 and having its registered office at 5, Lower
Rawdon Street, 1st floor, Kolkata-700020 within the jurisdiction
aforesaid;

...Applicant

-And-

In the matter of:

Datre Corporation Limited, Sector III, Falta Industrial Growth
Centre, 24 Parganas(S) West Bengal- 743 504;

...Respondent

Counsels on Record

- | | |
|---------------------------------|-----------------|
| 1. Mr. Manoj Banthia, Pr. CS |] For Financial |
| 2. Ms. Neha Somani, Pr. CS |] Creditor |
| 1. Ms. Manju Bhuteria, Advocate |] For Corporate |
| 2. Mr. Kaushik Chakravarty |] Debtor |

Date of Pronouncing the order:

Authored by Shri K.R. Jinan, Hon'ble Member(J)

ORDER

The applicant, Vistar Financiers Pvt. Ltd has filed this petition under section 7 of Insolvency & Bankruptcy Code (hereinafter be referred to as the I.B. Code), 2016), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Datre Corporation Limited, CIN: L25201WB1984PLC038030

Brief facts are mentioned below.

The petitioner is a registered holder of 220000 Zero Coupon Debentures issued by the respondent/corporate debtor. Annexure A-V is the Debenture Certificate. The petitioner by purchasing it agreed to abide the terms and conditions for the issue of Debentures annexed to the Debenture Certificate. As per term 3.2 debentures shall be converted, into equity shares of the Company(respondent) at the option of the debenture holder but not later than 5 years from the date of issue. The date of issue is 27.10.2016. On 3rd November 2016, the petitioner opted for redemption of his entire debentures of the respondent and made a request in writing to the respondent for redemption and consequently transfer the proceeds

of redemption as detailed in his letter which is produced and marked as Annexure A-VII. The respondent on receipt of the Annexure A-VII letter from the petitioner issued a reply dated 7th day of November 2016, expressing its inability to redeem the debenture and requested the petitioner to opt for extension of period of redemption for further period of 5 years with a further request to waive his right to claim interest as specified in clause 3.6 in the terms and conditions of debentures. Reply letter is annexed to Annexure A-VII. The petitioner did not agree for further extension and claimed redemption again vide letter dated 10th November, 2016. To that letter respondents care not to send any reply. Petitioner repeatedly demands redemption vide letters dated 20th January, 2017 and lastly on 7th March, 2017. Irrespective of repeated demands respondent failed to discharge its liability owed to the petitioner and therefore petitioner filed the instant application for initiating corporate insolvency resolution process against the respondent.

The petitioner is the holder of 2,20,000 optionally convertible debentures of Rs. 1000/- each fully paid-up aggregating to Rs. 22,00,00,000/- the total amount outstanding is 22 Crores as on 31st March, 2016. The petitioner in support of its claim has also filed copy of the audited financial statements of the respondent for the financial year ended March 31, 2016 and marked as Annexure A-VI. The petitioner also filed affidavit in Form NCLT-6 verifying the contents in the petition.

The petitioner has also filed copy of board resolution authorising the petitioner to file the application for initiation of corporate insolvency resolution process against the respondent. The resolution is marked as Annexure A-I. petitioner also proposed name of Mr Rakesh Kumar Agarwal as the Interim Resolution Professional for the initiation Corporate Insolvency Process. the petitioner has also filed written communication by

proposed IRP and Form 2 and certificate from proposed IRP. It is marked as Annexure A-III

Heard both sides. No reply has been filed on the side of the respondent. No argument advanced on the side of the respondent to reject the application. Based on documents submitted by the petitioner, it appears that the Corporate Debtor, Datre Corporation Limited has committed default in making payment of Rs. Rs.22,00,00, 000/-and the application filed by the petitioner is in proper format as prescribed under Adjudicating Authority Rules. The applicant has proposed the name of Shri Rakesh Kumar Agarwal as Interim Resolution Profession, who has also given his consent in Form 2 and he has given declaration that no disciplinary proceeding is pending against him. In compliance with the law laid down by the Hon'ble NCLAT in Innovative Industries Ltd., notice issued by the Registrar was again served on the Corporate Debtor and the petitioner has filed the Affidavit of Service to that effect.

On the above basis, the petitioner has filed complete application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Datre Corporation Limited and based on supporting documents, it is also clear that the Corporate Debtor has committed default of Rs. Rs.22,00,00,000/- to the petitioner. It also appears from the record that Mr. Ashok Kumar Poddar has been specifically authorised to initiate Corporate Resolution Process against the Corporate Debtor. In the circumstances, the application filed by the petitioner deserves to be admitted.

ORDER

It is thus clear that the application filed by the petitioner i.e. Vistar Financiers 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. So also, Annexure A-III shows that no disciplinary proceedings are pending against the proposed Resolution Professional, Shri Rakesh Aggarwal. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is admitted.

Shri Rakesh Kumar Agarwal, Regn. No. IBBI/IPA-001/IP-P00443/2017-18/10786 is appointed as Interim Resolution Professional.

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 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."

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 and I.R.P.

List for report to 12-10-2017

Sd/-
20/9/17

(Vijai Pratap Singh)
Member (Judicial)

Sd/-
20/9/17

(K.R. Jinan)
Member (Judicial)

Signed on this, the 20th day of September 2017.