

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (I.B.) No.331/KB/2017

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

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 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Reliance Commercial Finance Limited, company registered under the Companies act, 1956 and having its registered office at Reliance Centre, 6th Floor, south Floor, South Wing, Off Western Express Highway, Santacruz (East), Mumbai- 400055 and a corporate office at A.C. Market, 6th Floor, 1 Shakespeare Sarani, Kolkata- 700 071 within the jurisdiction aforesaid;

...**Applicant**

-And-

In the matter of:

LAXMIVINAYAK RICE MILL PRIVATE LIMITED, Gour Bangla Road Nagarthuba, Akrapur Habra, West Bengal- 743263;

...**Respondent**

Counsels on Record:

Mr. Arnab Basu Mullick, Advocate for Financial Creditor

Date of Pronouncing the order:

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

ORDER

The petitioner, Reliance Commercial Finance 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 against the Corporate Debtor, Laxmi Vinayak Rice Mill Private Limited CIN: U15490WB2011PTC166440

Brief facts are mentioned below.

The petitioner in course of its business of lending had extended financial assistance of Rs.64,00,000/- (sixty-four lakhs) in the form of loan to the Corporate Debtor on executing Loan-cum Hypothecation Agreement dated 31.12.2014. Complete details of the loan sanctioned in different accounts and date of disbursement of loan is given in Annexure 'A-2' at page 16 to 25 of the petition. The petitioner has stated that a total outstanding exposure (with the principal amounts, accrued interest and penal interest) as on 24th November 2016 was Rs.76,95,920/-. The details of outstanding dues along with date of default committed by the Corporate Debtor is also given in the Demand Notice in Annexure 'A-3'. The petitioner has further stated that the Corporate Debtor has committed total default of Rs. 76,95,920/- including interest 24% per annum. Details of total outstanding amount and accrued interest are mentioned in Annexure 'A-12'.

The petitioner in support of its claim has filed copy of statement of account, annexed Loan cum Hypothecation agreement bearing No. RLSLKOL000291692 dated 31st December 2014 in Annexure 'A-2'; Copy of the Foreclosure Statement for the Loan Agreement in Annexure 'A-11'; Statement of Account dated 15th May 2017 A-12 and demand notice dated 28.11.2016.

The petitioner has also filed the Authorisation letter/Power of attorney dated 24th March 2017 issued by the Reliance Commercial Finance Limited which shows that the Mr. Jayanta Mondal be appointed as the as the lawful attorney and for the initiation of the Corporate Insolvency Process before National Company Law Tribunal on behalf of the Reliance Commercial Finance Limited before the National Company Law Tribunal. The petitioner has also filed Form 2 as prescribed under the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016.

The petitioner has also proposed the name of Shri Kanchan Dutta as Interim Resolution Professional in Form 2 and has certified that he is fully qualified and permitted to act as an Insolvency Resolution Professional. Shri Kanchan Dutta, the proposed Resolution Professional has given consent in Form 2.

Irrespective of repeated demands the corporate debtor 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 (Application to Adjudicating Authority) Rules, 2016 (hereinafter be referred to as the Adjudicating Authority Rules).

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

The petition is not maintainable since the petitioner suppressed material factors. The Corporate Debtor's request for settlement availing One Time Settlement Scheme is pending with the Kolkata office of the petitioner. The petitioner did not return the post-dated cheques submitted to the petitioner with ulterior motive and malafide intention and deposited in bank. While the Corporate Debtor was repaying in terms of the loan agreement the director of the Corporate Debtor fell ill and undergone bypass surgery and therefore was unable to pay the repayment in instalment. Upon the said contention, Corporate Debtor prays for dismissal of the petition.

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 U/s.7 of I & B Code, 2016?

Based on documents submitted by the petitioner, it appears that the Corporate Debtor, Laxmi Vinayak Rice Mill Private Limited has committed default in making payment of Rs. Rs.76,95,920/-. (Seventy-six lakhs ninety-five thousand nine hundred twenty only). Ld. Counsel for the petitioner submits that objections raised by the respondent is not at all bonafide and raised for the sake of objection.

A reading of the objections raised by the respondent in his reply affidavit shows that respondent admitting default due to illness of one of

its directors. The main contention is that since request for enabling the respondent to settle its liability by availing One Time Settlement Scheme is pending with the petitioner a petition of this nature is not maintainable. According to the Ld. Counsel for the petitioner that contention of the respondent is also 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. So also petitioner produced record proving default as provided U/s.7(3)(a) of Insolvency & Bankruptcy Code, 2016. None of the documents are challenged by the respondent. Therefore, the contention of the respondent is found devoid of any merit.

The petition filed by the petitioner is in proper format as prescribed under Adjudicating Authority Rules. The petitioner has proposed the name of Shri Kanchan Dutta 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.

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.76,95, 920/-.the petition is liable to be admitted.

ORDER

It is thus clear that the application filed by the Applicant, i.e. Reliance Commercial Finance Limited 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, Form 2 submitted by the IRP through the petitioner shows that no disciplinary proceedings are pending against the proposed Resolution Professional, Shri Kanchan Dutta. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is admitted.

Shri Kanchan Dutta, Registration No. IBBI/IPA-001/IP-P00202/2017-18/10391, 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, as the case may be."

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 the matter on 5/10/2017 for progress report.

Sd/-
19/9/17

(Vijay Pratap Singh)
Member (Judicial)

Sd/-
19/9/17

(Jinan K.R.)
Member (Judicial)

Signed on this, the 19th day of September 2017.