

**In the National Company Law Tribunal,**  
**Kolkata Bench, Kolkata**

**CP (IB)695/KB/2017**

In the matter of:

An application 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

In the matter of:

**OLYMPIA CREDITS & MERCANTILE PRIVATE LIMITED**, a Company incorporated under the provisions of the Companies Act, 1956, and being a Company within the meaning of the Companies Act, 2013 having its Registered Office Sikkim House, 4<sup>th</sup> Floor, 4/1 Middleton Street, Kolkata 700 071

.....Financial Creditor

And

**PRITHVI FINVEST COMPANY PRIVATE LIMITED**, a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its Registered Office at CF 361, Salt Lake City, Sector-I, Kolkata 700 064

..... Corporate Debtor

**Order Delivered on 15<sup>th</sup> January 2018**

**Coram:**

**V. P. Singh, Member (J)**  
**Jinan K.R., Member (J)**

For the Financial Creditor

: 1. Mr. Aritra Basu, Advocate.  
2. Mr. Arnab Dutta, Advocate.

For the Corporate Debtor

: 1. Ms. Urmila Chakraborty, Advocate.  
2. Mr. Ashish Chowdhury, Advocate  
3. Mr. Jishu Saha, Sr. Advocate  
4. Ms. Aindrila Basu, Advocate

**ORDER**

**Per Jinan K.R., Member (J)**

1. The C.P.(IB) No.695 of 2017 has been filed by Olympia Credits & Mercantile Private Limited (OCMP), Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code 2016 (in short, the Code) alleging that the respondent/ Corporate Debtor has defaulted the loan in terms of the loan agreement and in spite of demand the respondent did not pay the default amount of Rs.25,00,000/- (Rupees Twenty five lakh).
2. The brief facts of the case, as stated in the application, are that the applicant/financial creditor is a corporate body having its Registered Office at SIKKIM HOUSE, 4<sup>th</sup> Floor, 1, Middleton Street, Kolkata - 700 071. The Identification No. is No.U65921WB1991PTC052054. Mr. Sanjay Kumar Gupta, Director of the Applicant/financial creditor has filed this application on behalf of Olympia Creditors & Mercantile Pvt. Ltd. who has been authorised to submit this application on behalf of the applicant vide letter dated 17/11/2017 annexed with the application and marked as Annexure A.
3. The Corporate Debtor Prithvi Finvest Co. Pvt. Ltd., Identification No. is U67120WB1994PTC064201. The name and registration number of the proposed interim resolution professional is Mr Rajesh Kumar Kejriwal, Poddar Court, 18, Rabindra Sarani, Gave No.2, 6<sup>th</sup> Floor, Room No.39, Kolkata - 700 001, Registration No. is IBBI/IPA-001/IP-P00431/2017-18/10754, the email address is kejriwalraj@hotmail.com.
4. Applicant has stated that the total debt granted by financial creditor to the corporate debtor of Rs.25,00,000/-. The corporate debtor had also agreed to pay interest amounting to Rs.73,973/-. The said loan was renewed from time to time and lastly renewed on 21/4/2017 for another period of 122 days.

In order to secure the said loan the corporate debtor had also issued a post-dated cheque of Rs.25,00,000/- dated 21/8/2017, copy of the money receipt dated 1/9/2014 and copy of the loan renewal letter enclosed along with the petition and collectively marked as Annexure C.

5. Applicant/financial creditor further submits that it had sent a letter dated 18/8/2017 and email dated 17/8/2017 to the corporate debtor that since the tenure of the loan would expire on 20/8/2017, amounting to Rs.25,00,000/- is to be re payed upon the expiry of the period. Copy of the letter and email are collectively annexed with the application and marked as Annexure D.

6. Applicant/financial creditor has also submitted that the liability of the corporate debtor has been duly admitted by signing the loan confirmation statement from time to time. Copies of the loan confirmation statement from the financial year 2014-15 to 2016-17 are collectively annexed with the application and marked as Annexure E.

7. Applicant/financial creditor had presented the aforesaid cheque with its banker which was returned unpaid with the remarks "Funds Insufficient". It appears from the record that in consideration of the sanction of the said loan, the corporate debtor executed various documents in favour of the applicant/financial creditor as follows:-

- a) Board Resolution in favour of Sanjay Kumar Gupta authorizing to sign on behalf of the applicant, Annexure A.
- b) Money receipt dated 1/9/2014 evidencing the amount paid to the corporate debtor, Annexure C.
- c) Loan confirmation statement collectively marked as Annexure E.
- d) Cheque dishonored and return memo, Annexure G.

e) Bank statement evidencing amount transferred to the corporate debtor and cheque dishonored, Annexure H.

8. Respondent/corporate debtor filed written statement denying the allegation of the applicant and submitted the application filed by the financial creditor is not maintainable as the same is defective and incurable in nature.

9. The applicant has no authority to institute the corporate insolvency process against the corporate debtor as copy of the Board Resolution wherein the application has been authorized has not been disclosed. It is the case of the corporate debtor that the applicant/financial creditor has failed to show any default on the part of the corporate debtor.

10. The corporate debtor also failed to disclose bank statement with seal and signature of the authorized person of the bank wherein the transactions between the corporate debtor and the petitioner has allegedly been taken place. The application filed by the applicant is premature as there is no default.

11. Heard Ld. Counsel of both sides. This is an application filed by the financial creditor under S. 7 of I&B,Code, alleging that the respondent *corporate debtor has defaulted the loan in terms of the loan agreement and in spite of demand the respondent did not pay and hence the applicant filed this application for corporate insolvency resolution process. The respondent contends that this petition is not maintainable since this application has been filed in violation of terms of mutual understanding and because of suppression of material facts regarding the Loan availed by the respondent. The respondent admitted the receipt of Rs. 25,00000- (Twenty Five Lakh) as a loan from the applicant and its liability to pay interest at 9% pa. The respondent contends that the application is premature since there is no default. According to the respondent the loan amount has not become payable or due as the*

tenure for the said loan has not expired as on the date of filing this application. The respondent further contends that as per mutual understandings upon payment of interest the loan amount is automatically extended till March,2018 and hence no default has occurred, and so this petition is liable to be rejected as per S.7(5) (b) of I&B, Code.

12. In a case of this nature The Hon'ble Supreme Court ~~has held~~ in **Innoventive Industries Ltd v. ICICI Bank & Anr Civil Appeal Nos. 8337-8338 of 2017**, has held that "*the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority under sub- section (7) of the Adjudicating Authority shall then communicate the order passed to the financial creditor and corporate debtor with in 7 days of admission or rejection of such application, as the case may be*".

13. So we have to satisfy two main ingredients under s.7 (5) (a) of I&B Code for admission. It is good to read S.7 (5) (a). it read as follows:-

(a) a default has occurred and the application under sub-section(2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order , admit such application; or

(b) .....

14. Coming to the application in hand the applicant has produced all the required documents for proving that a loan was given to the respondent, bank statement proving the amount given to the respondent, copy of letter issued to the respondent to prove that loan has defaulted by the respondent and that the proposed resolution professional has given written communication that there is no disciplinary proceedings pending against him. So no doubt this application is liable to be admitted.

15. However, respondent being raised contentions that this application is premature and there is suppression of material facts regarding extension of period of loan to March,2018 and that the applicant has no authority to institute an application of this nature let us see whether the said contention raised by the respondent is probable or believable.

16. The applicant has produced copy of board resolution dated 17.11.2017, Annexure- A for proving that applicant Mr. Sanjay Kumar Gupta was authorised to sign on behalf of the applicant company. We do not find any defect in the said document so as to reject it. So it proves that the applicant has got the authority to institute an application of this nature.

17. The loan was admittedly availed by the respondent on 01.09.2014 and periodically it was renewed by paying interest as agreed. This fact is further proved by the production of loan renewal letters copies (un disputed), as Annexures- C . According to the respondent upon payment of interest as shown in Exhibit X ( a copy of bank statement of account of respondent ) on 21.08.2017 the period of loan was extended to March,2018 on the basis of mutual understanding. To support this contention herein this case no supporting data or proof. On the other hand the applicant has produced Annexures D to prove that loan was not renewed after 21.08.2017. Annexure D strengthen the contention on the side of the applicant that it issued an E-Mail on 17.08.2017 and a letter on 18.08.2017 demanding repayment of loan. No contentions raised from the side of the respondent that those letters not in receipt by the respondent or that respondent send reply intimating that as per an understanding there was renewal of loan as contended. Annexures E on the other hand proves the contention on the side of the applicant that all the transactions related to the loan account has been confirmed by the respondent.

18. Annexure G the dishonour memo proves the default of the loan amount. The applicant has proposed the name of Mr. Rajesh Kumar Kejriwal by producing Form 2 as per Rule 9 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016. The written communication annexed to it proves that no disciplinary proceedings pending against him.

19. The above said discussions leads to a further conclusion that none of the contentions of the respondent are sustainable under law. The applicant being succeeded in proving all the ingredients to be satisfied in an application of this nature this application is liable to be admitted as held in the above cited decision under section 7(5) (a) of I&B,Code. Accordingly we admit this application u/s.7 of I&B, Code declaring a moratorium for the purposes referred to in section 14 of the Code with following directions:-

(i) That this Bench, subject to provisions of subsections (2) & (3) of section 14 of the Code, hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 and the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

(ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(iii) That 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.

(iv) That the order of moratorium shall have effect from the date of passing of the order till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.

(v) That his Bench hereby appoint Mr.Rajesh Kumar Kerjiwal as referred in Form 2 as interim resolution professional.

(vi) That this Bench directs the IRP to cause public announcement of the corporate insolvency resolution process upon immediately as specified under section 15 of the Code.

(vi) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

List it on 05.02.2017

20. This order be communicated to the Financial Creditor as well as Corporate Debtor.

*sd* 5/1/18

**(V.P. Singh)**  
**Member (Judicial)**

*sd*

**(Jinan K.R.)**  
**Member (Judicial)**

*Signed on 15<sup>th</sup> January 2018.*