

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P. (IB) No. 1405/KB/2018**

**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.

**-And-**

**IN THE MATTER OF:**

**ORIENTAL BANK OF COMMERCE**, a Banking Company incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, having their registered office at E-Block, Harsha Bhawan, Connaught Place, New Delhi – 110001 and Corporate Office at Plot No. 5, Institutional Area, Sector – 32, Gurgaon – 122001 and having one of it's Branches at P-22, Bondel Road, kolkata 700019

**... Financial Creditor/Applicant**

**-Versus-**

**IN THE MATTER OF:**

**M/S. VENKATESH LOGISTICS PRIVATE LIMITED**, having its Office at Jute House, 12, India Exchange Place, 1st Floor, Kolkata 700001

**... Financial Debtor/Corporate Debtor**

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**Coram: Shri Jinan K.R., Hon'ble Member (Judicial).**

**Counsel on Record:**

1. Mr. Ranjan Kumar Ghosh, Advocate & ] For Financial Creditor
2. Mr. Sandip Chatterjee, Advocate ]  
(for Md. Nasimuddin)

**Date of pronouncement of Order: 19/08/2019.**

**ORDER**

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

1. This is an Application filed under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Oriental Bank of Commerce**, hereinafter referred to as the **Financial Creditor**, through Mr. Rajesh Kumar, Assistant General Manager of its Branch at P-22 Bondel Road, Kolkata 700019 commonly known as MID Corporate Branch, Kolkata who was authorized by the bank by authorization letter dated 31.08.2018 to engage counsel/s and to file application, sign and verify form 1, Written Statement, Applications, Affidavits and/or any other pleadings etc. in connection with the application under section 7 of the Code before the NCLT for initiating Corporate Insolvency

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**Resolution Process as against the Corporate Debtor M/s. Venkatesh Logistics Private Limited.**

2. The financial creditor (FC) contends that the Corporate Debtor has failed in repayment of a debt of Rs. 18,45,63,437.69 (Rupees Eighteen Crore Fourty Five Lacs Sixty Three Thousand Four Hundred Thirty Seven and Paise Sixty Nine Only) and that the total outstanding amount inclusive of interest up to 29.09.2018 is Rs. 22,64,52,791.83 (Rupees Twenty Two Crore Sixty Four Lacs Fifty Two Thousand Seven Hundred Ninety One and Paise Eighty Three Only) and thereby filed this application for initiating the Corporate Insolvency Resolution Process.
3. At the request of Corporate Debtor, the Financial Creditor sanctioned credit facilities in the shape of Cash Credit (Hypothecation and Book Debts) to the limit of Rs. 7,85,00,000.00 (Rupees Seven Crores Eighty Five Lacs Only) and WCTL to the limit of Rs. 8,21,00,000.00 (Rupees Eight Crore Twenty One Lacs Only) and FITL to the limit of Rs. 3,60,00,000.00 (Rupees Three Crore Sixty Lacs Only) on the terms and conditions mentioned in the Letters of Sanction from time to time. The Corporate Debtor and its guarantors have agreed to pay the contractual interest and also the interest varied and/or enhanced from time to time according to the Policy of the Bank with monthly rests. The Corporate Debtor however failed to repay the principal amount along with the interest to the Financial Creditor thereby the accounts of the Corporate Debtor has declared



as Non-Performing Asset (NPA) on 31.12.2015 and thereby issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor demanding the amount defaulted along with the interest.

4. The Corporate Debtor when failed to repay the amount to the Financial Creditor the FC had filed Original Application No. 427 of 2017 before the DRT-III, Kolkata. Pending consideration of the said proceedings the Financial Creditor filed this application for initiating Corporate Insolvency Resolution Process.
5. To substantiate its claim the Financial Creditor has produced various documents detailed in **Annexure I** so also was produced the statement of Bank Accounts, Record of default, Recall Notice under Section 13(2) of the SARFAESI Act, 2002, true copy of Settlement Proposal dated 10.03.2017 submitted by the Financial Creditor and also produced the Form 2 and written communication proposing the name of the Resolution Professional. Upon the said contentions the applicant prays for admission of under section 7 of the Code.
6. Upon filing this application the Court Notice was issued to the Corporate Debtor for its appearance and for filing reply affidavit. The notice was ordered to be issued on 26<sup>th</sup> October, 2018. The Corporate Debtor upon receipt of the notice turned up before this Tribunal on 13.12.2018 and prays time to file reply affidavit for which the matter was adjourned to 07.02.2019 granting 7 days time for

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filing reply affidavit. On that day no reply affidavit was filed on the side of the Corporate Debtor and further time was asked for. Granting further time the case was again taken on 2<sup>nd</sup> April, 2019 but nobody turned up on the side of the Corporate Debtor and no reply affidavit was filed on the side of the Corporate Debtor. The case stand adjourned for hearing on 17.06.2019.

7. When the case was taken up on 17.06.2019 the Ld. Counsel appearing for the Corporate Debtor appears and submitted that he has filed an Interim Application CA(IB) No. 774/KB/2019 for recalling the order dated 2<sup>nd</sup> April, 2019 and that application was heard on 2<sup>nd</sup> July, 2019 which was allowed directing upon payment of cost of Rs. 10,000/-. Further direction given to file reply affidavit within 7 days of the date of the order and posted the case to 13.08.2019. The case was then preponed for an early hearing on 24<sup>th</sup> July, 2019. On that day nobody turned up on the side of the Corporate Debtor. Since no individual notice was served upon the Corporate Debtor for advancing the case for hearing, we adjourned the case to 13.08.2019 when it was originally posted for hearing. On 13.08.2019 also nobody turned up on the side of the Corporate Debtor. It is submitted on the side of the Financial Creditor that the Corporate Debtor failed in complying with the directions and also failed to deposit the cost and no reply affidavit is also seen filed, thereby I heard the Ld. Counsel appearing for the Financial Creditor and perused the records.

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8. This is an application filed under Section 7 for initiating the Insolvency and Resolution Process against the Corporate Debtor who had evidently failed in repayment of the loan availed from the Financial Creditor upon executing the various documents as alleged by the Financial Creditor. The records produced on the side of the Financial Creditor proves that the account stand in the name of the Corporate Debtor was declared as NPA on 31.12.2015 and thereafter the Corporate Debtor has issued the balance and Security Confirmation time to time and also has submitted the proposal for settlement vide letter dated 10<sup>th</sup> March, 2017 by paying 7.68 crores in August, 2016. According to the Ld. Counsel for the Financial Creditor there was no further payment on the side of the Corporate Debtor and the amount claimed by the Financial Creditor as shown in the application is the outstanding amount due as on the date of filing of the application and that the Corporate Debtor has committed default, the application is liable to be allowed. To prove that there is default what is relied upon is the recalling notice issued under Section 13(2) of the SARFAESI Act, 2002 dated 05.01.2016 and demand notice dated 21.02.2017 and the CRILC Report dated 25.09.2018.
9. The Financial Creditor has also proposed the name of the Insolvency Professional **Mr. Vinod Kumar Kothari** of Krishna Building, 224, A.J.C. Bose Road, Kolkata 7000-17, **having Reg. No. IBBI/IPA-002/IP-N00019/2016-2017/10033**, who has also sent a

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written communication dated 08<sup>th</sup> October, 2018 giving his consent to accept the appointment as an IRP.

10. Reference of the above said documents proved the default on the side of the Corporate Debtor in repayment of the amount in demand. Being satisfied that the Financial Creditor has succeeded in proving that the Corporate Debtor defaulted in repayment of the outstanding amount found due to the Financial Creditor in spite of executing various loan agreements, the question is whether this application filed under Section 7 is complete? The statement of Bank Account as well as Form 2 and written communication proves that there are no disciplinary proceedings pending against the proposed Resolution Professional.
11. On verification of the records I am satisfied that the Applicant has succeeded in proving its case and all the requirements to be meted out under Section 7 has been complied with and therefore this is a fit case for ordering admission and accordingly I admit the case upon the following orders:-

**ORDERS**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Venkatesh Logistics Private Limited is hereby admitted.

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- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
  - 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 Securitization 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.


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- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.
- viii) **Mr. Vinod Kumar Kothari**, an Interim Resolution Professional having **Registration No. IBBI/IPA-002/IP-N00019/2016-2017/10033**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

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- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xi) List the matter on **20<sup>th</sup> September, 2019** for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Jinan K.R.)  
Member (J)

Signed on this 19<sup>th</sup> day of August, 2019.

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