

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**KOLKATA BENCH**  
**KOLKATA**

**C.P. (IB) No. 305/KB/2019**

**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:**

**CORPORATION BANK**, a banking company constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980 and having its Head Office at Post Box No. 88, Mangladevi Temple Road, Pandeshwar, Mangaluru 575001.

**... Financial Creditor**

**VERSUS**

**In the matter of:**

**M/S. KRROME GLASS PRIVATE LIMITED**, a Company incorporated under the Companies Act, 1956 and having its Registered Office at Orbit House, 1, Garstin Place 2<sup>nd</sup> Floor, Room No. 2C, Kolkata 700001.

**... Corporate Debtor**

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

**Shri Harish Chander Suri, Hon'ble Member (Technical)**

*Sd*

*Sd*

Counsel on Record:

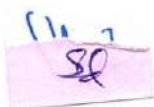
- |                                       |                        |
|---------------------------------------|------------------------|
| 1. MR. URMILA CHAKRABORTY, Advocate ] |                        |
| 2. MR. SITIKANTA MITRA, Advocate ]    | For Financial Creditor |
| 3. MR. ARKODEB SINHA, Advocate ]      |                        |

Date of pronouncement of Order: 17/01/2020

ORDER

Per Shri Harish Chander Suri, Member (Technical).

1. This Application under Section 7 of the Insolvency & Bankruptcy Code, 2016 has been filed by the Corporation Bank, a member of the consortium of Banks as its lead Member, through its Chief Manager Mr. Vivek Khanna , appointed vide General Power of Attorney dated 6<sup>th</sup> October, 2009, hereinafter referred to as the “**Financial Creditor**” is seeking initiation of Corporate Insolvency Resolution Process against M/s. Krrome Glass Private Limited, a Corporate entity, having its registered office at Kolkata, hereinafter referred to as the “**Corporate Debtor**”.
2. It is stated that the Financial Creditor had disbursed various loans and financial facilities to the Corporate Debtor through creation of various accounts in the name of the Corporate Debtor in the books of the Financial Creditor on the request of the Corporate Debtor in the year 2012 & 2013.





3. It is submitted that the total amount of cash disbursed to the Corporate Debtor as per various sanction letter was to the tune of Rs. 13,55,02,725.07 (Rupees Thirteen Crore Fifty Five Lacs Two Thousand Seven Hundred Twenty Five and Paise Seven only) and a sum of Rs. 15,49,74,428.66 (Rupees Fifteen Crore Fourty Nine Lacs Seventy Four Thousand Four Hundred Twenty Eight and Paise Sixty Six Only) had aggregated as interest as on 30<sup>th</sup> November, 2018. The Corporate Debtor was unable to pay its debt on a regular basis and as such the Bank had to declare the account of the Financial Creditor as a Non Performing Asset Account on 30<sup>th</sup> June, 2014.
  
4. It is submitted that vide letter dated 19<sup>th</sup> July, 2014 the Financial Creditor sent a notice under Section 13(2) read with Section 13(3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and called upon the Corporate Debtor to pay the outstanding loans, and took symbolic possession of the said assets of the Corporate Debtor and since the Corporate Debtor failed to pay the outstanding debt within the prescribed period of 60 days from the said notice, the Financial Creditor proceeded to sell the hypothecated and mortgaged assets of the Corporate Debtor under Section 13(4) of the SARFAESI Act, 2002 and also instituted a case to that effect before the Hon'ble Debt Recovery Tribunal-II (DRT) at Ahmedabad being O.A. No. 239 of 2015.

SD

SD

5. It would be seen that the Financial Creditor had got various documents executed from the Corporate Debtor to secure its loan which included Deeds of Guarantee dated 28<sup>th</sup> March, 2012 and Counter Guarantee, Joint Deed of Hypothecation and Form 8 filed with the Registrar of Companies dated 25<sup>th</sup> May, 2012. Three immovable properties of the Corporate Debtor were also mortgaged. It is submitted that the O.A. is still pending with the DRT, Ahmedabad.
  
6. The Financial Creditor has further submitted a statement of bank account depicting a total sum of Rs. 29,04,77,154/- (Rupees Twenty Nine Crores Four Lacs Seventy Seven Thousand One Hundred Fifty Four Only) due and payable by the Corporate Debtor to the Financial Creditor. The Financial Creditor has also proposed the name of Mr. Ramchandra D. Choudhary, an Insolvency Professional, who vide his letter dated 16<sup>th</sup> January, 2019 addressed to this Bench given his consent and agreed to accept the appointment as IRP in case of admission of this application.
  
7. In the reply affidavit filed in opposition to the application, one of the Directors of the Corporate Debtor Mr. Gundeep Singh Sood submitted that the application is not maintainable either in law or facts and that the Company cannot be termed as a Corporate Debtor as there is admitted claim and the claim made by the Financial Creditor in the instant proceedings needs to be adjudicated upon.

Sd

Sd

8. It is submitted that the Corporate Debtor was sanctioned a sum of Rs.10,97,00,000/- (Rupees Ten Crores Ninety Seven Lacs Only) by the Financial Creditor in the year 2012 and the same was enhanced on 9<sup>th</sup> January, 2013 to Rs. 14,64,64,000/- (Rupees Fourteen Crores Sixty Four Lacs Sixty Four Thousand Only) and the Corporate Debtor had written letters on 3<sup>rd</sup> July, 2013, 26<sup>th</sup> August, 2013 and 23<sup>rd</sup> September, 2013 requesting the Financial Creditor to enhance the loan amount by 20 crores but the Financial Creditor refused to do so as a result of which production and transactions of the Company came to a standstill and the business of the Corporate Debtor suffered immense losses which compelled the Director of the Corporate Debtor to write a letter dated 9<sup>th</sup> October, 2013 to the Financial Creditor to take over the Company in lieu of the loan sanctioned by them as the Corporate Debtor was unable to run the business without further sanction of the loan amount.
9. It is stated that in spite of the letter dated 28<sup>th</sup> October, 2013 intimating the Corporate Debtor that the proposal for enhancement of loan was under consideration of the Bank, the proposed loan got delayed, thereby causing immense loss to the Corporate Debtor.
10. The Corporate Debtor denied that sanction letter dated 16<sup>th</sup> January, 2012, was further amended by another sanction letter whereby the interest rate and payment terms were modified on the terms loan vide letter dated 6<sup>th</sup> February, 2012 and that the

Corporate Debtor came to know about the existence of the said letter for the first time on going through the said application. It is denied that any letter dated 9<sup>th</sup> January, 2013 was issued by the Corporate Debtor requesting the Financial Creditor to enhance the credit limit. The Corporate Debtor further denies the authenticity, genuineness and credibility of the documents as the said Deed of Guarantee dated 28<sup>th</sup> March, 2012 is stated to have been superseded by a subsequent Deed of Guarantee dated 21<sup>st</sup> January, 2013, in which the name of Mr. Jasdeep Singh Sood does not appear as guarantor as he had resigned from the Corporate Debtor Company on 05.01.2013 by that point of time. Similarly, the Corporate Debtor denied the authenticity, genuineness and credibility of Deed of Hypothecation dated 28<sup>th</sup> March 2012 which is stated to have been superseded by a subsequent Deed of Hypothecation dated 27<sup>th</sup> August, 2013. Similarly, the Corporate Debtor has denied the authenticity and genuineness of subsequent charge filed by the Financial Creditor with the Registrar of Companies and the documents like demand Promissory Notes.

11. The Financial Creditor chose not to file any rejoinder.
12. The matter was listed for hearing on 07.01.2020. Though the Ld. Counsel for the Financial Creditor is present but Ld. Counsel for the Corporate Debtor was not present. The matter was passed over once and on the 2<sup>nd</sup> call, it was decided that since the matter was listed for hearing and the Ld. Counsel for the parties were supposed

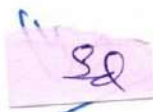
SD

SD

to be prepared for hearing, the matter would be heard and decided on its merits. The Ld. Counsel for the Financial Creditor referred to all the documents placed along with the application. The application very precisely refers to each and every relevant facts and we found the same complete in all respects. The Financial Creditor has referred to each of the documents viz., sanction letter, agreements between Financial Creditor and the Corporate Debtor entered into from time to time which was duly accepted by the Corporate Debtor in its Board Resolution dated 28<sup>th</sup> March, 2012 & 15<sup>th</sup> January, 2013, the terms where-of have been accepted and acknowledged by the Board of Directors of the Corporate Debtor vide Board Resolution dated 28<sup>th</sup> March, 2012. It is also clear that the Corporate Debtor has committed default in repayment of its debt.

13. The Financial Creditor has also placed on record all the correspondence that has taken place between the Financial Creditor and the Corporate Debtor.

14. We find that it is a fit case for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor who has committed default in complying with the terms and conditions of the agreement entered with the Financial Creditor. Since the Corporate Debtor has failed to discharge its debt owed to the Financial Creditor in terms of the agreements placed on record by the Financial Creditor. The default is

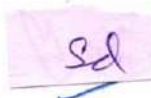




proved on record. With the above said observations, we pass the following:-

**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. KRROME GLASS PRIVATE LIMITED** is hereby **admitted**.
- 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.
- 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

Sd

Sd

cease to have effect from the date of such approval or liquidation order, as the case may be.

- viii) **Mr. Ramchandra D. Choudhary**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00157/2017-18/10326**, e-mail id: **rdc\_rca@yahoo.com** 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.
- 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.
- xi) The Registry is hereby directed under section 7(7) 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.
- xii) The matter be listed on **18.02.2020** for filing of the progress report.

Sd

Sd

- xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**



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

Signed on this, the 17<sup>th</sup> day of January, 2020.

VC