

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

**Shri Vijai Pratap Singh
Hon'ble Member (J)**

**Ms. Manorama Kumari
Hon'ble Member (J)**

Company Petition No.186/2017

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

-And-

In the Matter of:

M/s. Naviplast Traders Private Limited, 4 Fairlie Place, 6th floor, Room No.604, Kolkata- 700 001;

M/s. Krishna Park Infracon Private Ltd., 78, Bentick Street, 5th floor, Kolkata- 700 001;

M/s. Rosewood Highrise Private Ltd., 29, Robert Street, 1st floor, Kolkata- 700 012;

M/s. Crabel Distributors Private Limited, 85, Metcalfe Street, 2nd floor, Kolkata- 700 013;

M/s. Infosoft Global Private Limited, 17 Bangur Avenue, Block-D, Ground floor, Lake Town, Kolkata – 700 055;

M/s. Kit Commercial Pvt. Ltd., 4/1, Middleton Street, 4th floor, Sikkim House, P.S. Park Street, Kolkata – 700 071;

M/s. Neer Suppliers Private Limited, Vikash Surya Plaza, Plot No.1, Room No.105, Block-CU, 1st floor, LSC Mkt. Pit, New Delhi-110088;

M/s. Frazer Goods & Supply Pvt. Ltd., Shantiniketan Building, 8 Camac Street, 5th floor, R.No.2, Kolkata – 700 017;

Chowdhury

[Signature]

M/s. Sumnax Mercantile Pvt. Ltd., 41, N.S. Road, Room No.402,
Kolkata – 700 001;

M/s. Shirdi Plywood Private Limited (formerly known as M/s. Shiv
Shakti Dealcom Private Limited), 236A, Badu Road, Nadi Bhag,
Tetultala, Madhyamgram, Parganas North, Kolkata – 700 128;

... **APPLICANTS / PETITIONERS**

-And-

In the Matter of :

M/s. R. G. Shaw & Sons Private Ltd., 59, Lenin Street, Kolkata – 700 013

.. **CORPORATE DEBTOR / RESPONDENT**

Counsels on Record:

- | | | |
|--|---|---------------------|
| 1. Mr. Akhilesh Kumar Srivastava, Advocate |] | |
| 2. Mr. Aakash Sharma, Pr.C.S. |] | For the petitioner |
| 3. Mr. Kanishk Kantar, Advocate |] | |
| 1. Mrs.Manju Bhuteria, Advocate |] | |
| 2. Mr. Sidhartha Sharma, Advocate |] | For the Respondents |
| 3. Ms. Meenakshi Manot, Advocate |] | |
| 4. Ms. Namrata Basu, Advocate |] | |

Date of Pronouncing the order : 12.4.2017

ORDER

Per Sri Vijai Pratap Singh, Member(J)

This application has been filed under section 7 of the Insolvency and Bankruptcy Code and under Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by 10 Financial Creditors jointly represented by the petitioner no.1, M/s. Naviplast Traders Private Ltd. & Others for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on account of default for not making payments to different creditors total amounting to Rs.3,17,74,253/-. Details of debt amount of all the creditors has been given in a chart which is exhibit "B" of the petition at page nos. 33 and 34.





The total amount of debt disbursed by all the ten creditors as given at page no.32, which is exhibit "A" of the petition, which shows that the petitioner no.1 granted debt of Rs.10 lakhs, petitioner no.2 granted debt of Rs.25 lakhs, petitioner no.3 granted debt of Rs.50 lakhs, petitioner no.4 granted debt of Rs.25 lakhs, petitioner no.5 granted debt of Rs.50 lakhs, petitioner no.6 granted debt of Rs.25 lakhs petitioner no.7 granted debt of Rs.50 lakhs, petitioner no.8 granted debt of Rs.50 lakhs, petitioner no.9 granted Rs.10 lakhs and petitioner no.10 granted debt of Rs.20 lakhs, total amount of debt of Rs.3.15 crores were disbursed to Corporate Debtors on different dates outstanding amount as on 31.01.2017 of all the Corporate Debtors in common was Rs.3,17,74,253/-.

The petitioner has also filed copy of the Board Resolution which is Exhibit "C" which shows that petitioner no.1 vide Resolution dated 16.01.2017 unanimously passed resolution to initiate Corporate Insolvency Resolution under section 7 of Insolvency and Bankruptcy Code, 2016. The petitioner has also filed money receipt, bank statement with financial creditors evidencing the loan amount granted by each financial creditor to the Corporate debtor, dishonour of cheques issued by Corporate Debtor towards repayment of loan and payment of interest, receipt of interest via NEFT and receipt of a part of the loan amount are annexed with the petition. The petitioner has also annexed copies of letters received by all financial creditors from the Corporate Debtor evidencing receipt of loan which has been annexed with the petition. The petitioner has also annexed copies of cheques as drawn in favour of each financial creditor by the Corporate Debtor towards repayment of the loan and payment of interest which were dishonoured. Copies of all these documents relating to all the applicants are Exhibit "C" to "L" (page 35 to



207 of the petition). All the documents which have been filed alongwith the Petition are notarised by the Notary on dated 10th March, 2017 which bears the signature and petition has been signed by Chinmoy Guchhait as Director of Naviplast Traders Pvt. Ltd. who has been authorised by the Board Resolution to present the petition under section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating corporate insolvency process. On the basis of documents filed by the petitioner, it appears that the Corporate Debtor has committed default in making payment of Rs.3,17,74,253/-

It appears from the record that all the documents which have been filed are notarised by Notary Public, Sri P.K. Dutta on 10.03.2017 and the petitioner no.1 who was authorised to present the petition has signed the petition. The petitioner has also filed proof of service of application which is at page no.34 which shows that copy of application was sent by the petitioner to the Corporate Debtor via registered post on dated 11.03.2017 and receipt is attached with the petition at page no.234.

Ld. Counsel for the Corporate Debtor, Smt. Manju Bhuteria has submitted that the petitioner has not filed the affidavit in support of the documents. It appears from the record that the petition is in proper form no.1 as prescribed under the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and has been notarised. The petitioner no.1 has signed on behalf of all the Corporate Creditors and petition has been jointly presented by the 10 petitioners and every company has passed the Resolution for initiating Corporate Insolvency Process and copies of said Resolution have been filed with the petition.





The petitioner has also proposed the name of Shri Sumit Binani as Interim Resolution Professional whose registration number and Email ID as mentioned is given as under:

Shri Sumit Binani,
2A, Ganesh Chandra Avenue,
Commerce House, Room No.6, 4th floor,
Kolkata – 700 013.
Registration No.: IBBI/IPA-001/IP-N00005/2016-17/10025
Email address : ip.sumitbinani@gmail.com

The petitioner has also certified that Shri Sumit Binani is fully qualified and permitted to act as Interim Resolution Professional. The proposed IRP, Shri Sumit Binani has also given his consent letter in form no.2 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and he has also certified that no disciplinary proceeding is pending against him with the Board or Indian Institute of Professionals.

The Ld. Counsel for the Corporate Debtor has also raised the point that the petitioner has not come with clean hands, so the petition is not maintainable. This point has been raised on the basis that the petitioner has suppressed the fact that the petitioners have initiated proceedings under section 138 of the Negotiable Instrument Act on account of dishonoured cheques.


It is to be made clear that the proceedings under section 138 of Negotiable Instrument Act is a different proceeding and liability occurs when a cheque is dishonoured. This fact also supports the petitioners' case regarding the default committed by the Corporate Debtor. The petitioner has also filed a copy of the dishonoured cheque along with the petition. So it cannot be said that the petitioner has not come with a clean hand and suppressed the important facts.



The application is in proper form no.1 and documents which are required to be annexed with the said form are all attached with the application. So it cannot be said that there is need of filing separate affidavit in this regard when all the documents are notarised by the Notary Public.

On the above basis, it is clear that the Corporate Debtor has committed default for not making payment of debt of Rs.3,17,74,253/-. Therefore, the petition is admitted and Shri Sumit Binani is appointed as Interim Resolution Professional. Moratorium is also declared as per provision of section 14 of the Insolvency & Bankruptcy Code, 2016. Direction is also being issued for issuing public announcement in terms of section 15 of Insolvency & Bankruptcy Code, 2016. The petitioner is also directed to serve the copy of the order on the Corporate Debtor. This Order be communicated to the Financial Creditor as well as Corporate Debtor in terms of section 7 of the Insolvency and Bankruptcy Code, 2016.

List on 28th April, 2017 for submission of progress report by the Interim Resolution Professional.


(Manorama Kumari)
Member(J)


(Vijai Pratap Singh)
Member (J)

Signed on this 12th day of April, 2017