

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1045/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

(Incorporating State Bank of Patiala)

...Financial Creditor/Applicant

V/s.

Yash Jewellery Private Limited

[CIN: U27205MH2006PTC165520]

...Corporate Debtor/Respondent

Order Dated: 10.08.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Mr. Siddha Pamecha a/w Mr.
Ranveer Chapekar i/b Thodur
Law Associates, Advocates.

For the Respondent(s) : None present.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being CP (IB) No.1045/MB-IV/2021 filed on 22.10.2021 by State Bank of India ("Original Lender" or "Financial Creditor/Applicant"), under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) in the matter of Yash Jewellery Private Limited,

Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

- 1.1. The Applicant claimed total amount due including interest and penal interest of Rs.446,26,37,064.74/-, (Principal Outstanding: Rs.183,40,46,198.32, and the balance is interest) under (i) Foreign Currency Term Loan & Working Capital Export Finance, (ii) Corporate Loan Facility, and (iii) Term Loan facilities as on 29.12.2015, 30.03.2014 and 30.09.2014 respectively, in default. The date of defaults are accordingly stated as on 29.12.2015, 30.03.2014 and 30.09.2014 part IV of the petition in relation to each of these facilities. It is also stated that account was declared as Non-Performing Asset (NPA) on the same date. The Applicant has enclosed record of default, stated as “Deemed to be authenticated”, wherein date of default is stated as 30.05.2018 and last date of repayment is stated as 23.04.2018.
- 1.2. Subsequently, Original Lender/Applicant was merged with Unity Small Finance Bank Limited, and substitution of the name of merged entity was allowed vide order dated 22.12.2022 passed in IA-2147/2022.
2. On 29/01/2007, Corporate Debtor executed various Loan facilities sanctioned by erstwhile State Bank of Patiala (since merged with State Bank of India on 1.04.2017) to the Corporate Debtor to the tune of Rs.30.75 cr. Vide Supplemental Agreement executed dated 22/9/2007, at the request of the borrower the bank has agreed to increase the aggregate sum limit of the aforesaid credit facilities from 30.75 Cr. to 57.75 cr. Further, a FBT/ FBD/EBR (Adhoc) limit of Rs. 45.00 Cr. For the period of Rs.180 days was also sanctioned at that time. Thereafter, the limit was further enhanced to 102.75 Crores, and to Rs.107.75 Crores, and to Rs.129.75 Crores. Finally, the limit was enhanced 268.75

Crores in the year 2009. A Deed of Guarantee was also executed various group entities.

2.1. The Corporate Debtor executed various agreements and documents at the time of sanction of the limit, and thereafter at each enhancement.

- a. Agreement of hypothecation of goods and assets;
- b. Deed of guarantee by Pramod Goenka, Vinod Goenka, Shamita Jain, Sunita Bali;
- c. Letter of arrangement from erstwhile State Bank of Patiala in favour of State Bank of India for Jewel America;
- d. Board resolution;
- e. Agreement of pledge of goods and assets;
- f. Deed of mortgage;
- g. Memorandum entry creating equitable mortgage by Pramod Goenka, Director of the Corporate Debtor;
- h. And other documents, more specifically stated at Sr. No. 8 of part V of the application.

2.2. That thereafter on default in payments by Corporate Debtor towards above loan facilities extended by Financial Creditor (erstwhile State Bank of Patiala since merged with State Bank of India on 31.03.2017) the said loan facilities came to be classified as NPA on 30.09.2014 and accordingly the financial Creditor was constrained to issue section 13(2) notice dated 30.04.2016 under SARFAESI act calling upon the corporate Debtor to pay the outstanding amount of Rs.219,0,151,698.41/-.

2.3. That further on default in payments by Corporate Debtor towards above loan facilities extended by Financial Creditor (State Bank of India) the said loan facilities came to be classified as NPA on 30.03.2014 and accordingly the financial Creditor was constrained to issue section 13(2) notice dated 15.11.2016 under SARFAESI act

calling upon the corporate Debtor to pay the outstanding amount of Rs.36,90,21,949/-.

- 2.4. That thereafter by way of notification dated 22.02.2017, the Erstwhile State bank of Patiala merged with the present Financial Creditor i.e. State Bank of India and accordingly a consolidated financial Debt in respect of the respective loan facilities extended to Corporate Debtor stood at Rs.463,19,00,926.75 as on 23.08.2021.
- 2.5. That the Financial Creditor places on record the Statement of Transaction Inquires/Statement of Accounts in respect of the loan accounts of Corporate Debtor with the Financial Creditor subsequent to merger of erstwhile State bank of Patiala merged with the present Financial Creditor for the period between 13.12.2017 to 22.07.2019.
- 2.6. That accordingly the present petition is being filed under section 7 of the IBC and it is pertinent to note that there is no delay in filing present petition in view of the fact that the Audited Accounts (including the Balance Sheet) of the Corporate Debtor for the financial years ended 31.03.2016, 31.03.2017 and 31.03.2019 acknowledge the existence of the Financial Debt owed to Financial Creditor and the same initiates the limitation period afresh.
- 2.7. Thereafter, there has been few exchanges of communication in relation to outstanding debt, however, the Corporate Debtor failed in repayment of dues and committed the default.
3. This matter was listed on 02.11.2021 and again on 03.01.2022 when the Court Notice was ordered, and Corporate Debtor was directed to file reply within 14 days after receipt of the notice. On 08.02.2022, the Counsel for the Applicant submitted that despite service of Court Notice the Corporate Debtor chose not to appear in the matter, accordingly, the Applicant was allowed to take out substituted service by way of paper publication, and

the matter was posted on 04.04.2022. On 04.04.2022, the Corporate Debtor was set *ex-parte*. The Corporate Debtor didn't file any application for recalling the order dated 04.04.2022. This matter was reserved for Orders on 17.10.2022, however, no order was passed. Later on, it was noticed that this matter is pending for Orders, however, the Bench was reconstituted. Accordingly, this matter was listed again 22.02.2023 for de-reserving, and de-novo hearing. Thereafter, this matter was again listed on 10.04.2023, 27.06.2023, 10.07.2023 & 27.07.2023.

3.1. The Corporate Debtor neither appeared/represented before this bench nor any reply to the petition came to be filed despite all this. Hence, the Bench decided to proceed with the Hearing in the Petition and decide the Petition on basis of documents and arguments of the Applicant placed on record.

4. The Financial Creditor filed a written submission also, which is placed on record.

4.1. On account of continued absence of the Corporate Debtor, this Hon'ble Tribunal passed Order dated 08/02/2022 directing the Financial Creditor to take out paper publication in two daily leading newspapers one in English and another one in vernacular language i.e. Marathi mentioning the next date of hearing (04/04/2022) and file proof of service enclosing the original copy of newspaper. The Applicant has filed affidavit of service dated 19/02/2022 along with copy of the newspapers publication filed with this Hon'ble Tribunal.

5. This Bench heard the Counsel and perused the material available on record.

5.1. The Counsel on behalf of the Corporate Debtor none appeared when the matter was listed on several occasions. However, no reply was filed. Despite sufficient opportunities being granted, the Corporate Debtor failed to file reply. Even after substitution of the assignee a

Court Notice as well as notice by substituted service was issued to the Corporate Debtor by the assignee but neither Corporate Debtor filed the reply nor was represented.

5.2. It is evident from the records that the Financial Creditor had granted/sanctioned credit facility, and the Corporate Debtor availed the credit facilities but failed to repay the dues as a result of which the accounts of the Corporate Debtor were classified as Non-Performing Asset as per RBI prudential norms. Accordingly, it is not in dispute that the Corporate Debtor is in default of financial debt claimed in the part IV of this petition. Considering these facts, we opine that the nature of debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.

5.3. This Bench finds from the perusal of additional submissions of the Financial Creditor that the Corporate Debtor had served a copy of reply on the Financial Creditor, however, neither such copy was filed before this Bench nor any application was made to recall the order dated 04.04.2022 setting the Corporate Debtor *ex-parte*.

5.4. On the issue of limitation, the Applicant has placed on record the audited financial statements of the Corporate Debtor for year ended 31.03.2016, 31.03.2017 and 31.03.2019 contending that the debt claimed in the petition is acknowledged in these financial statements. As the various facilities were classified as NPA on 30.03.2014, 30.09.2014 and 29.12.2015, the period of limitation gets extended by such acknowledgement in the financial statements. The Applicant has relied upon the judgment of Hon'ble Supreme Court of India in the matter of Asset Reconstruction Company (India) Ltd. v/s Bishal Jaiswal & Anr. bearing civil appeal 323 of 2021 on this proposition. We find that the case of Applicant on limitation is

squarely covered by this decision, and the limitation period gets extended till 31.03.2022 in view of acknowledgment in the balance sheet.

5.5. In view of the above, we are of the considered view that there exists financial debt and default in repayment thereof in excess of threshold limit prescribed under Section 4 of the Code. The application is complete in all respect and is filed within the extended period of limitation. Hence, the petition deserved to be **admitted**.

6. **IA-2920/2022:** The Assistant Development Commissioner, SEEPZ-SEZ Government Union of India has filed an application seeking direction against the Interim Resolution Professional to be appointed in CP-1045/2021, in case this CP is admitted, that the possession of Unit No.603, 604 and 504 in SEEPZ-SEZ Andheri East Mumbai be not taken by such IRP and he may be directed not to consider Unit No.601 and 602 SEEPZ-SEZ Andheri East, Mumbai as assets of the Corporate Debtor. The Counsel for the Applicant submitted that upon commencement of the CIRP in the matter they cannot seek vacation of their premises, leased to the Corporate Debtor under SEZ Act; and the CIRP process may unnecessarily block the property of the Government which may be put to beneficial purpose for other entrepreneurs. These units are under occupation of the Corporate Debtor and Corporate Debtor in default in payment of rent, fine & penalties, and custom duty liability and recovery proceedings against these units have already been initiated by the Government under Section 7(3) of public premises (eviction unauthorised occupants) Act, 1971 by issuing recovery noticed dated 23.05.2018. It is further stated that unit nos. 601 & 602 were allotted to Chirag Designs and were not transferred to the Corporate Debtor even though other units 603 & 604 originally allotted to the Chirag Designs were transferred in the name of the Corporate Debtor on their request.

- 6.1. We have considered the prayer of the intervenor applicant and we feel that it would be appropriate, if IRP is directed to evaluate the necessity of unit nos. 603, 604 & 504 for the resolution of the Corporate Debtor immediately before constitution of CoC and place the matter before CoC at their first meeting itself to consider releasing these units to the Assistant Commissioner SEEPZ-SEZ Andheri East in case these units are not relevant or required for the resolution of the Corporate Debtor affairs. The claim of the intervenor shall be dealt with in accordance with the law. The IRP shall not include unit no. 601 and 602 in the assets of the Corporate Debtor in case these two units were not transfer in its name from Chirag Designs as contended by the intervenor. The intervenor shall provide necessary evidences in this regard to IRP to enable him to arrive at correct finding in these matters.
- 6.2. In view of aforesaid directions, the IA-2920/2022 is **disposed of**.
7. The Applicant has proposed the name of Mr. Surya Pratap Gupta, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01060/2017-2018/11753] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 1045/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by State Bank of India, Financial Creditor/ Applicant against Yash Jewellery Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench, as a result of moratorium, prohibits:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, 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 (SARFAESI Act);
 - d) 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) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of

section 31 of I&B Code or passes an order for the liquidation of the Corporate Debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the Corporate Insolvency Resolution Process (CIRP) shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Surya Pratap Gupta, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01060/2017-2018/11753] as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted immediately.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

10.08.2023/Bmb