

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 4062/IBC/NCLT/MB/MAH/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

ICICI Bank Limited
..... Financial Creditor

V.

Nakshatra Brands Limited.
..... Corporate Debtor
(Respondent)

Heard on: 22.01.2019
Pronounced on: 29.01.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :

Advocate Sagar Divekar a/w Advocate Abhimanyu.

For the Respondent :

1. C. Keswani i/b Economic Laws Practice for Anil Haldipur, Director of Corporate Debtor.
2. Rahul Agarwal for Directors Jyoti Vora and Dinesh Bhatia.

Per: M.K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'ICICI Bank Limited' (hereinafter as **Petitioner/Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 24.10.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Nakshatra Brands Limited' (hereinafter as **NBL/Corporate Debtor**) a Public Limited Company incorporated in the year 2004 in the name of Brightest Circle Jewellery Limited. Thereafter, in 2013 the name was changed to Nakshatra Brands limited.
2. The Corporate Debtor is engaged in the business of manufacturing, trading, importing and exporting diamond and gold jewellery within and outside India. The registered

address of the Corporate Debtor is stated to be Office Number-6 B Wing, 1st Floor, 'G' Block, Laxmi Tower, Bandra Kurla Complex, Bandra (East), Mumbai-400051.

3. In the requisite Form, under the head "Particulars of Financial Debt" the total amount claimed to be in default is **₹134,15,55,256.22/- as on 30.09.2018.**

Submissions by the Financial Creditor:

4. The Petitioner extended a Working Capital Loan facility to the Corporate Debtor and to Asmi Jewellery India Limited (**Asmi**) at the request of the Corporate Debtor. Thereafter, Asmi was amalgamated with the Corporate Debtor vide Order dated 22.04.2016 passed by the Hon'ble Bombay High Court. Accordingly, all debts and liabilities of Asmi have been transferred and vested in the Corporate debtor.
5. The Petitioner sanctioned the above said facility by way of a Credit Arrangement Letter dated 02.12.2005, with an overall limit of ₹10.60 Crores pursuant to which a Master Facility Agreement dated 31.12.2005 was entered into by both the parties. As per this agreement, the Petitioner sanctioned a working capital loan aggregating upto ₹10.00 Crores to the Corporate Debtor.
6. The Master Facility Agreement was secured by the following instruments:
- i. Deed of Hypothecation dated 31.12.2005.
 - ii. Deed of Personal Guarantee dated 31.12.2005: Guarantee extended by Mr. Mehul C. Choksi, Mr. Paresh K. Mehta, Mr. Milan Parikh and Mr. Pankaj K. Mehta.
 - iii. Undertaking for creation of permanent security dated 31.12.2005, whereby the Corporate Debtor undertook to create hypothecation on all its movable assets , to pay additional interest at the rate of 1.05% per annum, to refrain from creation of mortgage or charge or encumbrance on the Nakshatra Brand at the end of the 3 years from the date of the Master Facility Agreement in favour of any person without prior approval of the Applicant, to comply with requisite formalities for creation of mortgage and charge over the Nakshatra brand, to furnish deed of personal guarantee executed by Mr. Mehul C. Choksi, Mr. Paresh K. Mehta, Mr. Milan Parikh and Mr. Pankaj K. Mehta, to execute a power of attorney for creation of mortgage on the Nakshatra Brand.
 - iv. Power of Attorney for creation of mortgaged security dated 31 December 2005 in favour of the Applicant, authorising the Applicant to create a first mortgage on the Nakshatra Brand in favour of the Applicant for and on behalf of the Corporate Debtor, in the event of the Corporate Debtor failing to duly create a first mortgage on the Nakshatra Brand within the period stipulated under the Undertaking for creation of permanent security dated 31 December 2005.

7. Thereafter, the working capital facility extended to the Corporate Debtor was reduced from ₹10.00 Crores to ₹5.00 Crores by the Petitioner vide a Credit Arrangement Letter dated 04.10.2006.
8. Further, at the request of the Corporate Debtor, a Credit Arrangement Letter was extended on 06.02.2008 by the Petitioner enhancing the working capital facility from ₹5.00 Crores to ₹11.00 Crores.
9. Subsequently, *vide* letter dated 26 February 2008 addressed by the Corporate Debtor to 3i Infotech Trusteeship Services Limited (**Security Trustee**), the Corporate Debtor created a trust with a corpus of INR 100 (INR One Hundred Only) and appointed 3i Infotech Trusteeship Services Limited as the Security Trustee for holding upon trust for the benefit of the lenders, the trust properties and securities to be created pursuant to credit arrangement letters/ sanction letters and under the Master Facility Agreement, as amended from time to time, subject to the terms and conditions mentioned therein.
10. Thereafter, the Supplemental and Amendatory Agreement to the Master Facility Agreement dated 4 March 2008 was executed between the Corporate Debtor and the Applicant (**Supplemental Master Facility Agreement**), whereby a working capital facility aggregating to INR 11 Crores (INR Eleven Crores Only) was advanced by the Applicant to the Corporate Debtor.
11. The Supplemental Master Facility Agreement was secured by a Deed of Hypothecation dated 4 March 2008 executed by the Corporate Debtor in favour of the Security Trustee whereby, the whole of the stocks of raw materials, goods in process, semi-finished and finished goods, consumable stores and spares and such other movables, including book debts, bills, whether documentary or clean, outstanding monies, receivables both present and future in the Corporate Debtor's factories, premises and godowns situated at Popular House, Andheri, Mumbai (Maharashtra) or wherever else, were hypothecated as and by way of first charge in favour of the Security Trustee and shall rank *pari passu* inter-se among the Applicant and State Bank of Indore (another lender of the Corporate Debtor).
12. For the Supplemental Master Facility Agreement, contractual comfort was provided by way of Deed of Guarantee dated 7 March 2008 executed by GGL in favour of the Applicant, guaranteeing the payment of INR 11 Crores (INR Eleven Crores Only), and *inter alia*, indemnifying the Applicant against all losses of the principal sum, interest and other money, costs, charges and expenses as may be incurred in respect of any default by the Corporate Debtor and/ or the Guarantor in performance of their respective obligations under the Supplemental Master Facility Agreement and this Deed of Guarantee.

13. On 11 March 2008, the Security Trustee issued a letter to the Applicant, confirming that the Corporate Debtor had provided the Deed of Hypothecation dated 4 March 2008 as a security to the Master Facility Agreement and that the said Deed was in its possession. Further the letter noted that Form-8 had been filed on 10 March 2008 in respect of the securities created vide Deed of Hypothecation dated 4 March 2008, however a certificate of registration of charge issued by the Ministry of Corporate Affairs (**MCA**) in compliance thereof was awaited. The letter further noted that a letter from State Bank of Indore recognising the Applicant's *pari passu* charge over the moveable assets of the Corporate Debtor was awaited.
14. In furtherance of the letter dated 11 March 2008, the Security Trustee addressed a letter dated 14 March 2008 to the Assistant General Manager, State Bank of Indore and the Applicant, whereby the Security Trustee undertook to enter into an inter-se agreement with the State Bank of Indore on behalf of the Applicant, to define the rights and obligations of the parties inter-se and further providing that the securities created/ to be created by the Corporate Debtor shall rank *pari passu* for all purposes and to all intents and without any preference or priority of one over the other.
15. Pertinently, the Deed of Hypothecation dated 4 March 2008 was modified by Deed of Modification dated 14 September 2009, whereby terms relating to the nature of the facility were amended.
16. Thereafter, the Deed of Transfer dated 27 July 2012 was executed by the Security Trustee in favour of the Applicant, whereby the trust was terminated in accordance with the terms laid down thereunder. It was *inter alia*, agreed that the Security Trustee would assign, grant, convey, transfer and assure unto the Applicant all its rights, interests in the trust assets.
17. On 11.01.2013, a Principal Working Capital Consortium Agreement was entered into by and between the Corporate Debtor and a consortium of lenders, led by Punjab National Bank (PNB Consortium), whereby a working capital facility aggregating to ₹285.00 Crores was advanced. Of which, the Petitioner advanced the working capital facility of ₹11.00 Crores only.
18. The PNB Consortium consists of following banks:
 - i. ICICI Bank Limited
 - ii. Punjab National Bank
 - iii. Corporation Bank
 - iv. IDBI Bank Limited
 - v. Axis Bank Limited
 - vi. Vijaya Bank
 - vii. State Bank of India
 - viii. Canara Bank

ix. Bank of India.

The entire consortium has advanced a sum of ₹400.00 Crores Approx. out of which, ICICI Bank alone has advanced a sum of ₹134,15,55,256.22/-.

19. The Principal WCCA was secured by the following documents:

- i. Joint Deed of Hypothecation dated 11 January 2013,
- ii. Memorandum of entry recording mortgage by deposit of title deeds dated 11 January 2013,
- iii. Deed of Guarantee dated 11 January 2013 executed by GGL in favour of the Applicant.

20. Another Credit Arrangement Letter dated 17.12.2013 was extended whereby the Petitioner sanctioned the existing working capital facility to an extent of ₹11.00 Crores, subject to the terms and conditions mentioned therein. Pursuant to the Credit Arrangement Letter dated 17.12.2013, the **First Supplementary Working Capital Consortium Agreement** dated 29.03.2014 was entered into by and between the Corporate Debtor and PNB Consortium, whereby a working capital facility aggregating to ₹425.00 Crores was advanced. Of which, the Petitioner advanced the working capital facility of ₹11.00 crores.

21. First Supplementary Working Capital Consortium Agreement dated 11 January 2013 executed by GGL in favour of the Applicant was secured by:

- i. Deed of Mortgage cum Charge dated 29 March 2014.
- ii. Deed of Guarantee dated 29 March 2014 executed by GGL, as the corporate guarantor and Mr. Mehul C. Choksi, as the personal guarantor, in favour of the PNB Consortium.

22. On the same day, a Revival letter dated 29 March 2014 was executed by GGL and Mr. Mehul C. Choksi in favour of the PNB Consortium acknowledging their liability for the purposes of Section 18 of the Limitation Act, 1963 under the First Supplemental WCCA.

Facility advanced to Asmi

23. A Credit Arrangement Letter dated 22.07.2008 was extended to Asmi by the Petitioner, whereby it sanctioned a working capital facility with an overall limit of ₹30.00 Crores. Pursuant thereto, *vide* Facility Agreement dated 01.09.2008, the petitioner sanctioned a working capital loan aggregating up to a limit of ₹30.00 Crores to Asmi.

24. The Facility agreement was secured by the following instruments:

- i. Deed of Hypothecation dated 1 September 2008 executed between Asmi and the Petitioner.

- ii. Undertaking dated 1 September 2008 executed by Gitanjali Gems Limited (GGL) in favour of the Petitioner.
 - iii. Deed of Guarantee dated 1 September 2008 executed by GGL in favour of the Petitioner.
25. Thereafter, the petitioner extended a credit Arrangement Letter dated 07.09.2009, at the request of Asmi, whereby the petitioner enhanced the working capital facility extended to Asmi from ₹30.00 Crores to ₹50.00 Crores. Pursuant to the Credit Arrangement Letter dated 07.09.2009, Supplemental and Amendatory Agreement to the Facility Agreement dated 18.09.2009 (**First Supplemental Facility Agreement**) was executed between Asmi and the Petitioner, whereby the petitioner sanctioned working capital facility aggregating to ₹50.00 Crores.
26. The First Supplemental Facility Agreement was secured by:
- i. a Supplementary Deed of Hypothecation dated 18 September 2009 executed by Asmi in favour of the Security Trustee
 - ii. Undertaking dated 18 September 2009 executed by GGL in favour of the Petitioner.
 - iii. Deed of Guarantee dated 18 September 2009 executed by GGL in favour of the Petitioner.
27. Thereafter, at the request of Asmi, the Petitioner extended a Credit Arrangement Letter dated 17.11.2011, whereby the Petitioner enhanced the working capital facility extended to the Corporate Debtor from ₹50.00 Crores to ₹75.00 Crores. Thereafter, a Supplemental and Amendatory Agreement to the Facility Agreement dated 19.12.2011 (**Second Supplemental Facility Agreement**) was executed between Asmi and the Petitioner, whereby the petitioner sanctioned working capital facility aggregating to ₹75.00 Crores.
28. The Second Supplemental Facility Agreement was secured by:
- i. Deed of Hypothecation dated 19 December 2011 executed by Asmi in favour of the Petitioner.
 - ii. Deed of Guarantee dated 19 December 2011 executed by GGL in favour of the Petitioner.
29. Pursuant to the Credit Arrangement Letter dated 17.11.2011, Working Capital Consortium Agreement dated 14.05.2012 was executed between Asmi (**Asmi WCCA**) and the consortium of lenders led by the Petitioner, whereby the consortium of lenders sanctioned working capital facility aggregating to ₹250.00 Crores. Of which, the Petitioner sanctioned the existing working capital facility to the tune of ₹75.00 Crores to Asmi.
30. The Asmi WCCA was secured by:

- i. Joint Deed of Hypothecation dated 14 May 2012 executed by Asmi in favour of the Petitioner
- ii. Deed of Corporate Guarantee dated 14 May 2012 executed by GGL in favour of the Petitioner.
- iii. Deed of Personal Guarantee dated 14 May 2012 extended by Mr. Mehul C. Choksi in favour of the consortium of lenders, led by the Petitioner.

31. Thereafter, at the request of Asmi, the Petitioner extended a Credit Arrangement letter dated 28.03.2013, whereby the Petitioner enhanced the working capital facility extended to Asmi from ₹75.00 Crores to ₹85.00 Crores. Pursuant to the Credit Arrangement letter dated 28.03.2013, Supplemental and Amendatory Agreement to the Asmi WCCA dated 28.03.2013 (**Supplemental Asmi WCCA**) was executed between Asmi and the Petitioner, whereby the Petitioner sanctioned working capital facility aggregating to ₹85.00 Crores.

32. The Supplemental Asmi WCCA was secured by:

- i. a Supplemental Deed of Hypothecation dated 28 March 2013 executed by Asmi in favour of the Applicant,
- ii. Deed of Corporate Guarantee dated 28 March 2013 executed by GGL in favour of the Petitioner.

33. Thereafter, at the request of Asmi, the Petitioner extended a Credit Arrangement Letter dated 27.08.2014, whereby the Petitioner enhanced the working capital facility extended to Asmi from ₹85.00 Crores to ₹107.00 Crores. Pursuant to the Credit Arrangement Letter dated 27.08.2014, Supplemental and amendatory Agreement to the Asmi WCCA dated 29.09.2014 (**Second Supplemental Asmi WCCA**) was executed between Asmi and the Petitioner, whereby the Petitioner sanctioned working capital facility aggregating to ₹107 Crores.

34. The Second Supplemental Asmi WCCA was secured by:

- i. a Supplemental Deed of Hypothecation dated 29 September 2014 executed by Asmi in favour of the Petitioner,
- ii. Deed of Corporate Guarantee dated 29 September 2014 executed by GGL in favour of the Applicant,
- iii. Deed of Personal Guarantee dated 29 September 2014 was extended by Mr. Mehul C. Choksi in favour of the Petitioner.

35. Thereafter, at the request of the Corporate Debtor, the Petitioner extended a Renewal Credit Arrangement Letter dated 24.07.2017, whereby the Petitioner enhanced the working capital facility extended to the Corporate Debtor from ₹11.00 Crores to ₹118.00 Crores, on account of an order dated 22.04.2016 passed by the Hon'ble Bombay High Court, whereby Asmi was amalgamated with the Corporate Debtor.

36. On 22 September 2017, Letter of Acknowledgement was issued by the Corporate Debtor to the Applicant whereby it acknowledged that as on 21 September 2017, the balance due under the working capital facility was to the tune of INR 117,35,50,000 Crores.
37. Accordingly, in terms of the facility agreements, the Applicant issued a notice of recall dated 21 February 2018 in respect of the Facilities, (**Recall Notice**) to the Corporate Debtor, recalling the Facilities availed by the Corporate Debtor from the Applicant along with interest and other monies due in respect thereof. Further, the Applicant, *vide* the Recall Notice called upon the Corporate Debtor to honour the obligations towards the Applicant and pay the outstanding amount under the Facilities aggregating to INR 117,83,93,426 (INR One Hundred and Seventeen Crores Eighty Three Lakhs Ninety-Three Thousand Four Hundred and Twenty Six Only) as on 31 January 2018 together with applicable interest, penal interest, premia charges thereon at the contractual rates upon the footing of compounded interest until payment/realisation.
38. Upon failure to make payment despite issuing the Recall Notice, the account of the Corporate Debtor with the Applicant was classified as a non-performing asset (**NPA**) with effect from 31 March 2018.
39. It is submitted that despite issuing the Recall Notice and the Statutory Notice and time granted for regularisation of accounts, the Corporate Debtor has failed and neglected to repay the outstanding dues under the facilities to the Petitioner.
40. The Applicant submits that the aforesaid clearly demonstrates, (i) the existence of a debt owed by the Corporate Debtor to the Applicant under the Facilities; and (ii) the occurrence of persistent defaults on part of the Corporate Debtor in repayment of such debt. Hence, it is prayed that the petition be admitted.

A) No Submissions by the Corporate Debtor :

41. The promoters and directors of the Corporate Debtor never appeared before this Bench except on the date of final hearing dated 22.01.2019, after a specific direction by the Bench for the Directors to be present. The executive directors namely Jyoti Vora and Dinesh Bhatia were present in person. They informed the court that they did not have any involvement in availing these credits from the bank authorities. It is strange and alarming to note that the directors present, on issuance of notice of personal appearance, informed that they happened to be an employee of the Debtor Company, having no knowledge about this financial irregularity. They were forced to be a Director of this Company. No fees for attending Board meetings were ever paid. They have also been questioned by the EOW and ED officers but due to no knowledge of the affairs, asked them to leave. Moreover, no

reply has been received on record till date. The Corporate Debtor has nowhere denied his liability to pay the amount claimed.

Findings :

42. The debt was repayable as per the Agreements and other documents put on record. The Financial creditor issued a recall notice to the Corporate Debtor for repayment of debt. However, the Corporate Debtor failed to pay the said sum. Furthermore, the Corporate Debtor failed to reply to the petition in hand as well.
43. Huge stake is involved in the present case. The concerned matter is of national importance as already there are criminal proceedings under the Prevention of Money Laundering Act, 2002 and Fugitive Offenders act, 2018 going on against the promoters of this company. Recovery proceedings have been initiated before DRT, Mumbai. Therefore, on bare perusal of the documents placed on record, submissions made, and the fact that the corporate debtor has time and again acknowledged its liability, not even an iota of doubt is left to believe that the Corporate Debtor had committed breach in repayment.
44. Further, by not filing any reply to this petition or recall notice, the Corporate Debtor clarifies that there does not exist any valid defence to the amount claimed. Therefore, it can be very safely presumed that the Corporate Debtor has nothing to say in its defence.
45. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
46. Considering the above facts, I come to conclusion 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.
47. As a consequence, keeping the admitted facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, I am of the conscientious view that this Petition deserves ‘**Admission**’.
48. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
49. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.

50. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. Vijay Garg**, Flat No. 802, Tower 6, Unitech Escape Nirvana Country, Golf Course Road Extension, Sector-50, Gurugram, Haryana-122018., having registration No. IBBI/IPA-002/IP-N00359/2017-18/11060 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
51. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
52. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
53. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
54. The appointed IRP shall communicate this order to the other authorities who have taken action against the Debtors namely, Enforcement Directorate, Economic Offences Wing, Income Tax Department and Ministry of External Affairs to take due cognizance of this insolvency order for further action. The bank authorities shall take action against the debtor company along with the guarantors without fail immediately. In case of any recovery, the same should be reported to the appointed IRP, who shall in turn report the matter to this Bench.
55. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
56. Ordered Accordingly.

Dated : 29.01.2019

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)