

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

CP No. 3872/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
(Petitioner/Applicant)
V.

Nakshatra World 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 03.10.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against '**Nakshatra World Limited**' (hereinafter as **NWL/Corporate Debtor**) a Public Limited Company incorporated in the year 1995 in the name of Fantasy Diamonds Cuts Private Limited. Thereafter, in 2009 the name was changed to Fantasy Jewellery Private limited. Subsequently, in 2010 the name was changed to Gitanjali Brands Limited and in 2016 the name was again changed to Nakshatra World Limited, which is presently the name of the Corporate Debtor. The Corporate debtor is **a subsidiary of Gitanjali Gems 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 No.1, under the head "Particulars of Financial Debt" the total amount claimed to be in **default is ₹134,79,70,413.28/-** as on 31.08.2018.

A) Submissions by the Financial Creditor:

4. The Applicant, at the request of the Corporate Debtor, extended a Credit Arrangement Letter dated 18.10.2006, whereby it sanctioned a 'Working Capital' facility with an overall limit of INR 10 Crores (INR Ten Crores only) on the terms and conditions mentioned therein.
5. Pursuant thereto, *vide* Master Facility Agreement dated 15 November 2006 (**Master Facility Agreement**), the Applicant sanctioned a Working Capital Loan aggregating up to a limit of INR 10 Crores (INR Ten Crores Only) to the Corporate Debtor.
6. The Master Facility Agreement was secured by the following instruments:
 - i. Deed of Guarantee dated 15.11.2006 was extended by Gitanjali Gems Limited (**GGL**) in favour of the Petitioner,
 - ii. Undertaking dated 15.11.2006 that the Corporate Debtor would make necessary and satisfactory arrangements with its bankers for meeting its additional working capital requirements and security creation.
7. Pursuant to the Undertaking dated 15 November 2006, the Petitioner and YES Bank Limited, forming a 'consortium of lenders', led by the Petitioner (**Applicant Bank Consortium**), sanctioned a working capital loan aggregating to INR 30 Crores (INR Thirty Crores Only) by way of a 'Working Capital Consortium Agreement' dated 06.08.2007 (**WCCA**). Of which, the Petitioner sanctioned the working capital facility of INR 10 Crores (INR Ten Crores Only) as agreed upon under the Credit Arrangement Letter dated 18 October 2006 and the Master Facility Agreement.
8. The WCCA was secured by :
 - i. Joint Deed of Hypothecation dated 6 August 2007 executed between the Corporate Debtor and the Applicant Bank consortium;

- ii. Deed of Guarantee dated 6 August 2007 executed by GGL in favour of the Applicant Bank consortium.
9. Thereafter, at the request of the Corporate Debtor, the Petitioner extended a Credit Arrangement Letter dated 7 November 2007, whereby the Applicant enhanced the working capital facility extended to the Corporate Debtor from INR 10 Crores (INR Ten Crores Only) to INR 30 Crores (INR Thirty Crores Only), subject to the terms and conditions mentioned therein.
10. *Vide* letter dated 30 November, 2007 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 the Security Trustee for holding upon Trust for the benefit of the Applicant Bank consortium, the trust properties and securities to be created pursuant to credit arrangement letters/ sanction letters and under the WCCA, as amended from time to time, subject to the terms and conditions mentioned therein.
11. Subsequently, various other banks (namely Development Credit Bank Limited and IndusInd Bank Limited) joined the Applicant Bank consortium and the First Supplemental to Working Capital Consortium Agreement dated 3 December 2007 (**First Supplement WCCA**) was executed between the Corporate Debtor on one hand and the renewed Applicant Bank consortium on the other hand, whereby a working capital facility aggregating to INR 75 Crores (INR Seventy-Five Crores Only) was advanced. Of which, the Applicant advanced a working capital facility of an amount of INR 30 Crores (INR Thirty Crores Only).
12. The First Supplemental WCCA was secured by:
 - i. Deed of Hypothecation dated 3 December 2007 executed by the Corporate Debtor in favour of Security Trustee,
 - ii. Deed of Guarantee dated 3 December 2007 executed by GGL in favour of the Applicant Bank consortium,
 - iii. Undertaking cum Subordination dated 03.12.2007 issued by GGL in favour of the Applicant
13. On 5 December 2007, a letter was issued by the Security Trustee to the Applicant and the Corporate Debtor, pursuant to letter dated 30 November 2007 issued by the Corporate Debtor to the Security Trustee, recognizing the Trust constituted by the Corporate Debtor in view of financial assistance to the tune of INR

75 Crores (INR Seventy-Five Crores Only) advanced by the Applicant Bank consortium and accepting its appointment as Security Trustee.

14. At the request of the Corporate Debtor, the Applicant again issued a Credit Arrangement Letter dated 19 July 2010 to the Corporate Debtor whereby the Applicant enhanced the overall limit of the working capital facilities from INR 30 Crores (INR Thirty Crores Only) to INR 65 Crores (INR Sixty-Five Crores Only).

15. Pending joint documentation, a Facility Agreement dated 6 August 2010 (**First Interim Facility Agreement**) was entered into between the Corporate Debtor and the Applicant whereby the Applicant enhanced the overall limit of the working capital facilities from INR 30 Crores (INR Thirty Crores Only) to INR 65 Crores (INR Sixty-Five Crores Only).

16. The First Interim Facility was secured by :

- i. an Undertaking to create security in stipulated time dated 6 August 2010 executed by the Corporate Debtor in favour of the Applicant,
- ii. Deed of Guarantee dated 6 August 2010 executed by GGL in favour of the Applicant.

17. Subsequently, by way of an Amendatory Credit Arrangement Letter dated 9 August 2010 issued by the Applicant to the Corporate Debtor, the existing terms relating to creation of charges as specified in the Credit Arrangement Letter dated 19 July 2010 were modified. The modified terms proposed that the creation of security for the enhanced amount of INR 35 Crores (INR Thirty-Five Crores Only) would be made within 20 working days from the date of issuance of the said Credit Arrangement Letter.

18. Pursuant to the aforementioned Credit Arrangement Letter dated 19 July 2010 and Amendatory Credit Arrangement Letter dated 9 August 2010, the Second Supplemental Working Capital Consortium Agreement dated 2 September, 2010 (**Second Supplemental WCCA**) was executed between the Corporate Debtor and the Applicant Bank consortium. Notably, Syndicate Bank, Union Bank of India, Oriental Bank of Commerce, Andhra Bank and the Shamrao Vithal Co-operative Bank Ltd. were inducted into the Applicant Bank consortium and Development Credit Bank exited the Applicant Bank consortium. By way of the Second Supplemental WCCA, the working capital facility advanced by the Applicant Bank consortium was enhanced from INR 75 Crores (INR Seventy-Five Crores Only) to INR 200 Crores (INR Two Hundred Crores Only). Of which, the Applicant advanced a working capital facility of an amount of INR 65 Crores (INR Sixty-Five Crores Only).

19. The Second Supplemental WCCA was secured by:
- i. Supplementary Deed of Hypothecation dated 2 September 2010 (**Second Supplemental Deed of Hypothecation**) executed by the Corporate Debtor in favour of the Security Trustee
 - ii. Deed of Undertaking cum Indemnity dated 2 September 2010 executed by the Corporate Debtor in favour of the Security Trustee and the Applicant as the lead bank.
 - iii. Deed of Guarantee dated 2 September 2010 executed by GGL in favour of the Applicant Bank consortium,
 - iv. Deed of Undertaking cum Indemnity dated 2 September 2010 executed by GGL in favour of the Applicant as the lead bank of the Applicant Bank consortium.
20. Thereafter, at the request of the Corporate Debtor, the Applicant issued another Credit Arrangement Letter dated 17 November 2011 whereby the Applicant enhanced the overall limit of the working capital facilities from INR 65 Crores (INR Sixty-Five Crores Only) to INR 90 Crores (INR Ninety Crores Only), subject to the terms and conditions mentioned therein.
21. Pending joint documentation, a Supplemental and Amendatory Agreement to the Working Capital Consortium Agreement dated 19 December 2011 (**Second Interim Facility Agreement**) was entered into between the Corporate Debtor and the Applicant enhanced the overall limit of the working capital facilities from INR 65 Crores (INR Sixty-Five Crores Only) to INR 90 Crores (INR Ninety Crores Only).
22. The Second Interim Facility Agreement was secured by :
- i. Supplemental Deed of Hypothecation dated 19 December 2011 executed by the Corporate Debtor in favour of the Applicant,
 - ii. Deed of Guarantee dated 19 December 2011 executed by GGL in favour of the Applicant,
23. Pursuant to the Credit Arrangement Letter dated 17 November 2011, the Third Supplemental Working Capital Consortium Agreement dated 18 April 2012 (**Third Supplemental WCCA**) was executed between the Corporate Debtor and the Applicant Bank consortium. Notably, Dena Bank was inducted into the Applicant Bank consortium. By way of the Third Supplemental WCCA, the working capital facility advanced by the Applicant Bank consortium was enhanced from INR 200

Crores (INR Two Hundred Crores Only) to INR 350 Crores (INR Three Hundred and Fifty Crores Only). Of which, the Applicant advanced a working capital facility of an amount of INR 90 Crores (INR Ninety Crores Only).

24. Third Supplemental WCCA was secured by:

- i. Third Supplemental Deed of Hypothecation dated 18 April 2012 executed by the Corporate Debtor in favour of the Security Trustee ,
- ii. Deed of Guarantee dated 18 April 2012 executed by GGL in favour of the Applicant Bank consortium.

25. On 16 May 2012, the Security Trustee issued a letter to the Applicant, confirming that the Corporate Debtor had provided the Amended Security Trustee Agreement dated 18 April 2012, Deed of Accession executed between the Corporate Debtor, Dena Bank, Vijaya Bank and the Security Trustee dated 18 April 2012 and the Third Supplemental Deed of Hypothecation dated 18 April 2012 to secure the facilities and that the said documents were in its possession. The letter further noted that Form-8 had been filed on 30 April 2012 in respect of the securities created vide Third Supplemental Deed of Hypothecation dated 18 April 2012 and a certificate of registration of charge had been issued by the MCA in compliance thereof on 30 April 2012.

26. Thereafter, at the request of the Corporate Debtor, the Applicant extended a Credit Arrangement Letter dated 18 February 2013 whereby the Applicant enhanced the overall limit of the working capital facilities from INR 90 Crores (INR Ninety Crores Only) to INR 100 Crores (INR One Hundred Crores Only), subject to the terms and conditions mentioned therein.

27. Pending joint documentation, a Supplemental and Amendatory Agreement to the Working Capital Consortium Agreement dated 12 March 2013 (**Third Interim Facility Agreement**) was entered into between the Corporate Debtor and the Applicant whereby the Applicant enhanced the overall limit of the working capital facilities from INR 90 Crores (INR Ninety Crores Only) to INR 100 Crores (INR One Hundred Crores Only), subject to the terms and conditions mentioned therein.

28. Third Interim Facility Agreement was secured by:

- i. a Supplemental Deed of Hypothecation dated 12 March 2013 executed by the Corporate Debtor in favour of the Applicant
- ii. Deed of Guarantee dated 12 March 2013 executed by GGL in favour of the Applicant,

29. Subsequently, again at the request of the Corporate Debtor, the Applicant extended a Credit Arrangement Letter dated 27 August 2014 whereby the Applicant enhanced the overall limit of the working capital facilities from INR 100 Crores (INR One Hundred Crores Only) to INR 121 Crores (INR One Hundred and Twenty-One Crores Only), subject to the terms and conditions mentioned therein.
30. Pending joint documentation, a Supplemental and Amendatory Agreement to the Working Capital Consortium Agreement dated 29 September 2014 (**Fourth Interim Facility Agreement**) was entered into between the Corporate Debtor and the Applicant whereby the Applicant enhanced the overall limit of the working capital facilities from INR 100 Crores (INR One Hundred Crores Only) to INR 121 Crores (INR One Hundred and Twenty-One Crores Only).
31. Fourth Interim Facility Agreement was secured by :
- i. a Supplemental Deed of Hypothecation dated 29 September 2014 executed by the Corporate Debtor in favour of the Applicant
 - ii. Deed of Guarantee dated 29 September 2014 executed by GGL in favour of the Applicant,
 - iii. Deed of Personal Guarantee dated 29 September 2014 executed by Mr. Mehul C. Choksi in favour of the Applicant.
32. Additionally, at the request of the Corporate Debtor, the Applicant issued a Credit Arrangement Letter dated 31 July 2017 whereby the Applicant renewed the working capital facilities upto an overall limit of INR 121 Crores (INR One Hundred and Twenty-One Crores Only) upto 18 July 2018, subject to the terms and conditions mentioned therein.
33. On 1 August 2017, letter of Acknowledgement was issued by the Corporate Debtor to the Applicant whereby it acknowledged that it had executed the Third Interim Facility Agreement which had been secured by the Supplemental Deed of Hypothecation dated 12 March 2013. Further contractual comfort to the Third Interim Facility Agreement had been provided by way of a Deed of Guarantee dated 12 March 2013. Pursuant thereto, the **Corporate Debtor acknowledged that the balance due under the working capital facility was to the tune of INR 119,74,09,611** (INR One Hundred and Nineteen Crores Seventy Four Lakhs Nine Thousand Six Hundred and Eleven Only).
34. 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 120,45,88,734 (INR One Hundred and Twenty Crores Forty Five Lakh Eighty-Eight Thousand Seven Hundred and Thirty Four 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.

35. 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.**

36. 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.

37. 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.

B) No Submissions by the Corporate Debtor :

38. 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 and recorded their presence in the order sheet. 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 :

39. 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.

40. 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 hold that the Corporate Debtor had committed breach in repayment.
41. The directors present are nothing but name lenders having no information about the functioning of this debtor company. The main promoter/directors Mr. Mehul Choksi have never surfaced during the proceedings. The Bench has asked to inform the whereabouts and the contact details of the absconding directors. However, they have expressed their inability to provide any information having no knowledge of their whereabouts.
42. 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.
43. 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.
44. 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.
45. 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’**.
46. 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.

47. 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**.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
54. Ordered Accordingly.

Dated : 29.01.2019

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