



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 22 of 2024

*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)*

IN THE MATTER OF:

Canara Bank

... Financial Creditor

And

Topline Commodities Pvt. Ltd.

... Corporate Debtor

Date of Pronouncement: 20th of August, 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. Sujash Ghosh Dostidar, Adv.] For the Financial Creditor

Ms. Sankari Roy, Adv.

Ms. Sayori Mukhopadhyay, Adv.

Mr. Shaunak Mitra, Adv.] For the Corporate Debtor

Ms. Meenakshi Manot, Adv.

Ms. Shreya Choudhary, Adv.

ORDER

Per: D. Arvind, Member (Technical):

- 1.** The Court congregated through hybrid mode.
- 2.** Heard Ld. Counsels for the parties.
- 3.** This petition has been filed by **Canara Bank** (hereinafter referred as **“Applicant/Financial Creditor”**) under Section 7 of IBC seeking commencement of Corporate Insolvency Resolution Process (CIRP)

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of **Topline Commodities Pvt. Ltd.** (hereinafter referred as **“Corporate Debtor/Respondent”**).

Brief facts of the case:

4. The applicant Canara Bank (erstwhile Syndicate Bank) signed credit facilities to the corporate debtor on 03.09.2015, for Term loan I Rs. 16.76 crores, Term Loan II Rs. 32.10 crores with the sub-limit as FLC for an amount of Rs. 28.00 crores and bank guarantee for an amount of 4 crores.
5. The said sanction letter was duly executed and delivered by the financial creditor on 09.10.2015 and acknowledged by the corporate debtor by enclosing, inter alia, including following documents:
 - (a) Composite Hypothecation Agreement dated 09.10.2015 for Rs. 52,86,00,000/-
 - (b) Letter of undertaking for compliance of post release terms and conditions dated 09.10.2015.
6. M/s. Wonder Images Pvt. Ltd., M/s. Aniruddha Construction & Investment Pvt. Ltd., M/s. Avadesh Properties & Holding Pvt. Ltd., Sri Ram Avatar Poddar, Sri Sanjay Poddar, Sri Rajesh Poddar & Sri Mayur Poddar executed corporate guarantee/personal guarantee agreement to secure the loan availed by the corporate debtor from time to time.
7. The credit facilities were renewed, enhanced and additional facilities were given from time to time. The credit facilities were renewed, enhanced and modified on 29.07.2022 and various agreements were executed between the parties accompanied by corporate guarantees and personal guarantee agreements executed by the guarantors on 29.07.2022. It is the claim of the petitioner that from January 2023,

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the operation and conduct of the corporate debtor with regard to the conditions of financial assistance/credit facilities became irregular and the corporate debtor having failed to comply with the terms of the loan agreement was evasive in settling the dues. After considerable correspondence between the parties the account of the corporate debtor was classified as NPA on 25.04.2023, in accordance with the directives/guidelines issued by the Reserve Bank of India.

- 8.** The amount claimed to be in default as per Part IV of Form 1 submitted along with the application is Rs. 71,26,52,065/- and the date of default is stated as 25.04.2023. Irregularities for defaulted amount computation and dates of default in tabular form has been annexed in annexure C to the application.

Ld. Counsel for Applicant:

- 9.** Ld. Counsel for applicant brings to our notice various agreements made between the parties in connection with the credit facilities extended by the applicant to the corporate debtor. He also brought our notice the record of default issued by the information utility which records the date of default as 25.01.2023. Several record of defaults for different loan agreements made between the parties have been attached in the rejoinder to the reply from Page No. 10 to 96 of the rejoinder, all of which confirm the debt in default duly authenticated by the corporate debtor.
 - 10.** He thus, submits that debt in default has been clearly established and the defaulted amount is an excess of the threshold limit prescribed under Section 4 of IBC for the purpose of initiation of Corporate Insolvency Resolution Process of the corporate debtor. He also submits that the application has been filed in time as the date
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of default is 25.04.2023 whereas the application has been filed on 08.12.2023.

Ld. Counsel for Respondent:

- 11.** Ld. Counsel submits that the applicant has not produced any authorization for filing this petition. In the absence of any particular resolution/letter of authorization, no petition could have been filed by the applicant. As such the petition is defective and fatal in nature which strikes at the very root of the maintainability of the petition. The Ld. Counsel also submits that the applicant has not enclosed any record of default recorded with any information utility and therefore, the petition is incomplete. He submits that as per NPA classification norms published by Reserve Bank of India in the circular *vide* DBR. No. BP. BC. 45/21.04. 048/2018-19 dated 07.06.2019 financial creditors are under an obligation to recognize incipient stress in borrower accounts and immediately on default by classify them as Special Mention Accounts (SMA). Efforts should be made and time should be given to such borrowers for bringing back their account to normal/standard account.
- 12.** In the instant case, the financial creditor failed to classify the corporate debtors account as a “Special Mention Account”. The financial creditor directly classified the corporate debtor as NPA as per his whims and fancies. He further submitted that had there been any default and account of corporate debtor falls under any category of SMA – 0, 1 or 2 the financial creditor would be duty bound to inform the corporate debtor about the same and grant it an opportunity to move back the account to standard category by readjusting the days past account back to “0”. The fact that no such opportunity was granted to the corporate debtor at any stage clearly

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demonstrate that there had been no default on the part of the corporate debtor at any stage.

- 13.** He further submitted that in the purported notice dated 14.08.2023, issued under Section 13(2) of the SARFAEIS Act, 2002, the applicant had contended irregularity in account facility from January 2023. It is the claim of the Ld. Counsel for respondent that applicant has resorted to falsehood and misrepresentation to confuse this Tribunal. Ld. Counsel submits that the project for manufacturing artificial PU Leather for which a term loan of Rs. 52 crores was borrowed from Syndicate Bank (now merged with Canara Bank) faced difficulties on account of Covid 19 pandemic. The corporate debtor was facing market driven head-winds in achieving optimum level of operation and informed the financial creditor about the financial difficulties being faced by the them and discussed the future road map with the officials of financial creditor so that the unit could overcome the market linked head-winds. It is the submission of the Ld. Counsel that officials of the financial creditor assured the corporate debtor of all possible assistance to help the unit to run optimally and profitably. However, these assurances were never met and consequently, the promoters were left with no option but to infuse further capital in the form of equity and unsecured loans to the tune of Rs. 57.11 crores to fund the losses and to meet debt services and repayment obligations.
- 14.** Ld. Counsel further submits that the original amount stipulated at the time of sanction of credit facilities towards the promoters contribution was only Rs. 30.96 crores whereas, on as on date the promoters have contributed in excess of Rs. 57.11 crores which demonstrates that bona fide of the corporate debtor in running the
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operations of the company and meeting the debt servicing and repayment obligations.

- 15.** The Ld. Counsel further submits that the corporate debtor requested the financial creditor to restructure the account keeping in mind the market conditions, losses incurred etc.
- 16.** The Ld. Counsel further submits that financial creditor has agreed to consider such request for restructuring and even carried out viability study which also validate the contention of the necessity for such restructuring. He relied on the copies of correspondences made in this regard which are annexed in Annexure "A" to the Reply Affidavit. He further submits that till date against the sanctioned credit facilities, the corporate debtor has already repaid a substantial amount which reinstates the fact that there was never an intention to either misuse or misappropriate the credit facilities availed by it.
- 17.** He also brought to our attention the General Power of Attorney issued in favour of Mayur Krishna on 08.08.2012. This General Power of Attorney has been issued prior to enactment of Insolvency and Bankruptcy Code and, therefore, there is no specific General Power of Attorney authorizing him to initiate action under IBC and consequently this petition initiated is without authority and on this ground alone this petition deserves to be dismissed.

Analysis and Findings:

- 18.** We find that the debt of Rs. 71,26,52,065 is in default as evidenced by the several records of default issued by the information utility as could be seen from Pages No. 10 to 97 of the Rejoinder filed by the financial creditor. All the records of default issued by the information
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utility has been duly authenticated by the corporate debtor and therefore, we find no reason to get into the other records placed by the financial creditor for establishing the amount of debt and default.

19. The main defences of the corporate debtor are hereunder:

(a) There is no General Power of Attorney granted to any authorized representative of the financial creditor for initiating CIRP as the General Power of Attorney granted in favour of Mayur Kirshna was on 08.08.2012, which is before the Insolvency and Bankruptcy Code came into picture.

(b) We have perused the said General Power of Attorney dated 08.08.2021. In Clause 11 of the said document the bank has authorized the Attorney holder to act on behalf of the bank in all matters to or incidents arising out of the bankruptcy or insolvency or any composition or any other arrangement with the creditors of any person or persons indebted or under liability to the bank or claimed so to be or in the winding up of any company so indebted or under liability or claimed so to be.

20. Though the Insolvency and Bankruptcy Code came into picture in 2016, in our view, this clause authorizes the attorney holder, the power to initiate all actions, not only action with regard to recovery of the overdue credit facility advanced by the financial creditor to the corporate debtor but also initiate insolvency proceedings. In any event, even assuming that POA executed in 2012 could not have contained a clause with reference to insolvency under IBC 2016, this point is too technical in nature and deserves to be rejected, as it is curable defect, if at all.

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21. Coming to the second defence taken that the corporate debtor never defaulted but for the period post Covid 19 pandemic. According to Ld. Counsel for respondent before classifying any account as NPA the financial creditor is required to classify the overdue actions as under:

SMA – 0: Up to 30 days

SMA – 1: More than 30 days and up to 60 days

SMA – 2: More than 60 days and up to 90 days

22. We find that there is no response by the applicant in this regard to the reply made by the respondent. If there was a default, the corporate debtor would fall under any of the categories of SMA – 0, 1 or 2 and opportunity should have been granted to the corporate debtor to regularize the account and bring it back to SMA – 0, as per RBI guidelines. This contention of the respondent and the requirement of the financial creditor to take certain actions in terms of RBI guidelines before classifying any account as NPA is a matter of dispute between the parties which can be agitated only before a Civil Court. In a summary proceeding before the Adjudicating Authority, we are concerned with debt and default. If the defaulted debt is in excess of 1 crore and default of the debt is established, then the Adjudicating Authority will have no option but to admit the petition under Section 7 of the Code.

23. In the given case, debt and default has been clearly established by the financial creditor by placing the records of default issued by information utility. All the records of default issued by the information utility has been duly authenticated by the corporate debtor and consequently, the debt and default has been established

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beyond any doubt. The Hon'ble Supreme Court's judgment in the case of **Innoventive Industries Ltd. v. ICICI Bank** reported in **(2018) 1 SCC 407: MANU/SC/1063/2017** has laid down that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins..."

"28.... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ..."

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject application and not otherwise."

(Emphasis added)

- 24.** As held by the Hon'ble Supreme Court judgment in the case of **Innoventive Industries Ltd. v. ICICI Bank** cited supra, as long as there is debt and default and the defaulted amount is in excess of threshold limit, this Adjudicating Authority has to admit the petition. Since, we find all the criteria mentioned above has been met in this case, **we admit the petition**. We have also noted that the petition has been filed within the time limit prescribed.

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- 25.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- 26.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
- 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 asset 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 possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any

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other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

27. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
28. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
29. The Petition has proposed the name of **Mr. Avishek Gupta, Address: CK 104, Sector II, Salt Lake, Kolkata, West Bengal: 700 091, Registration No. IBBI/IPA-003/IP-N000135/2017-2018/11499, contact no.: 9051320025, Email ID: avishek@optimusresolution.net** , as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure II at pages 1605 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the **Boardor Insolvency Professional Agency of the Institute of Cost Accountants of India**. Hence, we appoint “**Mr. Avishek Gupta**” as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations,

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2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- 30.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 31.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- 32.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of

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Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

- 33.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- 34.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- 35.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- 36.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
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- 37.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- 38.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- 39.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 40.** List this matter on **01.10.2024, for hearing the progress report.**
- 41.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 20th day of August, 2024.

PH[PS]