IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No. 1318/MB-VI/2022

[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:

AXIS BANK LIMITED

[CIN- L65110GJ1993PLC020769]

Registered Office: Trishul, 3rd Floor, Opp.

Samartheshwar Temple, Law Garden Ellisbridge

Ahmedabad -380006, Gujarat.

…Financial Creditor

V/s

MORARJEE TEXTILES LIMITED

[CIN- L52322MH1995PLC090643]

Registered Office: Peninsula Corporate Park, Unit 5

Ground Floor, Tower 1, Wing B, Ganpatrao Kadam Marg

Lower Parel, Mumbai -400013, Maharashtra.

...Corporate Debtor

Pronounced: 09.02.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances:

Financial Creditor : Adv. Shantam Mandhyan

Corporate Debtor : Adv. Rohan Agrawal

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. **Background**

1.1 This is an Application bearing C.P. (IB) No. 1318/MB/C-VI/2022 (Application), filed by Axis Bank Limited, the Financial Creditor (FC), on 25.11.2022, under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Morarjee Textiles Limited, the Corporate Debtor (CD)**.** In this matter, the debt arises from a Term Loan of Rs. 175,00,00,000/- granted by the FC to the CD *vide* two sanction letters. The amount as per the Term Loan was disbursed by the FC on 29.09.2017. A total amount of Rs.179,50,00,000/-/- fell due to the FC from the CD as on 30.09.2022. In view of the above, the FC prays that Corporate Insolvency Resolution Process (CIRP) be initiated in respect of the CD under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). The date of default as mentioned by the FC in Part IV of the Application is 08.10.2022.

2 Contentions of FC

2.1 The FC submits that it granted a Term Loan of Rs. 175,00,00,000/- (One Hundred and Seventy-Five Crores Rupees) to the CD *vide* two separate Sanction Letters dated 25.09.2017 (Sanction Letters), *inter*

alia, for the purposes of (i) repayment of existing high-cost debt to the tune of Rs. 165,00,00,000/- (One Hundred and Sixty-Five Crores Rupees); and (ii) capex already incurred in the Financial Year 2018 or to be incurred and transaction related costs.

2.2 A Term Loan Agreement dated 28.09.2017 was then executed between the FC and the CD before disbursal of the said facility of Rs. 175,00,00,000/-. The CD secured the said Term Loan on execution of various documents including Indenture of Mortgage dated 10.08.2018, Unattested Deed of Hypothecation dated 10.05.2018 and Shortfall Undertaking dated 28.09.2017 in favour of the FC. In the event of any shortfall of funds in the loan account of the CD, Mr. Harshvardhan Piramal executed a Promoter's Guarantee dated 28.09.2017, whereby, an irrevocable and unconditional guarantee was given to the FC that the Promoter will bring in additional funds to meet the shortfall of funds, if any.

2.3 The CD also executed an Undertaking dated 29.09.2017, wherein the CD undertook and declared that, as per RBI Circular regarding strategic debt restructuring, the FC shall have the right to convert loan to equity or other capital in accordance with the regulatory guidelines for conversion of debt to equity in stressed situation or restructuring of debt. Further, the CD availed of an additional debt of Rs. 6,00,00,000/- sanctioned for the planned capex of Rs. 8,00,00,000/-. The amount as per the Term Loan was disbursed by the FC on 29.09.2017.

2.4 Subsequently, the FC entered into a Deed of Novation/Transfer dated 30.03.2018, with Tata Capital Financial Services Limited, whereby the FC transferred the principal amount of Rs. 30,00,00,000/- in favour of Tata Capital Financial Services Limited together with interest and all other charges.

2.5 Further, on 10.05.2018, a Security Trustee Agreement was entered into between CD as one of the "borrowers", FC and Tata Capital Financial Services Limited as "Lenders" and IDBI Trusteeship Security Limited as "Security Trustee". The FC, *vide* this Security Trustee Agreement, desired to form an express trust for the beneficial interest of the FC as well as Tata Capital Services Limited by empowering the Security Trustee to accept and to hold the security, more particularly mentioned in Schedule IV of the said Security Trustee Agreement.

2.6 The CD defaulted in its payment obligations on 31.01.2020 for non-repayment for the quarter of October, 2019 to December, 2019. After the event of default, the account of the CD was declared as Non-Performing Asset (NPA) on 01.11.2020. The CD was liable to repay a sum of Rs. 145,00,00,000/- on pro-rata basis to FC, pursuant to the said Term Loan, in 28 unequal quarterly installments starting from 30.06.2018. The CD had made repayment of Rs. 13,66,75,000/- till the date of account being declared as NPA. Thereafter, the CD made further repayments of Rs. 2,06,23,863.78/- on several dates.

2.7 It is submitted that the event of default occurred in January, 2022, and, therefore, the same does not fall within the period barred under Section 10A of the IBC. The record of default of the CD as available with the Information Utility is annexed to the Application.

2.8 The FC recalled the facility *vide* notice on 30.09.2022, calling upon the CD to clear the outstanding amounts within 7 days from the date of receipt of notice. Despite receipt of the recall notice, the CD neither replied to the notice nor cleared the outstanding amounts, and hence the Application.

3 Contentions of CD

3.1 The CD has contested the maintainability of the Application on the following grounds-

a) The Application is filed without lawful authority. It contends that a General Power of Attorney (GPA) holder does not have the authority to file an Application under Section 7 of the IBC. The GPA is general in nature and does not specifically authorise Mr. Prakash Rao, the GPA holder, to file any proceeding under the IBC. The Ld. Counsel for the CD submits that the remedy under the provisions of the IBC being a special remedy, special authorisation, specifically empowering the holder to file application under Section 7 of the IBC is mandatory; otherwise such application is not maintainable. According to him, the recital in the GPA, viz., "*power to institute,*

conduct, defend any legal proceedings by or against a company" is too general and does not authorise the holder to institute or defend the proceedings under the IBC. He further argues that while the institution of legal proceedings by signing, sealing, executing and delivering applications/ petitions etc., is a ministerial act, the decision regarding whether to institute such legal proceedings and against which party is a substantive decision, which is lacking in the instant GPA. Unless the Board of Directors delegates special power and authority to file an application under Section 7, the holder does not possess such special power or authority. The Ld. Counsel took us to the Notification of the Ministry of Corporate Affairs (MCA) No. S.O. 1091 (E) dated 27.02.2019, which*, inter alia*, notified "a person duly authorised by the Board of Directors of a Company" as competent person to file an application under section 7 of the IBC. According to him, the use of the words "a corporate debtor" in section 7(1) of the IBC as well as this Notification makes it clear that the authorisation in this regard ought to be specific to a particular corporate debtor and not a general authorisation.

b) The second point raised by the Ld. Counsel for the CD is that the Application is prohibited under Section 10A of the IBC. The CD relies on the date of default, i.e., 01.11.2020 as per the Information Utility (record of default available with the NeSL). The CD further states that the date of classification of an account as an NPA should be

considered as the date of default for the purposes of section 7 of the IBC and according to the Ld. Counsel for the CD, this date cannot shift. Hence, the present proceeding is barred by Section 10A and not maintainable. The date of default claimed as 08.10.2022, is unsubstantiated and factually incorrect. There is absolutely no event that occurred on 08.10.2022, enabling the FC to zero in on the said date as the date of default.

c) The CD further contends that the Term Loan Agreement is not admissible as evidence as the same is inadequately and improperly stamped. The Term Loan Agreement is executed in New Delhi. However, since the Application is filed in Mumbai, the FC is bound to pay the differential stamp duty as applicable in the State of Maharashtra, in accordance with Section 19 of the Maharashtra Stamp Act, 1958. According to the Ld. Counsel for the CD, the Term Loan Agreement executed in Delhi between the CD and FC is improperly stamped as per the Indian Stamp Act, 1899 read with the Delhi Stamp Rules and, hence, the Term Loan Agreement cannot be acted upon or received as evidence for the purpose of the present Application. Further, copy of the Application has not been served upon the Insolvency and Bankruptcy Board of India (IBBI) as mandated in Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules).

d) The CD further submits that the Application has been filed with the intention of recovery of money and not for the purpose of resolution of the CD by relying on the decision of the Hon'ble Supreme Court in *Swiss Ribbons Private Limited v. Union of India (2019) 4 SCC* and *Invent Asset Securitisation and Reconstruction Pvt. Ltd. Vs. Girnar Fibres Ltd,* [Civil Appeal No. 3033 of 2022]. The Ld. Counsel for the CD further argues that the proposal for debt resolution plan was submitted by it as per the RBI (Prudential Framework for Resolution Stressed Assets) Directions, 2019 issued to all lenders including the FC and it was a party to the JLM held on various occasions, and subsequently, the lenders had agreed to positively consider the request of the CD for restructuring of credit facilities. This evidences the fact that the proposal and talks for debt restructuring/resolution were already initiated and were under consideration with participation of and involvement by the CD and hence, the FC is attempting to recover money through this Application.

e) According to the FC, the Application fails to establish the amount that is due and payable. The FC in Part IV of the Application has claimed an amount of INR 179,50,00,000/- as due and payable as on 28.09.2022, whereas in the Recall Notice dated 30.09.2022, it has stated an amount of INR 203,25,00,000/- due and payable as on 28.09.2022, and on this ground also, the Application ought to be dismissed.

4 Rejoinder by FC

4.1 In the rejoinder, the FC clarified as to the amount of debt, due and payable to the FC and also the default by the CD. It also dealt with the admissibility of the Application on the ground of under-stamping of the Term Loan Agreement. Further, the FC also clarified the position as to the prohibition of filing applications under Section 10A of the IBC. In short, the Ld. Counsel for the FC submits that technical deficiencies in filing, should not result in rejection of the Application.

5 Analysis & Findings

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the CD. The CD argued that Mr. Prakash Rao, the then Senior Manager of the FC was not specifically authorised to appear and file application under Section 7 of the IBC as the GPA was only general in nature. However, we find that paragraph 9 of the GPA gives specific authority to him *"to appear (whether under or without protest) and represent the Bank in any Court or Tribunal and before all……..and prosecute, or defend any actions, suits, petitions or other proceedings whether civil and/or criminal in any court or Tribunal concerning any debt, dues, claim or demand….."*. Hence, we are satisfied that such authority is sufficient for Mr. Rao to prosecute this Application for the debt due to the FC by the CD. We, therefore, hold that IBC, being a special law and for special remedy, does not require

special authority to file a proceeding under Section 7. This goes against the CD.

5.2 The next ground of challenge of the Application by the CD is that the FC has not provided a Board Resolution authorising Mr. Rao to file this Application. To buttress this point, Ld. Counsel for the CD cited absence of "due authorisation" as reflected in S.O. 1091(E) dated 27.02.2019 issued, in exercise of the powers conferred by Section 7(1) of the IBC, by the MCA. On a close scrutiny of Section 7(1), it can be seen that a financial creditor is entitled to file application either by itself or jointly with other creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government. Hence, it is seen that the first limb of Section 7(1) entitles the financial creditor itself to file application. The Central Government (MCA) is only empowered to notify "any other person on behalf of the financial creditor" to file application. By exercising this power, the MCA notified the following persons by S.O. 1091(E), viz., (i) a guardian (ii) an executor or administrator of an estate of a financial creditor (iii) a trustee (including a debenture trustee) and (iv) a person duly authorised by the Board of Directors of a Company. From the above, it can be seen that the financial creditor itself has filed the present Application and is represented by its own authorised officer and is distinguishable from "any other person on behalf of the financial creditor". Moreover, the FC in its Rejoinder affirmed that the Circular Resolution was passed by its

Committee of Whole Time Directors on 23.08.2017, as annexed on page 36 of the present Application, at Sr. No. 118, duly authorising Mr. Prakash Rao, Assistant Vice President, among the other officers, specifically to deal with matters under the IBC. Hence, we are satisfied that Mr. Rao has sufficient authority to file the Application, and this issue is accordingly decided in favour of the FC.

5.3 With regard to the objection of the CD that copy of the Application was not served on IBBI, under Rule 4(3) of the AA Rules, we find that non-serving of copy does not have much consequence, as such a measure was brought in the AA Rules w.e.f. 24.09.2020*, inter alia,* enabling the IBBI to track the number of applications filed before NCLTs for research and other purposes, and is only to be taken as directory and not mandatory. In any case, the statutory right of an Applicant under Section 7 of the IBC to trigger CIRP would outweigh the procedural requirement of Rule 4(3) of the AA Rules, and would not render the Application invalid or inadmissible. As such a defect is curable, the FC has later complied with the requirement by submitting Form 1A(AAA) to the IBBI on 07.03.2023. We are of the considered view that, as Adjudicating Authority, we must give due weight to the principal law, i.e., Section 7 of the IBC, over Rule 4(3), which is a subordinate law. Hence, this Application cannot be rejected on such hyper-technical ground. We hold that rejection of an application due to the technical

deficiency would amount to miscarriage of justice. Hence, this issue also goes in favour of the FC.

5.4 The Ld. Counsel for the CD argued that the default falls within the period covered under Section 10A of the IBC, since the account of CD was declared as NPA on 01.11.2020. According to him, this date reckons as the date of default to enable the FC to initiate action under Section 7 of the Code. On the contrary, the Ld. Counsel for the FC clarifies that the loan recall notice was given on 30.09.2022, which is after the prohibition period and the CD was given 7 days to pay the due amount. Since the amount became payable by the CD on 07.09.2022, i.e., after 7 days of the notice, and the CD did not make payment, it resulted in default and the Application was filed thereafter. We find that Section 7 consciously uses the expression "default" and not the date of NPA to trigger insolvency. Hence, this contention of the CD is unfounded by any fact or law and goes against the CD.

5.5 As regards insufficient stamp duty of the Term Loan Agreement, we find that in a summary proceeding under the IBC, it is not for the AA to determine sufficiency or deficiency of stamp duty in a document and it is for the civil courts and other authorities to determine the same. Such a plea has no relevance so long as the execution of the Term Loan Agreement is admitted by the CD. As held by the Hon’ble NCLAT Delhi in *Koncentric Investments Ltd. Vs. Standard Chartered Bank, London* in CA (AT) (Insolvency) No. 911 of 2021, the issue of stamp duty is

irrelevant and uncalled for in a Section 7 application, especially when the "debt" and "default" are otherwise proved. Further, in *Ashique Ponnamparambath Member of Suspended Board of Directors Vs. The Federal Bank Limited,* the Hon'ble NCLAT Chennai in CA (AT)(CH)(Insolvency) No. 22 of 2021, also held that when alleged debt and default are proved beyond doubt and the application filed under Section 7 is complete, CIRP is only to be initiated. This Bench has also decided in *DBS Bank India Limited Vs. Parakkott Investment India Private Limited in CP (IB) No. 790/MB-VI/2020* that mere technical deficiency or insufficiency of stamp duty relating to the execution of a deed need not be looked into by the AA in an application under Section 7 of the IBC, as the proceedings are summary in nature. This again is found against the CD.

5.6 As regards the objection of the CD that Inter-Creditor Agreement (ICA) was not brought on record by the FC, we find that the ICA was entered into between the FC and other financial institutions and a resolution plan was to be implemented within a period of six months from 17.02.2022, the date of ICA. In the present case, while no resolution plan was implemented within the agreed timeframe, the FC informed all the members of the JLM on 05.12.2022 regarding non-implementation of the plan; and it was only after a lapse of six months that the FC sent loan recall notice on 25.11.2022, and thereafter, this Application was filed. Further, on examination of Clause 13 of the ICA,

it is seen that it is a standstill clause, and hence, ICA itself does not bar the Applicant from filing the appropriate proceedings, unless the same is within a period of 60 days from the effective date. Further, as held by the Hon'ble NCLAT in *Innoventive Industries Ltd Vs. ICICI Bank Limited*, a Joint Lender Forum proceeding pending against a corporate debtor has no bearing on the applications initiated under Section 7 of the IBC. Further, no RBI Circular can eclipse the statutory provision under the IBC. All other contentions raised by the CD are insignificant and irrelevant, when we have already found that there is a debt and default and a financial debt is payable to the FC and the CD has committed default. Considering the facts and law as discussed above, this Bench is of the view that in such circumstances, it is imperative that the CIRP be initiated in respect of the CD. There exists a “financial debt” as defined under Section 5(8) of the IBC and default of the said debt committed by the CD.

5.7 We, therefore, find merit in the documents submitted and the arguments advanced by the FC in rebuttal to the reply filed and arguments advanced by the CD. The FC has proved the existence of the debt and default and the debt remains unpaid. In view of the above, the present Application filed under Section 7 of the IBC to initiate CIRP in the matter of the CD deserves to be admitted.

5.8 The Applicant has proposed the name of **Mr. Ravi Sethia**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-

P01305/2018-2019/12052 and E-mail- ravisethia@kpmg.com as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC and has also given his declaration in Form 2 dated 05.09.2019, having valid Authorisation for Assignment, stating that no disciplinary proceedings are pending against him.

ORDER

As a result, this Application being **C.P. (IB) No. 1318/NCLT/MB/C-VI/2022** filed under Section 7 of the IBC by the FC for initiating CIRP in the case of Morarjee Textiles Limited, the CD, is **admitted.**

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the

Securitisation 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 CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Ravi Sethia**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P01305/2018-2019/12052 and E-mail- ravisethia@kpmg.com as the IRP to carry out the functions under the IBC, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP

within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, 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 CD.

IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.

X. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
SANJIV DUTT	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

// Akshata //