

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 1808/IBC/MB/2019

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Jalgaon Janat Sahakari Bank

Sewa, 117/119, Navi Peth, Jalgaon
MH 425001

.....**Financial Creditor**

Vs

Desimran Cartons Private Limited

(CIN: U74999MH2002PTC137629)

Registered office at: Kulkarni house
2nd Floor, Ghantali Road Naupada
Thane MH 400602

.....Corporate Debtor

Order delivered on: 23.07.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Rohit Gupta, Advocate

For the Respondent: Mr. Gauraj Shah

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by *Jalgaon Janata Sahakari Bank Limited* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Desimran Cartons Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 17,53,80,008/- (Rupees Seventeen Crores Fifty-Three Lacs Eighty Thousand Eight Hundred only) (Principal Amount Rs. 9,55,63,193/- Plus interest: Rs. 7,98,16,815/-)
3. The brief facts of the Operational Creditor are as follows:-
 - i. M/s Jalgaon Janata Sahakari Bank Limited is a Co-Operative Society registered under the Maharashtra Co-Operative Societies Act, 1960 and a bank registered under the Banking Regulation Act, 1949.
 - ii. The Corporate Debtor has availed various loan facilities from the Corporate Debtor since year 2003 and has continuously availed loan facilities from the Financial Creditor till the year 2016.
 - iii. In the year 2006, the Financial Creditor along with Janaseva Sahakari Bank Ltd., Pune and Dombivali

Nagari Sahakari Bank Ltd. formed a consortium viz. "The Jalgaon Janata Sahakari Bank Ltd. Consortium" (JJSB Consortium) and the Financial Creditor has been designated and recognized as the lead bank of the JJSB consortium.

- iv. Thereafter, on 30.09.2006, the documents such as Acknowledgement of Debt & Letter of confirmation of Balance & Security, Agreement and the shares were transferred to the member banks by way of consortium.
- v. Thereafter, on 02.01.2015, the Corporate Debtor has passed a resolution for the purpose of restructuring the loan facilities provided by the Consortium banks.
- vi. The Corporate Debtor for the purpose of restructuring the loan facilities has made an application dated 02.01.2015 to the Financial Creditor.
- vii. The Financial Creditor vide its board resolution dated 28.01.2015 has sanctioned the restructuring of the loan facilities provided by the Consortium banks.
- viii. The Corporate Debtor has passed a resolution dated 29.03.2015 pertaining to the restructuring of the loan facilities provided by the Consortium banks. Therefore, the Financial Creditor has issued a loan disbursement memo dated 30.03.2015.
- ix. The Consortium has entered into an Inter se agreement dated 31.03.2015. The Corporate Debtor, the Financial Creditor i.e. Jalgaon Janata Sahakari Bank Limited along with Dombivali Nagari Sahakari Bank Limited and Janaseva Sahakari Bank Limited are the parties to the said agreement.
- x. The Supplemental Joint Deed of Hypothecation dated 31.03.2015 has been executed between the Corporate

Debtor, the Financial Creditor along with Dombivali Nagari Sahakari Bank Limited and Janaseva Sahakari Bank Limited.

- xi. The Funded Interest Term Loan Agreement dated 31.03.2015 has been executed between the Corporate Debtor, the Financial Creditor along with Dombivali Nagari Sahakari Bank Limited and Janaseva Sahakari Bank Limited.
- xii. The Joint Working Capital Term Loan Agreement dated 31.03.2015 has been executed between the Financial Creditor along with Dombivali Nagari Sahakari Bank Limited and Janaseva Sahakari Bank Limited and the Corporate Debtor. Various other documents were executed on 31.03.2015 i.e. (i) Demand Promissory Note, (ii) Extract of form K., (iii) letter of continuity and (iv) agreement to mortgage (for 530 lacs).
- xiii. The details of the facilities after execution of Funded Interest Term Loan Agreement and Joint Working Capital Term Loan Agreement dated 31.03.2015 is as tabulated below:

Sr. no.	Name of the bank	Facility	Loan Amt. (In lacs)	Rate of interest
1.	Jalgaon Janata Sahakari Bank (JJSB)	FITL	96.43	12%
		WCTL	663.39	12.50%
		Hypo.CC	160.00	12.50%
			919.82	
2.		FITL	0	--

	Janaseva Sahakari Bank Limited (Janaseva)	WCTL	50.00	12.50%
		Hypo.CC	30.00	12.50%
			80.00	
3.	Dombivali Nagari Sahakari Bank (DNSB)	FITL	32.10	--
		WCTL	50.00	12.50%
		Hypo.CC	30.00	12.50%
			332.49	
		Total	1332.31	

- xiv. The Acknowledgement of debt dated 31.03.2015 has been executed between the Financial Creditor along with Dombivali Nagari Sahakari Bank Limited and Janaseva Sahakari Bank Limited and the Corporate Debtor. The letter of lien and set off and Term Loan Agreement has also been executed between the parties.
- xv. The Financial Creditor has provided a report dated 25.04.2015 to sanction for extending time period of utilization of letter of credit of Rs. 30.00 Lacs. Further, the present loan positions i.e. the due amount as on 31.03.2015 is reflected as Rs. 1462.31 Lacs.
- xvi. The Financial Creditor and the Corporate Debtor has entered into a Memorandum of deposit of the title deed dated 10.07.2015. The said deed is executed between Financial Creditor, other consortium banks and Corporate Debtor along with Smt. Urmila Uday Kulkarni and Mrs. Shalaka Dhananjay Kulkarni for various facilities from the Financial Creditor and other banks in

- consortium aggregating to an amount of Rs. 5,30,00,000/- (Rupees Five Crores Thirty Lac Only).
- xvii. M/s Janaseva Sahakari Bank Limited has issued a Sanction letter dated 30.07.2015 for additional letter of credit of Rs. 50,00,000/- (Rupees Fifty Lacs only) with revolving limit of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lacs Only). The Financial Creditor has passed a resolution in its Consortium meeting dated 04.08.2015 pertaining to the additional facility amounting to Rs. 50 Lacs for letter of credit.
- xviii. The Corporate Debtor passed a resolution in its board meeting dated 21.09.2015 authorizing Mr. Girish Vaidya and Mrs. Shalaka Kulkarni its directors to sign and execute mortgage deed in favour of the
- xix. The Financial Creditor alongwith other consortium banks and Corporate Debtor entered into Supplemental Joint Mortgage Deed dated 01.10.2015 for additional LC Revolving limit of Rs. 50,00,000/-.
- xx. The Financial Creditor made an application dated 06.10.2015 to the Administrator of Dadra and Nagar Haveli for Registration/mutation of charge on the property of the Corporate Debtor mentioned in the Mortgage deed dated 01.10.2015.
- xxi. The Corporate Debtor has provided an application dated 13.10.2015 to the financial creditor for availing the TOD facility amounting to Rs. 60,00,000/-
- xxii. The Corporate Debtor has passed a board resolution dated 30.10.2015 for execution of Hypothecation deed in favour of the Financial Creditor and other consortium banks.

- xxiii. The corporate debtor has passed a board resolution dated 02.11.2015 pertaining to the TOD (temporary overdraft facility) amounting to Rs. 60,00,000/- (Rupees Sixty Lac only).
- xxiv. Irrevocable power of attorney for mortgage was executed on 02.11.2015 on behalf of the Corporate Debtor and Mr. Uday Achyut Kulkarni in favour of Mr. Mahesh Anant Garge.
- xxv. Agreement of overdraft dated 02.11.2015 was executed between Financial Creditor, other banks in consortium and Corporate Debtor for temporary overdraft facility/additional limit of Rs. 60,00,000/- (Rupees Sixty Lac only).
- xxvi. The Financial Creditor and Corporate Debtor has executed a Term Loan Agreement dated 31.03.2016 for working capital term loan amounting to Rs. 6,63,39,000/- (Rupees Six Crore Sixty-Three Lacs and Thirty-Nine Thousand only).
- xxvii. On 05.12.2016, the Mortgage Deed was Executed between Financial Creditor and Mr. Uday Achyut Kulkarni. Mr. Uday Achyut Kulkarni has Mortgaged Residential Premises as a Guarantor to the tune of Rs. 60,00,000/- (Rupees Sixty Lacs only) against the loan availed by the Corporate Debtor as per sanction letter dated 05.12.2016.
- xxviii. The Financial Creditor has issued a letter dated 04.03.2017 to the Chairman of Kulkarni house Co-Operative Housing Society to register mortgage on Flat no. 206 vide mortgage deed dated 05.12.2016. Further, the Financial Creditor has sent a legal notice dated 15.03.2019 the Corporate Debtor.

xxix. The details of the debt granted by the Financial Creditor to the Corporate Debtor is as mentioned below:

Sr. no.	Loan Acc. No.	Sanction Date	Effective Date	Limit Sanctioned (Rs. In Lcs.)	Tenure/Instalments	Date of default
1.	174/2	28.01.2015	31.03.2015	160.00	12 Month Renewal	28.03.2019
2.	174/2	03.11.2015	03.11.2015	60.00	90 days	28.03.2019
3.	174/2	30.11.2015	30.11.2015	80.00	---	28.03.2019
4.	174/47	28.01.2015	31.03.2015	663.39	84 Month	28.03.2019
5.	172/48	28.01.2015	31.03.2015	96.43	36 Month	28.03.2019
				1059.82		

xxx. There are numerous dates of defaults because Corporate Debtor has not honoured the commitments which Corporate Debtor has given for timely payment of EMIs' from time to time. Whereas for the purpose of simplicity in date of default, we are treating 28.03.2019 as the last date of default when the loan was recalled, and Corporate Debtor did not pay the same.

4. The Corporate Debtor has on the contrary, denied all the averments and allegations raised by the Financial Creditor. The contentions of the Corporate Debtor are summed up as follows:
- The respondent/Corporate Debtor submitted in his reply that there are inconsistencies and contradictions found in the various amounts mentioned in the petition. The

Annexures to the petition and the Notice under Section 101 of the Maharashtra Co-operative Societies Act, which inconsistencies and contradiction are tabulated as under:

Sr. No.	Particulars	Amounts as per petition	Amounts as per Annexures to the petition	Amounts as per Notice under Section 101
1.	Loan Amount sanctioned	@Page 4: Rs. 1592 Lakhs @Page 6: Rs. 1332.21 Lakhs @Page 8: Rs. 1462.31 Lakhs (2015)	As per Annexure -6 (Loan Disbursement Memo) Rs. 919.83 Lakhs As per Annexure-8 (Restructuring Agreement) Rs. 1462.31 Lakhs (2015)	Rs. 1517.18 Lakhs (2019)
2.	Outstanding amount claimed	@Page 15 Rs. 2022.48 Lakhs	Annexure-6 (Loan Disbursement Memo) Rs. (Not mentioned)	Rs. 2511.46 Lakhs

		@page 16 Rs. (Not mentione d)	Annexure-8 (Copy of Loan Restructurin g Agreement) Rs. 1332 Lakhs) (2015)	
		@Page 17 Rs. 1753.80 Lakhss (2015)		(2019)

Due to the aforesaid inconsistencies and contradictions in the petition and its Annexure, the Corporate Debtor is unable to ascertain the accounts as stated in the petition as well as the amount claimed by the Financial Creditor and hence all accounts are required to be produced and inspected from the inception of loan.

- ii. The various loans availed by the Corporate Debtor from all the consortium banks have been duly serviced/repaid by it and till date the amount repaid by the Corporate Debtor along with interest thereon is about Rs. 22,00,00,000/-.
- iii. However, the Financial Creditor is alleging that the amount payable/outstanding as on date is to the tune of Rs. 25,00,00,000/- (Rupees Twenty-Five Crores only) approximately which is absolutely illegal, unlawful and without any supporting documentary evidence to prove the said amount.
- iv. On 09.07.2019, the meeting was fixed up at Jalgaon Janata Sahakari Bank ltd at their Thane Branch. The

said meeting was attended by the respective officers of the consortium banks, the Director of the Corporate Debtor and its Chartered Accountants. On the said also accounts from 31st March, 2015 onwards were shown to the Corporate Debtor contrary to what was requested.

- v. In spite of the fact that numerous requests have been made by the Corporate Debtor to the Financial Creditor and its member banks to give inspection of the loan accounts from the inception of loan i.e. from 2002-2003 upto date, the Financial Creditor and its members bank have wilfully failed and neglected to furnish the accounts as sought for by the Corporate Debtor for the reason best known to them.
- vi. The Corporate Debtor is disputing the amount of Rs. 25,00,00,000/- approximately as being claimed by the Financial Creditor and its members bank. The Financial Creditor has played a fraud upon the Corporate Debtor and is trying to extort monies from it.
- vii. As per the Minutes of Meeting of Consortium Bank dated 29.11.2015 accepted by all banks, all 3 banks accepted that no deduction from bills should be done towards old dues by any bank till next decision on restructuring is done. Accordingly, banks admitted that there was an error in restructuring in March 2015. However, the Financial Creditor and member banks have acted contrary to the decision.
- viii. The Consortium Meeting held on 09.03.2016, it was expressed by all the members that a Feasibility Report needs to be prepared by a third-party agency. Accordingly, V3C3E3 was appointed to prepare the said feasibility report.

- ix. The Consortium Meeting held on 20.04.2016, the Director of V3C3E3 presented the Feasibility Report and the same was discussed at length by the members. The Director of Financial Creditor, Mr. Kamathe raised question on this report. It was stated by him that V3C3E3 has not carried out the restructuring proceedings as per RBI guidelines. It is important to note that V3C3E3 was appointed / selected by the Consortium itself.
- x. On 11.09.2019 itself, the Advocates and Solicitors, representing the Corporate Debtor, wrote a letter to the Company Secretary via email representing the Financial Creditor to fix up the date and time for taking inspection of the documents in accordance with the order dated 11.09.2019.
- xi. In spite of receiving the letter dated 11.09.2019 via email, the Financial Creditor chose not to reply to the same. Accordingly, the Advocates and Solicitors for the Corporate Debtor sent a reminder email on 19.09.2019 to the Company Secretary of the Financial Creditor, reminding him to fix up the date and time to give the inspection of the documents. On receiving the reminder, the Branch Manager of the Financial Creditor on 24.09.2019 addressed a letter to the Corporate Debtor fixing the date and venue on 26th September and 27th September between 11.00 a.m. to 5.00 p.m which was after the expiry of two weeks of the order dated 11.09.2019 and further imposed several unreasonable conditions upon the Corporate Debtor which conditions were not recorded by this Bench in the order dated 11.09.2019.

- xii. On receiving the letter dated 26.09.2019, the Branch Manager of the Financial Creditor addressed an email to the Corporate Debtor to fix the date of inspection of documents on 4th and 5th October, 2019 between 11.00 to 5.00 p.m. Notwithstanding the fact that the Financial Creditor had committed a breach of the order dated 11.09.2019 passed by this Bench, only with a view to show their bona fides the representative of the Corporate Debtor visited the Thane Branch of the Financial Creditor on 04.10.2019 to take inspection. Even on 04.10.2019, the inspection of the documents was not completed and the officers of the Financial Creditor represented to the representatives of the Corporate Debtor that they did not have all the requisite documents, the inspection whereof was to be given and accordingly the representatives of the Corporate Debtor left the bank and the inspection could not be completed.
- xiii. The Financial Creditor has, right from the beginning, tried to shy away from giving inspection of the entire accounts to the Corporate Debtor who is in fact the customer of the Financial Creditor. The Financial Creditor has not only breached the banking norms but also breached the order dated 11.09.2019 by failing to adhere to the timelines allowed by this Bench in the said order and, has, till date, not given the entire inspection of the accounts as prayed for the Corporate Debtor in the Misc. Application preferred in the above Company Petition and accordingly an advocate inference is required to be drawn by this Bench against the Financial Creditor.

- xiv. The Financial Creditor is trying to play a fraud upon the Corporate Debtor by claiming amounts which are not even payable by the Corporate Debtor. The Financial Creditor has failed to produce the accounts and has also failed to give supporting evidence of as to how the Financial Creditor has arrived at the figure of more than 25 crores claimed by it from the Corporate Debtor.
- xv. For the reason set out, the respondent submits that the present petition under section 9 of the Act shall be dismissed against respondent in interest of justice.

Findings

1. Heard both sides and perused the record.
2. Mr. Rohit Gupta, the learned counsel appearing for the Financial Creditor submitted his arguments in the light of pleadings and argued that the loan facilities were originally sanctioned to the Corporate Debtor in 2003 by the Consortium of Banks and subsequently restructured in the year 2015 vide sanction letter dated 30.01.2015 of the Financial Creditor Annexed at page 138 to 143 of the application and were also disbursed in the month of March, 2015 vide disbursement memo annexed at page 146 to 149 to the application and in pursuance of restructuring, the Corporate Debtor executed various loan documents which were annexed to the Company Petition from page nos. 175 onwards. As per the sanction letter, the respondent/corporate debtor was required to repay the loan in the following manner;
 - i. FITL to be repaid in 36 months in equated monthly instalments from April 2015.

- ii. WCTL to be repaid in 84 months (including moratorium period of 3 months) EMI of the loan to be started from April 2015.
- 3.** Mr. Rohit Gupta, further submits that the last payment in respect of Term Loan Facility was paid by Corporate Debtor on 02.05.2017 entry of which has been captured in the Bank statement at page 43 of the application and the last payment amounting to Rs. 1,40,000/- towards the CC facility was paid by Corporate Debtor on 11.11.2016 entry of which has been captured in the bank statement at page no. 110 of the application and there was no payment thereafter. Thereafter the Financial Creditor got issued a legal notice on 14.12.2018 through their advocate to which the Corporate Debtor sent a routine reply notice dated 19.03.2019 disputing the amount claimed by the Financial Creditor.
- 4.** Thus, Mr. Gupta prayed for admission of above company petition contending that the debt and default in the above case are clearly proved by the Financial Creditor and the Financial Creditor received last payment in respect of term loan facility on 02.05.2017 and the last payment in respect of cash credit facility was paid on 11.11.2016 and the above company petition being filed on 06.05.2019 is well within limitation.
- 5.** Mr. Gauraj Shah, learned counsel appearing for the Corporate Debtor only confined his argument with regard to the quantum of amount claimed by the Financial Creditor in the above company petition. It is the submission of Mr. Gauraj Shah that Financial

Creditor has failed to provide the inspection of documents and also the statement of accounts with regard to actual figure claimed by the consortium of banks and therefore argued that an adverse inference has to be drawn against the applicant.

- 6.** Except the above contention the counsel appearing for the respondent did not raise any serious legal issues during the course of arguments.
- 7.** In order to answer the above contention raised by the Corporate Debtor, it is important to mention here that loan facilities were restructured in the year 2015 after consolidation of the accounts and accordingly, the Corporate Debtor executed all necessary loan documents in favour of the consortium of banks in pursuance of restructuring of the loan facilities. It is very surprising that after restructuring of the facilities and execution of the documents, and after committing default, the Corporate Debtor started demanding calculation and statement of accounts down from the year 2003 which is not legally permissible. Even otherwise adjudication of quantum of the liability is beyond the scope of enquiry in an application under Section 7 of the code. It is not the case of the Corporate Debtor that there was no debt or default in this case. Apart from that the Corporate Debtor also gave an OTS offer of repayment of 4 crores as full and final settlement vide their reply notice dated 02.05.2019 sent through their advocate without prejudice to their rights and contentions. Therefore, it is very clear from the above feeble contest raised by the Corporate

Debtor that the debt and default are clearly established in this case and there is no merit in the above contention raised by the Corporate Debtor.

8. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. The present petition is complete in all respects and the petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. However, the Financial Creditor sought the appointment of Mr. Vivek Murlidhar Dabhade in the place of Mr. Hansraj Chandanlal Ahuja whose name was initially suggested in the petition since the said Mr. Hansraj Chandanlal Ahuja has become ineligible on account of attaining the age of 70 years. The petitioner also filed form-2/consent letter of Mr. Vivek Murlidhar Dabhade along with written submissions. Thus, the present Company Petition satisfies all the necessary requirement for admission.
9. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) - 1808(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is

ordered against M/s Desimran Cartons Private Limited.

- b. This Bench hereby appoints **Mr. Vivek Murlidhar Dabhade** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00306/2017-2018/10570 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.

1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**