

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/920/2019 filed 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 **M/s. Kanishk Gold Private Limited**

State Bank of India

Stressed Assets Management Branch
Rep by its Assistant General Manager,
Having its Office at
Red Cross Buildings, Egmore,
Chennai – 600 008.

... Financial Creditor

-Vs-

M/s. Kanishk Gold Private Limited

Reg. Off:-

No.39, North Usman Road,
7th Floor, Prasanth Real Gold Tower,
T. Nagar, Chennai – 600 017

...Corporate Debtor

Order Pronounced on 22nd January 2020

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : M.L. Ganesh, Counsel

*For Corporate Debtor : V. Vasantha Kumar, Counsel
D. Tamilselvan, Counsel*

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is IBA/920/2019 that has been filed by **State Bank of India** (hereinafter referred to as '**Financial**

Creditor') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Kanishk Gold Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is body Corporate constituted under the State Bank of India Act, 1955 and the Registered office as per the Application is stated to be at Corporate Centre at Madame Cama Road, Nariman Point, Mumbai – 400 021.

3. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U36911TN2006PTC058595 and registered office of the Corporate Debtor as per the Application is stated to be at No.39, North Usman Road, 7th Floor, Prasanth Real Gold Towe, T. Nagar, Chennai – 600 017. As per Part III of the application, the Financial Creditor has proposed the name of



on Shri. C. Ramasubramaniam, Registration Number: IBBI/IPA-002/IP-N00052/2016-17/10096 as the Interim Resolution Professional

4. Part IV of the application signifies the amount of debt to the tune of Rs.311,49,25,168,60/- as on 09.07.2019. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

- i) Hypothecation of Stocks and receivables
- ii) Collateral Security of Immovable Property
- iii) Certificate of Charge dated 21.06.2017 for the total limit of Rs.747 crores issued by RoC, Tamil Nadu, in favour of SBI and consortium members.
- iv) Bank Statement Certified under Bankers Book Evidence Act

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor was incorporated as a private limited Company on 16.01.2006 and engaged in the business of manufacture and sale of Gold jewellery at Chennai and it had approached the Consortium of Banks comprising of the Financial Creditor and 13 other banks for financial assistance which has been extended from time to time. It was further submitted that the Directors of the Corporate Debtor had



offered Corporate Guarantee to the Financial Creditor and 13 other banks in order to secure the repayment of loan amount availed by the Corporate Debtor and further the Directors have offered their immovable properties as collateral security by depositing the original title deeds and created equitable mortgage in favour of the Financial Creditor and 13 other banks and stood as a guarantor for the loan liability of the Corporate Debtor.

6. The Learned Counsel for the Financial Creditor submitted that prior to availing of the consortium loan, the Corporate Debtor had availed Working Capital credit facilities from the Financial Creditor for which the Corporate Debtor had executed the loan security documents on 25.10.2008 and 05.07.2010 payable to the Financial Creditor. It was submitted by the Learned Counsel for the Financial Creditor that apart from the Working Capital facility availed from the Financial Creditor, the Corporate Debtor had also availed Term Loan facility to the limit of Rs.8.5 Crores and executed the security documents in favour of the Financial Creditor on 08.02.2013. Further, the Corporate Debtor had also availed Working Capital credit facility under consortium arrangement from the Financial Creditor and 13 other banks at regular intervals for which the Corporate Debtor and guarantors had executed



consortium loan security documents on 11.05.2011 (Rs.145 Crores), 27.02.2012 (Rs.237.30 Crores), 26.06.2012 (Rs.257.30 Crores), 08.02.2013 (Rs.358.30 Crores), 24.08.2015 (Rs.658 Crores), 24.11.2015 (Rs.670 Crores), 09.01.2017 (Rs.747 Crores) confirming the loan liability.

7. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor and the Guarantor had deposited the original title deeds pertaining to the secured property with an intention to create equitable mortgage in favour of the Financial Creditor and 13 other banks as evident from the MOD executed from time to time. Further, the Corporate Debtor has created paripassu charge on entire current assets, including stocks, stocks-in-trade, receivables, consumable stores and spares and hypothecation of machines and fixed asset in favour of the Financial Creditor and 13 other banks. It was submitted that with regard to the Term Loan, the Financial Creditor had advanced the Term Loan to the tune of Rs.8.5 Crores to the Corporate Debtor and the Corporate Debtor had offered primary security of assets (plant & machinery) purchased from Term Loan and collateral security of Factory Land at Pukkathurai Village to secure the said loan.



8. The Learned Counsel for the Financial Creditor submitted that since the Corporate Debtor had failed and neglected to service the principal and interest, the loan accounts had become NPA in the books of the Financial Creditor and 13 other banks on the following dates;

Sl. No.	Name of Bank	Date of NPA
1	State Bank of India	28.07.2017
2	Punjab National Bank	30.06.2017
3	Bank of India	30.06.2017
4	IDBI Bank	30.05.2017
5	Syndicate Bank	29.06.2017
6	Union Bank of India	30.06.2017
7	UCO Bank	31.05.2017
8	Central Bank of India	29.06.2017
9	Corporation Bank	29.06.2017
10	Bank of Baroda	30.06.2017
11	Tamilnad Mercantile Bank	30.06.2017
12	HDFC Bank	30.05.2017
13	Andhra Bank	31.05.2017

9. The Learned Counsel for the Financial Creditor further submitted that the Financial Creditor had caused a demand notice to be issued on 12.09.2017 under Section 13(2) of the SARFAESI Act, to the Corporate Debtor and the Guarantors but to no avail they have failed to make payments due to the consortium banks. The Financial Creditor had also issued a legal notice on 28.02.2018 to the Corporate Debtor and the Guarantor for which they have given an evasive reply on 07.02.2018. The Financial Creditor has also filed an O.A. No.347 of 2018 before the DRT – II Chennai for the recovery

of the dues from the Corporate Debtor and its guarantors. Thus, the Financial Creditor has submitted the Corporate Debtor is liable to the Financial Creditor to pay a sum of Rs.311,49,25,168.60/- as on 09.07.2019 towards various credit facilities availed from the Financial Creditor.

10. In relation to the Corporate Debtor, it may be noted from the record of proceedings that the Corporate Debtor through its Counsel has entered appearance on 19.11.2019 and a direction was given to file reply within two week. However, when the matter came up for hearing on 16.12.2019, the Counsel for the Corporate Debtor has pleaded more time to file reply and this Tribunal has passed the following order;

"Counsel for parties are present. Learned Counsel for the Corporate Debtor represents that vakalath as undertaken during the course of last hearing has been duly filed. However, reply has not been filed as of today, even though two weeks' time was granted vide order dated 19.11.2019. Taking into consideration provision of IBC, 2019, a last and final opportunity is given to the Corporate Debtor to file reply on or before next date of hearing failing which the right of filing the reply shall stand closed. Post the matter on 08.01.2020 for arguments".

When the matter came up for hearing on 08.01.2020, this Tribunal observed that the Corporate Debtor has not yet



filed its reply and posted the matter for arguments on 10.01.2020 and even on that date when the matter was taken up for enquiry, the Corporate Debtor has not preferred to file its reply. Thus, we are constrained to proceed with the matter without the reply being filed by the Corporate Debtor.

11. We have heard the submission made by the Learned Counsel for the parties and perused the records, including the documents placed on file. From the records, it is evident that the Financial Creditor along with 13 other banks has granted various credit facilities to the Corporate Debtor on various dates and the Corporate Debtor has failed to repay the said loan amount along with the principal and interest as agreed between them. Further, it may be seen that the Consortium of Banker have on various dates declared the account of the Corporate Debtor as Non – Performing Asset (NPA) and more particularly the Financial Creditor herein have declared the account of the Corporate Debtor as NPA on 28.07.2017 and thus under the provisions of IBC, taking into consideration the decision of the Supreme Court in **Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. & Anr.** in *Civil Appeal No.4952 of 2019* and **B.K. Educational Services Private Limited –Vs- Parag Gupta and Associates;** (2018) SCC Online SC 1921, the right to sue



accrues for the Financial Creditor to sue the Corporate Debtor on 28.02.2017, the date on which the account of the Corporate Debtor was declared as NPA and from the records it is evident that the Financial Creditor has filed the present petition on 19.07.2019 which is well within the 3 years period of limitation.

12. Further, we are also satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the Consortium of Bankers and in the instant case to the Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter



claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Lakh.

13. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

14. The Financial Creditor has initially proposed the name of one C. Ramasubramaniam as IRP, however upon perusal of the Form -2 enclosed in the typed set, this Tribunal observed that the proposed IRP has numerous matters pending with him and in the circumstances directed the Financial Creditor to propose the name of some other IRP. In pursuance of the same, the Financial Creditor has proposed the name of one **EBENEZAR INBARAJ**, having Registration Number **[IBBI/IPA-001/IP-P00754/2017-2018/11286]** (Email id:- **ebiadvocate@gmail.com**) (Mob:- **+91-9500005659**) as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the



Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

15. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- (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 assets 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;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.”

16. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub - section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

18. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond