

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II**

C.P.(IB)-527(MB)/2022

(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

Bank of India

Having Head Office at: Star House, C-5, 'G'
Block, Bandra-Kurla Complex, Bandra (East),
Mumbai, Maharashtra- 400001.

.....Financial Creditor/Applicant

Vs

Future Retail Limited

Having Registered Office at: Knowledge
House, Shyam Nagar, Off. Jogeshwari-
Vikhroli Link Road, Jogeshwari(E)
Maharashtra -400021.

.....Corporate Debtor/Respondent

Order delivered on: 20.07.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Financial Creditor : *Senior Counsel, Mr. Ravi Kadam*

a/w Counsel, Mr. Pulkit Sharma

For the Corporate Debtor : *Counsel, Mr. Shyam Kapadia*

ORDER***Per- Coram***

1. The Present **Company Petition (IB)-527(MB)/2022** is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Bank of India (for brevity 'Financial Creditor') through its Authorised Signatory, *Mr. Harish V*, who has been duly authorised vide Power of Attorney dated 05.11.2019 for initiating Corporate Insolvency Resolution Process (CIRP) against Future Retail Limited (for brevity 'Corporate Debtor') for default in repaying an amount of ₹856.10 Crores (Indian Rupees Eight Hundred and Fifty-Six Crores and Ten Lacs), as on 31.12.2021.
2. On perusal of the Company Petition, it reveals that the Corporate Debtor is a public listed company engaged in the business of multi-brand retail and operating stores across the Country. The Financial Creditor has provided the various credit facilities to the Corporate Debtor in the form of **Cash credit limit, working capital term loan, funded interest term loans**

amounting to ₹1249.48 Crores and **non-fund-based limits** amounting to ₹192.14 Crores, which were extended from time to time. The said facilities were restructured under sanction Letter MLCB/CC/2021-22/44 and Framework Agreement dated 17.04.2021 and 26.04.2021 respectively.

In order to secure the facilities availed from the Financial Creditor, the Corporate Debtor created and perfected security over certain assets for the benefit of the Applicant Bank. The facilities were also secured by the Personal Guarantee of Mr. Kishore Biyani (promoter, the Corporate Debtor) and Corporate Guarantee from Future Enterprises Limited and created pledge over unencumbered shares of the Corporate Debtor. The Corporate Debtor has also availed substantial facilities from certain other banks and financial institutions including public sector banks, private sector banks, private non-banking financial institutions and foreign banks (for brevity 'Lenders'), which had advanced certain long-term loans, short term loans, working capital term loans and various other facilities.

3. Further, the Corporate Debtor defaulted in repayment and as per Income Recognition and Asset classification norms notified by the RBI, the account was required to be classified as NPA on 30.11.2020. However, due to stay on asset classification imposed by the Hon'ble Supreme Court of India vide order dated 03.09.2020, the asset classification was maintained as standard and account was not downgraded on 30.11.2020, although the default persisted. Meanwhile on 27.09.2020, the Corporate

Debtor issued a letter to the Financial Creditor and certain other lenders, applying for one-time restructuring the facilities under the “*Resolution Framework for Covid-19 related stress*” (for brevity “**RBI Circular**”) dated 06.08.2020, which permits one-time restructuring in respect of eligible borrowers facing stress on account of Covid-19. The request was considered by the Lenders (including the Financial Creditor) allowing one-time restructuring under the RBI Circular on 29.10.2020. The Corporate Debtor and the Lenders (including the Financial Creditor) executed the Framework Agreement dated 26.04.2021 for restructuring of the existing outstanding amounts. As per the terms of the Framework Agreement, the Corporate Debtor was under an obligation to repay an amount of atleast Rs. 788.40 Crores to the Financial Creditor and the other lenders by 31.03.2022.

The provisions of the Framework Agreement and RBI Circular read in conjunction imply that the Event of Default under the Framework Agreement requires an automatic and retrospective downgrade of the loan account to an NPA, at the end of the review period of 30 days, and upon occurrence of such an event of default under the Framework Agreement, the defaults existing prior to the Framework Agreement stand revived. In view of this, the classification of the facilities given to the Corporate Debtor has been downgraded to “NPA” in the books of the Financial Creditor on 31.01.2022.

4. In addition to this **Framework Agreement** dated 26.04.2021, this Financial Creditor has also filed the Copies of

the following agreements between the Financial Creditor and the Corporate Debtor:

- i.) *Sanction Letter No. MLCB/SJ/2018-19/215, dated 14.06.2018*
- ii.) *Sanction Letter No. MLCB/RKM/2020-21/618, dated 20.12.2019*
- iii.) *Sanction Letter No. MLCB/RKM/2020-21/192, dated 10.09.2020*
- iv.) *Working Capital Consortium Agreement, dated 29.03.2017*
- v.) *First Supplemental Working Capital Consortium Agreement, dated 23.08.2017*

This Applicant/Financial Creditor has also filed *Copy of the **Commercial Credit Information Report maintained by Trans Union CIBIL bank account statement; True copies of the certified statement of accounts maintained by the Financial Creditor/Applicant Bank showing entries of disbursement of amount to Corporate Debtor and Certificate in terms of Section 2A of the Bankers Book Evidence Act, 1891.*** The list of other documents attached to this application in order to prove the existence of Financial debt are as:

- i.) *A copy of the Annual Report of the Corporate Debtor for the FY 2020-2021*
- ii.) *Letter dated 27.09.2020 and 31.12.2021 issued by the Corporate Debtor to the Financial Creditor.*
- iii.) *Default notice dated 05.01.2022.*
- iv.) *Resolution dated 11.01.2022, passed by the Board of Directors of the Corporate Debtor.*
- v.) *Minutes of the meeting dated 04.02.2022.*
- vi.) *Intimation dated 01.04.2022, under the SEBI (Listing Obligations & Disclosure Requirements) Regulation, 2015.*

5. In reply to this, the Corporate Debtor contended that the subject-matter of the present Petition is pending adjudication before the Hon'ble Supreme Court of India in a Writ Petition bearing W.P. (C) No. 48 /2022 (Writ Petition") filed by the Corporate Debtor against the Lenders, including the Financial Creditor.

In this regard, the Financial Creditor has submitted that the Corporate Debtor has not been granted any interim reliefs despite the Corporate Debtor seeking such relief. In fact, subsequent to the last hearing in the Writ Petition on 03.02.2022, the Corporate Debtor has not even moved the Hon'ble Supreme Court for the listing of the Writ Petition. Moreover, the payment obligation of the Corporate Debtor under the Framework Agreement in terms of Clause 2.2.1 read with Schedule VIII of the framework Agreement is entirely independent of its obligation to monetise the small format stores, therefore, irrespective of its inability to monetise the small format stores, it is required to pay the Lenders. Hence, there is no merit in any event to the submissions of the Corporate Debtor on this count. Further, having moved the Hon'ble Supreme Court on the issues faced by it in monetization of stores, the Corporate Debtor is precluded from taking the same grounds in the present Petition, as it has been duly heard by the Hon'ble Apex Court. Further, the Financial Creditor relied on ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC705*** and submitted that it is well settled that mere preferring of an appeal does not operate as stay on the decree or

order appealed against nor on the proceedings in the court below. Hence, the pendency of a Writ Petition before the Hon'ble Supreme Court cannot operate as a reason for staying the present Petition. Further on the day of Final hearing, the Senior Counsel for the Petitioner argued that the existence of a dispute is not relevant for the purpose of admitting a Petition under Section 7 of the Code and relied on ***Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1SCC 407*** wherein, the Hon'ble Supreme Court of India held that 'debt' means a liability of obligation in respect of a 'claim' and 'claim' means a right to payment even if it is disputed. The Code gets triggered, the moment default is of Rupees one lakh or more. Thus, the existence of a dispute cannot be a ground for the dismissal of the present Petition, in which the existence of 'debt' and 'default' is admitted and established.

6. The Corporate Debtor has also further alleged that the Lender's decision to refuse to continue Holding on operations severely impacted the Corporate Debtor's business and resulted in its failure to meet its repayment obligations. Further alleged that the Lenders, including the Financial Creditor could have taken possession of and sold the assets of the Corporate Debtor over which the Lenders security extended.

In this regard, the Petitioner's Counsel argued that the contention is untenable, as the first payment default in terms of the Framework Agreement occurred on 31.12.2021, whereas the decision of the Lenders to allow holding on operations was taken much later in the Lenders meeting with the Corporate Debtor

dated 04.02.2022, as admitted by the Corporate Debtor in its reply. Further, in relation to sell the assets of the Corporate Debtor, the Petitioner submitted that the Corporate Debtor cannot be allowed to dictate the actions taken/to be taken by the Lenders in the exercise of their contractual and statutory rights.

7. As per the records, the Amazon.com NV Investment Holdings LLC has filed an Intervention Petition/1/2022 in CP/527/MB/2022 seeking investigation into fraudulent and malicious intention of the present proceedings by the Financial Creditor and to dismiss the present petition by imposing penalty on the Financial Creditor and the Corporate Debtor in accordance with Section 65(1) of the Code, same has been dealt separately vide order dated 20.07.2022. Moreover, the Corporate Debtor on the payment obligation under the OTR scheme, admitted the default of its repayment as on 31.12.2021. Further, on 04.02.2022, the Corporate Debtor admitted in its meeting with the Lenders that the Events of default continue to subsist. Furthermore, the Corporate Debtor issued an intimation under Regulation 30 and other regular regulations of Securities and Exchange Board of India (Listing Obligations & Disclosure Requirements) Regulations, 2015 admitting the default of its repayment obligations under the Framework Agreement as on 31.03.2022 as well as 31.12.2021. Looking at the aforementioned facts, this Bench is of the view that the existence of debt and default has been proved, therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency

Professional, we hereby appoint **Mr. Vijay Kumar V Iyer** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.

8. Accordingly, this Company Petition is hereby **admitted** with the following directions:

a. **The above Company Petition (IB) 527(MB)/2022 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Future Retail Limited.**

b. This Bench hereby appoints **Mr. Vijay Kumar V Iyer**, having Registration No: **IBBI/IPA-001/IP-P00261/2017-2018/10490**, Address: **Deloitte India Insolvency Professionals LLP, One International Center, Tower 3, 32nd Floor, Senapati Bapat Marg, Elphinstone Road (West), Maharashtra, 400013;** E-mail: viyer@deloitte.com, Ph.No: **+91 9821219493** 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 cost 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
9. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

SD/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)

Arpan, LRA