

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

CP (IB) No.806/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Amit Punjabi

...Financial Creditor/Applicant

V/s

GAMBS India Private Limited

[CIN: U4520MH1982PTC026441]

...Corporate Debtor/Respondent

Order Dated: 07.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Naushar Kohli a/w Ms. Anjali
Trivedi and Jyoti Muley Advocate.

For the Respondent:

Mr.Laxman Shahpur,Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is a company petition filed u/s 7 of IBC, 2016 by Amit Punjabi (Financial Creditor), seeking to initiate CIRP against GAMBS INDIA PRIVATE LIMITED (Corporate Debtor). The financial Creditor claiming to be in default a sum of Rs. 1,85,19,027/- inclusive of interest of 17% p.a. as on 22.07.2021. The date of default is 1st April,2021.

2. The Corporate Debtor is a private limited company incorporated on 24.02.1982 under the companies Act,1965 with Register of companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45200MH1982PTC026441. Its registered office at CTS No.714 F, Plot No.508, Near National College, V.P. Road, Bandra (WEST), Mumbai Therefore, this bench has jurisdiction to deal with this petition.
3. The case of Financial Creditors is as follows:
- a) The Financial creditor submits that, the total amount claiming to be in default is a sum of Rs. 1,85,19,027/- inclusive of interest of 17% p.a. as on 22.07.2021.
- b) The Financial creditor submits that, the loan granted to the Corporate Debtor was of Rs.1,20,25,000/-The financial creditor has disbursed this amount to the Corporate Debtor through Cheque. The payments are more precisely given in the below mentioned table.

Sr. No	Date	Cheque No.	Amount
1.	02.05.2013	319183	15,00,000/-
2.	13.05.2013	319189	9,00,000/-
3.	31.08.2013	395869	32,00,000/-
4.	31.08.2013	000002	10,25,000/-
5.	12.11.2013	395882	7,50,000/-
6.	16.11.2013	395884	2,00,000/-
7.	19.11.2013	395885	5,00,000/-
8.	26.11.2013	395886	2,50,000/-
9.	04.12.2013	395892	2,50,000/-
10.	19.02.2014	000003	10,00,000/-
11.	20.03.2014	000008	8,50,000/-

22.	22.12.2015	000075	10,00,000/-
13.	30.12.2015	000080	6,00,000/-
	TOTAL		1,20,25,000/-

- c) The Financial creditor submits that, the Corporate Debtor has refunded the amount of Rs 24,00,000/- by way of cheques.

Sr. No	Date	Cheque No.	Amount
1.	02.08.2013	083035	15,00,000/-
2.	02.08.2013		9,00,000/-
	TOTAL		24,00,000/-

- d) The Financial creditor submits that, the said Rs.96,25,000/- being the Principal Amount outstanding, loan of Rs.80,25,000/- (Rs. Eighty Lakhs Twenty-Five Thousand Only) was lent at the compound interest rate of 17% p.a. to be paid on the Quarterly basis, whereas loan of Rs.16,00,000/- was lent at the interest rate of 12% p.a. compounded basis. The Corporate Debtor has paid periodically interest till 14th February 2016 and thereafter the Corporate Debtor has failed to make any payment.
- e) The Financial Creditor Submits that, reminder letters dated 20.02.2018 and 1.03.2018 requesting for the Repayment of loan along with interest was due since 15.02.2016 which was given to the Corporate Debtor.
- f) The Financial Creditor Submits that, a letter dated 3.03.2018 informing the Financial Creditor that Corporate Debtor has sent all the details to the CA for checking and verifying the same as it pertains to period before the fire took place in the Company's office premises. On receiving the information from the CA, the same will take 3 weeks for further compliance

- g) The Financial Creditor Submits that, as on 08.07.2018, the Corporate Debtor has owed an amount of Rs.1,33,51,471/- broken up into a principal sum of Rs.96,25,000/- and unpaid interest of Rs.37,26,471/-.
- h) The Financial Creditor Submits that, IBC proceedings were filed under sec 7 with a prayer to initiate CIRP against the Corporate Debtor for its default in the payment of the dues with the CP No.3319(MB)2018.
- i) The Financial Creditor Submits that, the consent term was executed on 18.12.2019 between both the parties. In accordance with the consent term the Corporate Debtor handed over below Cheques.

Sr. No	Particulars	Date	Cheque No.	Amount
1.	Principal Amount	30.06.2020	478238	80,25,000/-
2.	Interest till 30.06.2020 on Rs.80,25,000/-	30.06.2020	478239	53,69,970/-
3.	Principal Amount	30.06.2020	478250	16,00,000/-
4.	Interest till 30.06.2020 on Rs.16,00,000/-	30.06.2020	478239	10,70,648/-
	TOTAL			1,60,65,618/-

- j) The Financial Creditor prayed to NCLT, Mumbai bench to withdraw the petition. Accordingly, Hon'ble NCLT was pleased to dispose the petition on 19.12.2019 in view to consent terms dated 18.12.2019.
- k) The Financial Creditor Submits that, as the cheque was deposited for its clearance on 30.06.2020, which has been dishonoured on 02.09.2020 due to the reason mentioned as "Funds Insufficient".

- l) The Financial Creditor Submits that, the notice u/s 138 of Negotiable Instruments Act dated 08.09.2020 was issued on Corporate Debtor.
 - m) The Financial Creditor Submits that, the Corporate Debtor had approached with an offer of One-time Settlement with a proposal to make payment of the entire amount of Principal and interest till 30.06.2020. It was further agreed between parties that the corporate Debtor will secure the payment of dues to the Financial Creditors.
 - n) The Financial Creditor Submits that, Agreement for Repayment of Loan dated 7.10.2020 executed between the Corporate Debtor and Financial Creditor annexed and marked as Annexure “F” of the Company Petition.
 - o) The Financial Creditor has proposed Mr. Saket Shantilal Jain, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00065/2017-2018/10151. He is appointed as IRP for conducting CIRP of the Corporate Debtor.
4. The case of Corporate Debtor is as follows:
- a. Corporate Debtor submits that, the financial Creditor have invested money in the Corporate Debtors Company for development of Commercial premises i.e. Gambs House situated at, CTS No. F/714, Linking Road, Bandra (West), Mumbai-400050.
 - b. Corporate Debtor submits that, the said Commercial premises was constructed and was ready for occupancy and in between in the 2016 caught fire and major building premises was burnt. The amount was to be repaid for the sale of the premises as the company has only one Asset i.e. the present building. The present market value of the building and assets of the Company is more than 200 crores against the liability of less than Rs.60 Crores including bank Loan and loan from the present Financial Creditors.

- c. Corporate Debtor submits that, the entire building carpet area admeasuring 15,000 Sq. Ft is still Vacant and company is searching for prospective buyers and even ready to lease the same for longer term. The area admeasuring 850 Sq. Ft was occupied but due to the 1st Covid-19 wave the licensee has vacated the said premises.
- d. Corporate Debtor submits that, six months more time may be granted to repay their loan along with the interest at the rate of 17% p.a.
- e. Corporate Debtor submits that, the said affidavit in reply is filed for opposing the appointment of Insolvency Resolution Professional.
5. Corporate Debtors referring to the letters dated 20.02.2018 ,01.03.2018 and 3.03.2018 alleging that the financial creditor has sent the figures/amounts by mistake and are incorrect.
6. Corporate Debtor submits that, as per the letter dated 25.07.2020 requesting for the extension of time to deposit and issue cheques all dated 30.06.2020.
7. The Financial Creditor Submits that, demand notice dated 24.05.2018 was issued against the Corporate Debtor to make the outstanding payment of Rs.1,31,59,605/-.
8. Corporate Debtor submits that, reply to demand notice dated 24.05.2018 was filed on 02.06.2018 stating that amounts to be paid only after the sale of premises.
9. Corporate Debtor submits that letter dated 18.03.2018, referring to the letters dated 20.02.2018 ,01.03.2018 and 3.03.2018 alleging that the financial creditor has sent the figures/amounts by mistake and are incorrect.
10. Corporate Debtor submits that, as per the letter dated 25.07.2020 availing for the extension of time to deposit and issue cheques all dated 30.06.2020

Findings:

11. We have heard the arguments of Learned Counsel for Financial Creditor and Corporate Debtor and perused the records.
12. The Financial creditor submits that, the total amount is in default amounting to Rs. 1,85,19,027/- inclusive of interest of 17% p.a. as on 22.07.2021.
13. It is noticed from the petition that, the Corporate Debtor also admitted the amount of 1,85,19,027/- inclusive of interest of 17% p.a. as on 22.07.2021 in its reply.
14. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. The debt and default is constituted, and default amount is more than the threshold amount. Hence, the application filed by the Financial Creditor is complete in all respect.
15. Financial Creditor has proposed Mr. Saket Shantilal Jain, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00065/2017-2018/10151. He is appointed as IRP for conducting CIRP of the Corporate Debtor.

ORDER

This Application being **C.P. (IB) No. 806/NCLT/MB/C-IV/2021** filed under Section 7 of I&B Code, 2016, presented by Amit Punjabi, Financial Creditor/ Applicant against **GAMBS India Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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

of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VII. Financial Creditor has proposed Mr. Saket Shantilal Jain, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00065/2017-2018/10151.He is appointed as IRP for conducting CIRP of the Corporate Debtor.
- e) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Kishore Vemulapalli
Member (Judicial)

07.01.2022

Sd/-

Rajesh Sharma
Member (Technical)