

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.799/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

DBS Bank India Limited

[CIN: U65999DL2018FLC329236]

...Financial Creditor/Applicant

V/s

M/s S.K.S Textiles Limited

[CIN: L17000MH1997PLC111406]

...Corporate Debtor/Respondent

Order Dated: 28.09.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Nikhil Rajani, Advocate.

For the Respondent(s) : Mr. Gaurav Anawad, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.799/MB-IV/2021 filed by DBS Bank India Limited, the Financial Creditor/Applicant, under Section 7 of the

Insolvency & Bankruptcy Code, 2016 (I&B Code) against M/s S.K.S Textiles Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. This application is filed by Mr. Pankaj Maroo, Authorised Signatory of the Financial Creditor vide its Authority Letter dated 03.06.2021, claiming a total default of Rs. 27,26,78,417.26/- (Rupees twenty-seven crore twenty-six lakh seventy-eight thousand four hundred seventeen and paise twenty-six only). The Date of Default as mentioned in the Petition is 01.05.2021. The Petition has been filed on 06.04.2021.
3. The case of the Financial Creditor is as under:
 - a. The Financial Creditor submits that it has sanctioned the following credit facilities to the Corporate Debtor as under:
 - i. Under facility letter bearing Ref No. CDT/ADMIN/321/2015 dated 29.04.2015 r/w modification letter dated 10.09.2015 of this Financial Creditor, the Corporate Debtor was sanctioned with the following facilities upon the terms and conditions mentioned:

| Sr. No | Nature of facilities | Facility Limits (INR Million) | Sub-Limits (INR Million) |
|--------|--|-------------------------------|--------------------------|
| A. | Multiline facilities parent limits (Trade Finance Facility as mentioned in Sub-Limits) | 40.00 | - |
| | 1. Overdraft Cash Credit | | (0.1) |
| B. | Trade Financing Facilities | | |
| | I. Purchase Side Financing | | |
| | 1. Letter of Credit | | (40.00) |
| | Total Facility Limits | 40.00 | (40.00) |

- ii. Under facility letter bearing Ref No. CDT/ADMIN/48/2016 dated 24.02.2016 of this Financial Creditor, the Corporate Debtor was sanctioned with the following facilities upon the terms and conditions mentioned:

| Sr. No | Nature of facilities | Facility Limits (INR Million) | Sub-Limits (INR Million) |
|--------|---|-------------------------------|--------------------------|
| A. | Working Capital Facility/Multiline facilities Parent limits Trade Finance Facility as mentioned in Sub-Limits | 229.00 | - |
| | 1. Overdraft Facility/Cash Credit Facility (OD/CC) | | (185.00) |
| B. | Trade Financing Facilities | | |
| | I. Purchase Side Financing | | |
| | 1. Letter of Credit Facility (LC) | | (44.00) |
| | Total Facility Limits | 229.00 | |

- iii. Under facility letter bearing Ref No. CDT/ADMIN/98/2017 dated 17.02.2017 of this Financial Creditor, the facilities earlier sanctioned were extended in favour of the Corporate Debtor upon the terms and conditions therein mentioned:

| Sr. No | Nature of facilities | Facility Limits (INR Million) | Sub-Limits (INR Million) |
|--------|---|-------------------------------|--------------------------|
| A. | Working Capital Facility/Multiline facilities Parent limits Trade Finance Facility as mentioned in B Sub-Limits | 229.00 | - |
| | 1. Overdraft Facility/Cash Credit Facility (OD/CC). | | (185.00) |

| | | | |
|----|-----------------------------------|--------|----------|
| | 2. Working Capital Loan | | (125.00) |
| B. | Trade Financing Facilities | | |
| | I. Purchase Side Financing | | |
| | 1. Letter of Credit Facility (LC) | | (44.00) |
| | Total Facility Limits | 229.00 | |

- iv. Under facility letter bearing Ref No. CDT/ADMIN/159/2018 dated 22.02.2018 of this Financial Creditor, has extended the existing facilities sanctioned to the Corporate Debtor upon the terms and conditions therein mentioned:

| Sr. No | Nature of facilities | Facility Limits (INR Million) | Sub-Limits (INR Million) |
|--------|---|-------------------------------|--------------------------|
| A. | Working Capital Facility/Multiline facilities Parent limits Trade Finance Facility as mentioned in B Sub-Limits | 229.00 | - |
| | 1. Overdraft Facility/Cash Credit Facility (OD/CC). | | (185.00) |
| | 2. Working Capital Loan | | (125.00) |
| B. | Trade Financing Facilities | | |
| | I. Purchase Side Financing | | |
| | 1. Letter of Credit Facility (LC) | | (44.00) |
| | Total Facility Limits | 229.00 | |

- v. Under facility letter bearing Ref No. CDT/ADMIN/108/2019 dated 07.02.2019 of this Financial Creditor, agrees to and had renewed the existing facilities granted to the Corporate Debtor upon the terms and conditions therein mentioned:

| Sr. No | Nature of facilities | Facility Limits (INR Million) | Sub-Limits (INR Million) |
|--------|--|-------------------------------|--------------------------|
| A. | Working Capital Facility/Multiline facilities Parent limits Trade Finance Facility as mentioned in B Sub-Limits | 229.00 | - |
| | 1. Overdraft Facility/Cash Credit Facility (OD/CC). | | (185.00) |
| | 2. Working Capital Loan | | (125.00) |
| B. | Trade Financing Facilities | | |
| | I. Purchase Side Financing | | |
| | 1. Letter of Credit Facility (LC) | | (44.00) |
| | Total Facility Limits | 229.00 | |

- vi. Under facility letter bearing Ref No. BSU/IBG-3/369/2020 dated 30.03.2020 of this Financial Creditor agrees to and had renewed the existing facilities granted to the Corporate Debtor upon the terms and conditions therein mentioned:

| Sr. No | Nature of facilities | Facility Limits (INR Million) | Sub-Limits (INR Million) |
|--------|---|-------------------------------|--------------------------|
| A. | Working Capital Facility/Multiline facilities | 229.00 | - |
| | 1a. Overdraft Facility Credit Facility. | (185.00) | |
| | 1b. Working Capital Loan. | (125.00) | |
| | 1c. Letter of Credit (LC) | (44.00) | |

- vii. Under facility letter bearing Ref No. BSU/IBG-3/ECLGS/113 of 2020 dated 27.10.2020 of this Financial Creditor, the Corporate Debtor was sanctioned with the fresh

facility in the form of Guarantee Emergency Credit Line facility in the sum of about INR 3,84,00,000 upon the terms and conditions therein mentioned.

4. While covering the chain of events with regards to the above-mentioned credit facilities, the Corporate Debtor has availed various facilities in multiple banking from the Applicant and other financial lenders in multiple banking.
5. Upon the request of the Corporate Debtor as on 10.09.2015, the Applicant sanctioned, granted and disbursed multiple facilities in the sum of Rs.40.00 INR million and in lieu whereof various documents were executed including Demand Promissory Note.
6. The Financial Creditor submits that, the Personal Guarantors to the Corporate Debtor by giving their Personal Guarantee dated 11.05.2015 had guaranteed the due repayment of the facilities in the event of the default on the part of the Corporate Debtor.
7. Upon the request of the Corporate Debtor in or about 24.02.2016, the said credit facilities were extended by the Applicant upon the terms and conditions as detailed in the sanctioned and in lieu whereof various documents were executed including Demand Promissory Note.
8. The Personal Guarantors to the Corporate Debtor by giving their personal Guarantee dated 03.03.2016 had guaranteed the due repayment of the facilities in the event of the default on the part of the Corporate Debtor.
9. The facilities were time to time extended, the repayment whereof was secured by executing various loan documents including Demand Promissory Note and Guarantees of the Personal Guarantors.

10. The Corporate Debtor has deposited on 11.05.2021 with the Applicant its three Cheques with an undertaking to honor the same when presented for repayment.
11. While covering the chain of events with regards to the above-mentioned credit facilities, the Financial Creditor submits that the said facilities occurred on 01.05.2021 and the applicant has proceeded to recall the entire loan facility vide notice dated 03.05.2021 r/w 13.05.2021
12. The Financial Creditor submits that the amount of default under the said facilities further occurred on 11.05.2021 when the three Cheques of Rs. 7,40,00,000/-, Rs. 7,50,00,000/- and Rs.8,00,00,000/- aggregating to Rs.27,26,78,417.26/- (due and payable as on 31.05.2021 with further interest at the contractual rate from 01.06.2021 till payment and/ or realization) issued by the Corporate Debtor towards repayment of the facilities were returned dishonoured. In the view of dishonour of cheques, the applicant issued notice dated 18.05.2021 u/s 138 of Negotiable Instruments Act.
13. The Corporate Debtor in its reply dated 26.10.2021 has admitted his liability which is due and payable to the Financial Creditor

Findings/Observations:

14. We have heard the submissions made by the counsel on both the sides and perused the records.
15. We have prudently gone through the pleadings available on record and observed that:
 - a. It is clear from the records that the Corporate Debtor in its reply has acknowledged the debt which was due and payable to the Financial Creditor.

16. From the above observations, this Bench finds no dispute with respect to the limitation as there are consecutive admissions on the part of Corporate Debtor.
17. From the contentions of the Corporate Debtor, it is observed that the Corporate Debtor has neither disputed nor disproved its liability. Mere denial of the debt does not wave the Corporate Debtor from its liability to pay the debts.
18. Therefore, the Petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of Rupees one crore stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority need to admit this Petition and order initiation of CIRP against the Corporate Debtor.
19. The application is complete and has been filed under the proper form. The debt amount is more than rupees one crore and default of the Corporate Debtor has been established.
20. The Financial Creditor has proposed Mr. Anurag Jain an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01049/2017-18/11732 as Interim Resolution Professional to carry out functions as mentioned I&B Code and has also given his declaration no disciplinary proceeding are pending against him.

ORDER

The petition bearing CP(IB) 799/MB-IV/2021 filed by DBS Bank India Limited, (“the Financial Creditor”), under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s S.K.S Textiles Limited (“the Corporate Debtor”), is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- b) Notwithstanding the above, during the period of moratorium, -
- (v) 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;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) Mr. Anurag Jain, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01049/2017-2018/11732. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations / Circulars / Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- f) During the CIRP Period, the management of the Corporate Debtor 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 Corporate Debtor 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.

- g) The Fin 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).
- h) The Registry is directed to communicate this Order to the Fin, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Manoj Kumar Dubey
Member (Technical)
29.09.2022.

Sd/-

Kishore Vemulapalli
Member (Judicial)