

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**IB-2122(ND)2019**

**IN THE MATTER OF:**

**Smt. Shalini Choudhary  
Flat A 37/F, Tower 2  
1 Ying Hong Street  
The Visionary, Tung Chung Lantau  
New Territories, Hong Kong**

**...Financial Creditor**

**VERSUS**

**M/s Mothers Pride Dairy India Pvt. Ltd.  
A-11, Ground Floor  
Nirman Vihar, Shakarpur  
New Delhi-110092**

**... Corporate Debtor**

**Section: 7 of IBC, 2016**

**Order Delivered on: 13.11.2019**

**CORUM:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner : Mr. Sanjay Kumar and Mr. Anant Gupta, Advs.

For the Respondent : Mr. Anand Frakash, Adv.

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## ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition is filed under the 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 Smt. Shalini Choudhary, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Mothers Pride Dairy India Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, Mothers Pride Dairy India Pvt. Ltd. is a Company incorporated on 30.09.2014 under the provisions of Companies Act, 2013 with CIN No. U74999DL2014PTC272213, having its registered Office at A-11 Nirman Vihar, Shakarpur, New Delhi-110092.

3. The Authorised Share Capital of the Respondent Company is Rs.25,00,00,000 and Paid-up Share Capital of the Company is Rs.22,64,18,500 as per the Master Data of the Company annexed.

4. The Financial Creditor in her Petition has averred the following :

*"2. That the Financial Creditor, being the promoter director and shareholder of the Corporate Debtor, upon the request of the Corporate Debtor, infused an amount of INR 19,17,48,515/- (Indian Rupees Nineteen Crores Seventeen*

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*Lacs Forty Eight Thousand Five Hundred and Fifteen only) in the Corporate Debtor from 30.09.2014 to 05.04.2017, out of which the Financial Creditor was issued 1,29,42,999 equity shares (Rupees 10 each) of the Corporate Debtor for a total worth of INR 12,94,29,990/- (Indian Rupees Twelve Crores Ninety Four Lacs Twenty Nine Thousand Nine Hundred and Ninety Only)."*

*"3. That as on 01.04.2017 the Financial Creditor ceased to be a director of the Corporate Debtor and on 10.07.2017 ceased to be a shareholder of the Corporate Debtor by transferring her entire shareholding in the Corporate Debtor to Mr. Navneet Jain, the current director of the Corporate Debtor."*

*"4. Pertinently, upon her exit as a shareholder, it was agreed between the Financial Creditor and the Corporate Debtor, that an amount of INR 2,00,00,000/- (Indian Rupees Two Crores Only) ('Loan Amount') was due and outstanding from the Corporate Debtor to the Financial Creditor during her Directorship, against which a certificate was given by the Chartered Accountant of the Corporate Debtor."*

*"5. That upon her exit as a shareholder of the Corporate Debtor, the Financial Creditor and Corporate Debtor, after due discussions and negotiations, entered into a loan agreement on 10.07.2017, under which it was agreed by the Corporate Debtor that it would repay the Loan Amount to the Financial Creditor in four equal tranches of INR 50,00,000/- (Indian Rupees Fifty Lacs Only) and that the Loan Amount would not carry any interest ('Loan Agreement'). The Corporate Debtor was liable to repay the Loan Amount as per the schedule below:*

- a. *First instalment: on or before 18 months of the execution of the Loan Agreement i.e. on or before 10.01.2019;*
- b. *Second instalment: on or before 30.06.2019;*
- c. *Third instalment: on or before 31.12.2019; and*
- d. *Fourth instalment: on or before 30.06.2020."*

5. It is submitted by the Financial Creditor that having no payment made, the Corporate Debtor had committed a default in respect of the first and the second installments, total amounting to Rs.1,00,00,000 against which a certificate was also given by the Chartered Accountant of the Corporate Debtor.

6. It is submitted by the Financial Creditor that accordingly, issued a notice of default dated 19.08.2019 to the Corporate Debtor in terms of Clause G of the Loan Agreement dated 10.07.2017. Clause 'G' of the Agreement reads as follows :

*"THAT in the event of default in payment of any of the aforesaid installments by the Borrower Company, the Lender shall cause written notice to the Borrower Company and to its Directors through registered post, notifying therein, the default made by the Borrower Company."*

It is further submitted by the Financial Creditor that the Corporate Debtor neither made the payment nor replied to the default notice.



7. To support the existence of Financial Debt, the Financial Creditor has relied upon the Loan Agreement dated 10.07.2017, Financial Statements of the Corporate Debtor for the year 2016-17 reflecting the amount of Rs.2,00,00,000 as a loan from Directors and the default notice dated 19.08.2019.

8. That the Corporate Debtor in their reply dated 27.09.2019 has submitted that :

*"2. That the whole case of the applicant revolves around the loan agreement dated 10<sup>th</sup> of July 2017 but the applicant has deliberately intentionally concealed the documents which were entered upon after the loan agreement executed on 10<sup>th</sup> of July 2017 that is the termination of Master Agreement dated 10<sup>th</sup> of December 2018 and the terms sheet entered by the husband of the applicant on 28<sup>th</sup> June 2019 copy of the same is annexed as Annexure-R-1 and whereas term sheet is dated 19<sup>th</sup> of June 2019, copy of the term sheet dated 19<sup>th</sup> of June, 2019 in annexed as Annexure-R2 ."*

9. We therefore referred to the relevant Para of the Termination Agreement dated 10.12.2018, which reads as below :

*"1. Termination of Agreement: The Parties hereby agree that the Master Agreement dated 10th July 2017 is terminated*



*with immediate effect without any liability whatsoever to the parties herein except to the extent of the liability of the Company to repay the loans provided by Shalini to the Company.”*

10. That the Corporate Debtor has relied upon clause (vii) of the Recital and Clause 'M' of the Loan Agreement dated 10.07.2017. The contents of the clause (vii) of the Recital are reproduced below :

*“RECITALS*

*(vii) The Lender being fully aware of the present financial crisis of the Borrower Company has approved and agreed to the proposal/ request of the Borrower Company and decided/ consented to the Borrower Company to retain the said amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) as interest free Loan and such Loan shall be repaid by the Borrower Company to the Lender by the year 2021.”*

*“M. THAT the Lender has agreed to give the said Loan of Rs. 2,00,00,000/- (Rupees Two Crores Only) without any collateral security either from the Borrower Company and/ or from its Directors and also confirms that he shall not insist for any collateral security for the said Loan Amount in future. Provided however that the Lender shall have a right to seek collateral security from the borrower company if the entire loan is not paid and/or cleared by the borrower Company within 30<sup>th</sup> June 2021.”*



11. It is argued by the Corporate Debtor that there is no default committed by it as it has time to repay the loan till 2021. It is further submitted by the Corporate Debtor and Shri. Navneet Jain, the Director of the Company are jointly and severally liable for the debt but the Financial Creditor has not made Shri. Navneet Jain as a party.

12. To know whether the Corporate Debtor has committed a default or not we referred to the definition of 'default' as defined under Section 3(12) of IBC 2016, as per which :

*"Default" means non- payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or he corporate debtor as the case may be;"*

13. That as per the loan agreement, the Corporate Debtor was required to make payment of the first two installments of Rs.50 Lakhs each, within 18 months from the execution of the Loan Agreement and on 30<sup>th</sup> June 2019 respectively. The plea taken by the Corporate Debtor basing on Recital Clause and Clause 'M' of the Loan Agreement, does not merit consideration, especially when there is specific schedule of payment agreed upon vide Clause 'C' of the Loan Agreement. Further, as per the definition of 'default' as stipulated under Section 3(12) of IBC 2016 default, inter-alia includes the non-payment of installment(s) due and payable.



14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial debt for the default amount being above Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:


- “(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 Securitisation 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.”

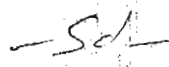


15. As proposed by the Financial Creditor, this Bench appoints Mr. Mohd. Nazim Khan as an IRP having Registration No. IBBI-002/IP-N00076/2017-18/10207 (Email id- [nazim@mnkassociates.com](mailto:nazim@mnkassociates.com), Mobile No. 9818156340), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

  
(L. N. Gupta)  
Member (T)

  
(Ina Malhotra)  
Member (J)