



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

CP (IB) No. 258/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

**Omkara Assets Reconstruction Private
Limited**

...Financial Creditor/Applicant

V/s

**M/s Vyva Apparels (India) Private
Limited**

[CIN: U18202MH2012PTC229892]

...Corporate Debtor/Respondent

Order Dated: 17.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Sanjana Pandey i/b Akash
Menon, Advocates.
For the Respondent(s) : Ms. Rina H. Pujara, Advocate.

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 258/MB/C-IV/2021 filed on 31.12.2020 by Omkara Assets Reconstruction Private Limited, the



- Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against M/s Vyva Apparels (India) Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Financial Creditor has filed Board Resolution dated 18.08.2021 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Financial Creditor.
 3. The Bharat Co-operative Bank (Mumbai) Limited/ bank sanctioned a sum of Rs. 38,34,00,000/- in terms of various sanction letters between the period of 08.05.2015 to 08.08.2017. The Bank has assigned this loan to the Applicant Financial Creditor vide Assignment Agreement dated 14.08.2019. The total amount claimed as on 10.11.2020 is Rs. 47,29,33,073/- (Rupees Forty-Seven Crore Twenty-Nine Lakh Thirty-Three Thousand Seventy-Three only) which includes interest of Rs. 13,25,64,266/-. The date of default is stated as 28.02.2019 in Part IV of the Application which is date of NPA as well.
 4. The Applicant has also filed a Loan Agreement, entries in the Banker's Book as defined in clause 3 of Section 2 of Banker's Book Evidence Act, 1891, Assignment Agreement dated 14.08.2019 assigning the date in favour of Applicant, the Loan recall notice dated 27.02.2020 and a letter dated 12.09.2020 written by the Corporate Debtor to the Applicant requesting to allow submission of proposal towards settlement of dues.
 5. The Corporate Debtor has filed a reply dated 12.01.2022 objecting the present application on the ground of - (A) Failure to Furnish Record Of Information Utility (B) There are three defaults under three credit



facilities and single petition is not maintainable; (C) The date of default is different than the date of NPA; (D) Limitation; (E) Absence of any financial contract with the petitioner. On perusal of this reply, it is also noted that the Corporate Debtor has submitted at para 15 thereof that due to change in government policies, could not repay the credit facilities for a small period of time.

6. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.
7. Sec 7(1) of IBC reads as under-

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

7. (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:



Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2021, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

8. In the present case, there is no dispute on the amount of debt and default committed by the Corporate debtor in payment thereof. Section 7(3) of the code requires the Financial Creditor to file Record of the default with the Information Utility or such other record or evidence of default as may be specified. Regulation 2A of IBBI (Resolution Process for Corporate Persons) Regulations, 2016 specifies Certified copies of entries in the Banker’s Book as defined in clause 3 of Section 2 of Banker’s Book Evidence Act, 1891 as record or evidence of default. Hence, this plea is not maintainable.
9. Section 7 of the Code is clear that the Application can be filed by the Financial Creditor Singly or jointly with others meaning thereby that the Code does not bar filing single application for multiple defaults provided all such defaults are within the limitation period. Nonetheless, in the present case the amount under each credit facility



in default exceeds the minimum threshold limit of Rs. 1 crore. For this reason the ground of limitation also does not survive. Though, we accept the plea of Corporate Debtor that the date of default is different than the date of NPA, yet the Adjudicating Authority is under obligation to determine correct date of default which is 90 days prior to the date of NPA and such date is also within limitation.

10. In view of the above, we find that the present case is fit for admission under Section 7 of the Code for initiation of CIRP against the Corporate Debtor.
11. The Applicant has proposed the name of Snehal Kamdar, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00415/2017-18/10738] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 258/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Omkara Assets Reconstruction Private Limited, Financial Creditor/ Applicant against M/s Vyva Apparels (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. That this Bench appoints Snehal Kamdar, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00415/2017-18/10738], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) 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/-

Prabhat Kumar
Member (Technical)
/Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)