



**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT-I**

11. C.P.(IB)789/MB/2022

CORAM: SHRI H. V. SUBBA RAO, HON'BLE MEMBER (J)  
MS. ANU JAGMOHAN SINGH, HON'BLE MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **18.04.2023**

NAME OF THE PARTIES: Tata Capital Financial Services Limited

V/s

Santoshi Barrier Film India Private limited

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

Counsel for the Petitioner/FC, Mr. Gaurav Jangle a/w Mr. Kunjita Shah I/b I V Merchant and co. and counsel for the Corporate Debtor, Mr. Debopriyo Mouluk a/w. Mr. Paras Parekh, Mr. Abhineet Sharma and Mr. Kandarp Trivedi are present through virtual hearing.

**C.P. 789/2022**

Heard the submissions of Mr. Gaurav Jangle, counsel appearing for the Financial Creditor and Mr. Debopriyo Mouluk, counsel appearing for the Corporate Debtor.

The above company petition is admitted. Detailed order will follow.

Sd/-  
ANU JAGMOHAN SINGH  
Member (Technical)  
*--Rajeev--*

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI  
BENCH COURT- I**

**C.P. No. 789/IBC/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*

**TATA CAPITAL FINANCIAL SERVICES LIMITED**

Having registered office at: Tower A, 11<sup>th</sup> Floor Peninsula  
Business Park, Ganpatrao Kadam Marg, Lower Parel,  
Mumbai- 400013

*.....Financial Creditor*

**Vs**

**SANTOSHI BARRIER FILMS INDIA PVT LTD**

(CIN: U25203MH2009PTC214185)

Registered office at: Plot No. D-51, Butibori Industrial  
Area, Village Gangapur, Taluka Hingna, Nagpur,  
Maharashtra- 441122

*.....Corporate Debtor*

Order pronounced on: **18.04.2023**

**Coram:**

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anu Jagmohan Singh, Member (Technical)

**For the Petitioner:** Mr. Gaurav Jangle a/w Mr. Kunjita Shah I/b I  
V Merchant and co.


**For the Respondent:** Mr. Debopriyo Moulik a/w. Mr. Paras Parekh,  
Mr. Abhineet Sharma and Mr. Kandarp Trivedi.

The above Company Petition is filed by M/s. Tata Capital Financial Services Limited hereinafter called as Financial Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against M/s. Santoshi Barrier Films India Pvt Ltd called as Corporate Debtor by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 8,68,46,679/-.

**BRIEF FACTS OF CASE ARE AS FOLLOWS**

1. The Financial Creditor is a Non-Banking Financial Company ("NBFC") and is engaged in the business of providing financial assistance to various Companies/Enterprises.
2. The Corporate Debtor is a Private Limited Company and is engaged in the business of manufacturing multilayer co-extruded plastic film. Mr. Dinesh Keshavrao Atkare and Mr Madan Keshavrao Atkare (hereinafter referred to as the "Personal Guarantors") have provided a guarantee in their personal and individual capacity and had irrevocably and unconditionally guaranteed repayment of the loan.
3. The Corporate Debtor and the Personal Guarantor vide Loan Application had approached the Financial Creditor for availing the Equipment Finance Facility. Financial Creditor sanctioned an Equipment Finance Facility for Rs.8,00,00,000/- upon such terms and conditions as mentioned in the Sanction Letter dated 22<sup>nd</sup> December 2016. Financial Creditor also entered into Loan cum Hypothecation cum Guarantee Agreement dated 5<sup>th</sup> January 2017 with the Corporate Debtor and the Personal Guarantors. The Personal Guarantors had given their irrevocable and unconditional guarantee for payment of loan by the Corporate Debtor.

4. The Corporate Debtor forwarded to the Financial Creditor, a proforma invoice bearing No.107 dated 23<sup>rd</sup> December 2016, issued by its supplier Brick and Byte Innovative Products Ltd.
5. Corporate Debtor had addressed a letter dated 31<sup>st</sup> December 2016 to the Financial Creditor providing undertaking with respect to the Facility. Corporate Debtor requested the Financial Creditor to disburse the entire loan amount of Rs 8,00,00,000/- directly to the Supplier i.e. Brick and Byte Innovative Products Pvt Ltd.
6. The Corporate Debtor and the Personal Guarantors have executed documents which are (1) Certified True Copy of the Resolution passed by Board of Directors of Corporate Debtor dated 29<sup>th</sup> December 2016, (2) Irrevocable Power of Attorney dated 5<sup>th</sup> January 2017. (3) Letter of Undertaking cum Indemnity dated 5<sup>th</sup> January 2017.
7. The Financial Creditor vide email dated 25<sup>th</sup> April 2017 had informed the Corporate Debtor that the Escrow condition under the Sanction Letter has not been complied with and that the disbursement would only happen when the escrow will have minimum inflow of Rs. 75,00,000/- every month.
8. The Financial Creditor vide letter dated 31<sup>st</sup> August 2017 had disbursed the balance amount of Rs. 1,72,50,000/- to the Supplier in pursuance of the Letter for Net Disbursal.
9. The Financial Creditor vide email dated 6<sup>th</sup> April 2018, 5<sup>th</sup> September 2018, 2<sup>nd</sup> November 2018, 11<sup>th</sup> September, 2018 12<sup>th</sup> September 2018 and 18<sup>th</sup> September 2019 reminded the Corporate Debtor to clear the outstanding amounts due and payable under the Facility.

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10. The Financial Creditor through its' erstwhile Advocates had issued Loan Recall Notices dated 14<sup>th</sup> November 2019 and 16<sup>th</sup> December 2019 calling upon the Corporate Debtor and the Personal Guarantors to pay to Financial Creditor to jointly and/or severally pay an aggregate sum as mentioned in Loan Recall Notice.
  11. The Financial Creditor filed Section 9 Petition in the Bombay High Court. Various interim reliefs were granted vide Order dated 8<sup>th</sup> January 2020. Various Affidavit in Replies were filed by the Corporate Debtor in compliance to the Order dated 8<sup>th</sup> January 2020.
  12. The Financial Creditor also filed a Complaint dated 14<sup>th</sup> January 2020 with Economic Offence Wings against the Corporate Debtor and the Personal Guarantor and Mrs. Dipali Dinesh Atkare, (the directors of the Corporate Debtor), Brick and Byte Innovative Product Private Limited, Ms Priyanka Prashant Kamat and Mr. Prashant Mangesh Kamat (Directors of Brick and Byte Innovative Products) under Section 403, 406 r/w Section 34 and 120-B of the Indian Penal Code, 1860.
  13. The Court Receiver could not take possession of the machinery as the technical person was not available for dismantling the machinery. The Financial Creditor preferred an Interim Application (L) 29163 of 2021 in the Commercial Arbitration Petition before the Hon'ble Bombay High Court to direct the Court Receiver for taking the symbolic possession of the machine and to exercise all the powers under Order 40 Rule 1 of Code of Civil Procedure Code, 1908.

**FINDINGS**

1. Heard the submission of Mr. Gaurav Jangle, counsel appearing for the Financial Creditor and Mr. Debopriyo Moulik, counsel appearing for the Corporate Debtor even though no reply has been filed by the Corporate Debtor.
2. The counsel appearing for the Financial Creditor invited the attention of this Bench to the following documents to prove the existence of “debt” and “default”:
  - i. Copy of Loan Application dated 20<sup>th</sup> December 2016 submitted by the Corporate Debtor.
  - ii. Copy of the loan sanction Letter dated 22<sup>nd</sup> December 2016 issued by Financial Creditor.
  - iii. Copy of the Loan cum Hypothecation executed between the Financial Creditor and the Corporate Debtor and Personal Guarantor.
  - iv. Copy of the proforma Invoice as forwarded by the Corporate Debtor to the Financial Creditor.
  - v. Copy of the Letter addressed by the Corporate Debtor to the Financial Creditor.
  - vi. Copy of the Letter dated 3<sup>rd</sup> August 2017 for Net Disbursal issued by the Corporate Debtor in favour of the Financial Creditor.
  - vii. Emails dated 21<sup>st</sup> September 2019, 23<sup>rd</sup> September, 2019 and 28<sup>th</sup> September, 2019 sent by the Financial Creditor to the Corporate Debtor.
  - viii. Copy of Loan Recall Notice as sent by the erstwhile Advocate to the Corporate Debtor and Personal Guarantors.
  - ix. Copy of Notice dated 16<sup>th</sup> December 2019 as sent by the erstwhile Advocate to the Supplier i.e. Brick and Byte Innovative Products Pvt Ltd and Reply dated 21<sup>st</sup> January, 2020 as sent by the Supplier i.e. Brick and Byte


Innovative Products Pvt Ltd to the erstwhile Advocate of the Financial Creditor.

- x. Copy of Order dated 8<sup>th</sup> January 2020 passed by the Hon'ble Bombay High Court.
3. The only contention of the counsel appearing for the Corporate Debtor during the course of final hearing today is that the second installment amount was belatedly disbursed by the Financial Creditor which is not a valid defence and which is beyond the scope of an enquiry in a section 7 application. Except the above plea, the Corporate Debtor did not raise any other legal issues in opposing the above Company Petition. After hearing both sides and upon perusing the material available on record including the record of default issued by the National E-Governance Services Limited (NeSL) on 17<sup>th</sup> March 2022, this Tribunal is convinced that the existence of "debt" and "default" stands proved beyond "debt" in this case and the "debt" claimed by the applicant is within limitation. The Financial Creditor also suggested the name of the IRP along with his consent in the Company Petition. Thus, the above Company Petition satisfies all the legal requirements for its admission.

Accordingly, the above Company Petition is admitted by passing the following.

#### **ORDER**

- a. The above Company Petition No. (IB) 789 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Santoshi Barrier Films India Pvt Ltd.
- b. This Bench hereby appoints **Ms. Palak Swapnil Desai**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01517/2019-2020/12515 (email id- palakdesai77@gmail.com) as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

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- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
  - 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

--Rajeev--

**Sd/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**