IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P.(IB)-419(MB)/C-III/2023

(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

Centbank Financial Services Limited

Having Registered Office at: Central Bank of India-MMO Building, Third Floor (East), 55 Mahatma Gandhi Road, Fort, Mumbai, Maharashtra- 400001.

……Financial Creditor/Applicant

Vs

M/s. Taquito Lease Operators Limited

Having Registered Office at: 3rd Floor, SOBO Central Mall, 28 P.T. Madan Mohan Malviya Road, Haji Ali, Tardeo, Mumbai, Maharashtra -400034.

…….Corporate Debtor/Respondent

Order Reserved on: 08.11.2023
Order Delivered on: 10.11.2023

CORAM:

SHRI CHARANJEET SINGH GULATI	**SMT LAKSHMI GURUNG**
HON'BLE MEMBER (T)	**HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Shwetaank Nigam
a/w Adv. Disha Mohanty, Adv. Rishi Badraj

For the Corporate Debtor: Non-appeared

ORDER

1. The Present **Company Petition (IB)-419(MB)/2023** is filed under 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 **Centbank Financial Services Limited** ("Financial Creditor") through its Authorised Representative, *Mr. Sunil Kumar Naik*, who has been duly authorised vide Board Resolution dated 25.04.2023 for initiating Corporate Insolvency Resolution Process ("CIRP") against **M/s Taquito Lease Operators Limited** ("Corporate Debtor") for default in repaying an amount of ₹321,71,71,304.63 (Indian Rupees Three Hundred Twenty-One Crores, Seventy-One Lakhs, Seventy-One Thousand, Three Hundred Four Rupees and Sixty Three Paisa only), as on 31.03.2022.

2. On perusal of the Company Petition, it reveals that the Corporate Debtor is engaged in the business of building and procuring moveable and immovable fixed assets conducive to the retail business, and leases the assets on a long-term operating lease to companies in the retail sector.

3. The Corporate Debtor issued and allotted 3000 secured, rated, redeemable, non-convertible debentures ("Debentures") each bearing a face value of INR 10,00,000 (Indian Rupees Ten Lakhs only), the aggregate nominal value being INR 300,00,00,000 (Indian Rupees Three Hundred Crores only) in 2018.

4. The Punjab National Bank ("Debenture Holder") vide their letter bearing no. Treasury/NSLR/TLOPL/SKJ/2017-2018 dated 09.01.2018 subscribed to 2550 Debentures for an aggregate nominal value of INR 255,00,00,000 (Indian Rupees Two Hundred Fifty-Five Crores). Centbank Financial Services Limited was appointed as the debenture trustee ("Debenture Trustee/Applicant") for the Debentures issued by the Corporate Debtor, pursuant to the Debenture Trustee Agreement dated 22.02.2018 executed between the Corporate Debtor and the Debenture Trustee and a Debenture Trustee Deed dated 22.02.2018 executed between the Corporate Debtor and the Debenture Trustee, which obliges the Debenture Trustee to act on behalf of the Debenture Holder.

5. Pursuant to the issuance of Debentures, the following documents were executed-

    i. Debenture Trust Deed and Debenture Trustee Agreement was executed by the Corporate Debtor and the Debenture Trustee on 22.02.2018;
    ii. Deed of Hypothecation and Deed of Pledge was executed by the Corporate Debtor and the Debenture Trustee on 23.02.2018;

iii. Promoter undertaking was executed by the Corporate Debtor, Mr. Kishore Biyani, Mr. Rakesh Biyani, Mr. Sunil Biyani and the Debenture Trustee on 22.02.2018;
iv. Deeds of personal guarantee issued by Mr. Kishore Biyani and Mr. Vijay Biyani on 23.02.2018;
v. Escrow Agreement was executed by the Corporate Debtor, Debenture Trustee and the Debenture Holder in its capacity as the escrow bank on 18.04.2018.

6. On failure to pay the debt, the Corporate Debtor requested the Debenture Holder to permit a one-time restructuring under the Reserve Bank of India circular on Prudential Framework for Resolution of Stressed Assets, 2019 dated 07.07.2019.

7. Accordingly, the Debenture Holder approved the restructuring of the terms of the outstanding Debentures and issued a sanction letter dated 16.06.2021 ("Restructuring Sanction Letter"), revising/restructuring the terms of the outstanding Debentures of INR 255,00,00,000 (Indian Rupees Two Hundred and Fifty Five Crores only) and sanctioning Funded Interest Term Loan ("FITL") of INR 37,00,00,000 (Indian Rupees Thirty Seven Crores only)for funding interest on the Debentures for the period from 01.07.2020 to 31.12.2021. An interest of 9.5% was applicable on the Debentures and FITL in accordance with the terms specified in the Restructuring Sanction Letter.

8. In pursuance to the Facilities mentioned in the Sanction Letter, the parties have modified the existing financing and security documents in pursuance of the terms specified in the Restructuring Sanction Letter as follows:

    i. Restructuring Agreement was executed by the Corporate Debtor and the Debenture Trustee on 18.06.2021.
    ii. Supplemental Debenture Trust Deed was executed by the Corporate Debtor and the Debenture Trustee on 18.06.2021.
    iii. Supplemental Deed of Hypothecation was executed by the Corporate Debtor and the Debenture Trustee on 18.06.2021.
    iv. Supplementary Escrow Agreement was executed by the Corporate Debtor, the Debenture Trustee and Punjab National Bank in its capacity as the Escrow Bank on 18.06.2021.

9. Despite the Debenture Holder permitted the one-time restructuring, the Corporate Debtor failed to fulfil its obligations under the relevant financing and transaction documents.

10. Pursuant to the instructions of the Debenture Holder, the Debenture Trustee had issued a demand notice to the Corporate Debtor on 06.08.2022, wherein the Corporate Debtor was obligated to repay INR 9,25,00,000 (Indian Rupees Nine Crores and Twenty-Five Lakhs only) as principal payment plus interest of INR 47,33,000 (Indian Rupees Forty-Seven Lakh and Thirty-Three thousand only) as interest with regard to the FITL and INR 6,03,36,575.34 (Indian Rupees Six Crores, Three

Lakhs, Thirty Six Thousand, Five Hundred Seventy-Five and Thirty-Four Paise only) as coupon repayment with regard to the Debentures.

11. The Corporate Debtor responded to the demand notice on 20.08.2022 and admitted that OTR could not be implemented as envisaged.

12. The Debenture Trustee received consent from the Debenture Holder on 18.10.2022, to issue a notice to recall the entire loan, and has subsequently the Debenture Trustee issued a notice on 28.11.2022 calling a default and accordingly recalling the entire loan amount, and seeking the repayment of the loan amount. Therefore, the current amount due and payable by the Corporate Debtor is INR 321,71,71,304.63. (Indian Rupees Three Hundred Twenty-One Crores, Seventy-One Lakhs, Seventy-One Thousand, Three Hundred Four Rupees and Sixty Three Paisa only).

13. The events of default have occurred in accordance with the terms of the Restructuring Sanction Letter and Restructuring agreement. Article 8.1.b of the Restructuring Agreement provides that if there is a default by the Corporate Debtor in the payment of any instalment of the interest on the FITL on any interest repayment date, then it shall be considered as an event of default. Upon the occurrence of an event of default as aforementioned, the debenture Trustee is entitled to exercise its rights under Article 8.2.e of the Restructuring Agreement and can accordingly to pursue any other legal remedy or right

provided under the applicable law, including the right to recall the loans, accelerate the maturity of the Facilities and exercise any right it may have under the relevant documents and under Indian Law.

14. In such circumstances, the Financial creditor has filed the present petition before this Tribunal seeking to initiate the CIRP against the Corporate Debtor.

15. In response to this, the Corporate Debtor filed a reply and submitted that the business of the Corporate Debtor was severely impacted during the Covid-19 pandemic due to which the Corporate Debtor could not commit to its financial obligations. The Corporate Debtor further submitted that the Corporate debtor is in the process of monetizing its assets and repay the alleged outstanding amount to the Financial creditor. It is pertinent to note that the Corporate debtor has assets to the tune of Rs. 300 Crores and monetization of the same would adequately cover the alleged outstanding of the Financial Creditor.

16. The corporate Debtor further submitted that it is well settled that the IBC,2016 is a beneficial legislation which puts the Corporate debtor back on its feet and therefore is not merely a recovery legislation for Creditors. The Corporate Debtor relied on ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd., (2018)1SCC 353***, wherein Hon'ble Supreme Court has held that-

"(d) Denial of an application to commence proceedings
61. The preceding paragraphs refer to a number of instances where it will be desirable, in those cases where the court is required to make the commencement decision, for the court to have the power to deny the application for commencement, either because the questions of improper use of the insolvency law or for technical reasons relating to satisfaction of the commencement standard…

62. Examples of improper use might include those cases where the debtor uses an application for insolvency as a means of prevaricating and unjustifiably depriving creditors of prompt payment of debts or of obtaining relief from onerous obligations, such as labour contracts. In the case of creditor application, it might include cases where a creditor uses insolvency as an inappropriate substitute for debt enforcement procedures (which may not be well developed); to attempt to force a viable business out of the market place; or to attempt to obtain preferential payments by coercing the debtor (where such preferential payments have been made and the debtor is insolvent, investigation would be a key function of insolvency proceedings).

63. As noted above, where there is evidence of improper use of the insolvency proceedings be either the debtor or creditors, the insolvency law may provide, in addition to denial of the application, that sanctions can be imposed on the party improperly using the proceedings or that the party should pay costs and possible damages to the other party for any hard caused…"

17. In addition to abovementioned judgement, the Corporate Debtor submitted that the similar view has been taken by the

Hon'ble Supreme Court of India in ***Transmission Corporation of Andhra Pradesh vs. Equipment Conductors and Cables, (2019) 12 SCC 697***; ***Swiss Ribbons Pvt. Ltd. vs. Union of India & Ors., (2019) 4 SCC 17*** and ***Invent Asset Securitisation and Reconstruction Pvt. Ltd. vs. Girnar Fibres Ltd., 2022 SCC Online SC 808***.

18. The Corporate Debtor further relied on Judgement of ***Vidarbha Industries Power Ltd. vs. Axis Bank Ltd., (2002) 8 SCC 352*** and submitted that the Adjudicating Authority has to exercise its discretion under Section 7(5)(a) of the Code, to keep the admission of the applicant of the Financial Creditor in abeyance, unless there is a good reason not to do so. Further prayed to dismiss the present petition.

19. In response to this, the Ld. Counsel for the Petitioner has relied on the Judgement of ***M. Suresh Kumar Reddy vs. Canara Bank & Ors. (Civil Appeal No. 7121 of 2022)***.

Findings:

20. We have heard the Ld. Counsel for the Petitioner and considered the reply filed by the Respondent and perused the record.

21. The Corporate Debtor in its reply to Demand Letter dated 20.08.2022 admitted the default of its repayment under the OTR scheme. Further, in reply to the Company Petition, the Corporate Debtor admitted that the business of the Corporate Debtor was severely impacted during the Covid-19 pandemic

due to which the Corporate Debtor could not commit to its financial obligations.

22. The Respondent has relied on the Judgement of ***Vidarbha Industries Power Ltd. vs. Axis Bank Ltd., (2002) 8 SCC 352*** to contend that Adjudicating Authority has to exercise its discretion under section 7 of the Code. This Reliance is mis-conceived because in the ***Review Petition no. 1043 of 2022*** of Vidarbha Industries Power Limited, the Hon'ble Supreme Court of India vide order dated 22.09.2022, clarified that:

> *"The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgements are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."*

23. In subsequent judgement of ***M. Suresh Kumar Reddy vs. Canara Bank & Ors (Civil Appeal No. 7121 of 2022)***, the Hon'ble Supreme Court after noting the judgement of Vidarbha Case (Supra) held that-

> *"13. Thus, it was clarified by the order in review that the decision in the case of* **Vidarbha Industries** *was in the setting of facts of the case before this Court. Hence, the decision in the case of* **Vidarbha Industries** *cannot be read and understood as taking a view which is contrary to the view taken in the cases of* **Innoventive Industries** *and* **E.S. Krishnamurthy***. The view taken in the case of* **Innoventive Industries** *still holds good."*

24. In the case of ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, the Hon'ble Supreme court has held that-

> *"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

25. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the "debt" (which may be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application. In other words, if the "debt" and "default" has been proved, the petition has to be admitted.

26. Moreover, the Applicant/Financial Creditor has also filed the Record of default certificate issued by NeSL and record of default issued by CRICL to prove existence of debt and default.

27. Looking at the aforementioned facts, this Bench is of the view that the existence of debt and default has been proved, therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint ***Prajakta Menezes*** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.

28. Accordingly, this Company Petition is hereby **admitted** with the following directions:

a. **The above Company Petition (IB) 419(MB)/2023 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against ***M/s Taquito Lease Operators Limited.***

b. This Bench hereby appoints ***Prajakta Menezes,*** *having Registration No:* ***IBBI/IPA-001/IP-P01349/2018-2019/12016,*** *Address:* ***106, Kanakia Atrium -2, Chakala, Andheri East, Mumbai- 400059;*** *E-mail:* *prajakta@prmlegal.in* as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

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

Sd/- Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan,LRA