IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

C.P. (IB)/126(AHM)2024

orders under Section 7 IBC

IN THE MATTER OF:

Profectus Capital Private Limited .....**Applicant**
V/s
M K Fashion Hub Private Limited .....**Respondent**

Order delivered on: 07/10/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-SD-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

CP(IB) No.126/NCLT/AHM/2024

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

MEMO OF PARTIES

Profectus Capital Private Limited,
a Non-Banking Finance Company, registered
with the Reserve Bank of India and
incorporated under the provisions of the
Companies Act, 2013 and having its
Registered Office at B-17, Fourth Floor, Art
Guild House, Behind Phoenix Market City,
Lal Bahadur Shastri Marg, Kurla (West),
Mumbai-400070, Maharashtra and
Branch Office at Office No.F-2, Nikumbh Complex
4th Floor, Opp. Tomato Restaurant Lane,
Near GLS College, C.G. Road, Ahmedabad-
380009. Through its Authorised Officer Mr.
Ganesh Aparaj (Authorised through Power of
Attorney dated September 29, 2003)

...Financial Creditor/Applicant

Versus

M. K. Fashion Hub Private Limited,
a Company incorporated under the
Companies Act, 2013 having its Registered
Office at GF Shop No.501 to 514, A-One
Complex, Opposite Kalupur Railway Station,
B/S Post Office, Ahmedabad-380001, Gujarat.

...Corporate Debtor/Respondent

Order pronounced on 07.10.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Hem Buch, Adv. a.w. Mr. Harsvardhan Rathore, Adv. in
For the Respondent : Mr. Parth Shah, Adv. a.w. Mr. Kamlesh Lalwani, Adv.

JUDGEMENT

1. This application is filed by the Financial Creditor under section 7 of IBC being a Non-Banking Finance Company, registered with RBI having its office at CG Road, Ahmedabad with CIN U65999MH2017PTC295967having a debt due to be paid by the Corporate Debtor (Respondent) M. K. Fashion Hub Private Limited, having its registered office at GF Shop No.501 to 514, A-One Complex Opp. Kalupur Railway Station Ahmedabad with CIN U18109GJ2020PTC116413. The prayers are to admit the

application under section7 of IBC r.w. Rule 4 of the IB(AAA)Rules,2016 and appoint an IRP in terms of section 16 of the Code and declare a moratorium in terms of section 14 of the Code. It is stated that the Applicant had sanctioned an Enterprise Mortgage Loan. Mr. Manish Prakashlal khilani, proprietor of M. K. Fashion Hub and Ms. Riya Khilani are Co-borrowers for the Mortgage Loan,vide sanction letter dated 31.12.2021 for an amount of Rs.4,70,00,000/- for its working capital requirement. The stated loan amounts were disbursed on 31.12.2021 for an amount of Rs.3,07,23,535/- and on 31.01.2022 an amount of Rs.1,28,26,197/- to the corporate debtor. Documents such as Loan Agreement, Demand Promissory Note, etc., were executed on 31.12.2021 to secure the facility. The co-borrowers have also executed certain mortgage deeds in favor of the applicant and also along with the corporate debtor signed a Power of Attorney in favor of the Financial Creditor. Respondent no. 2 Mr. Manish P. Khilani also executed an Indenture of Mortgage deed dated 09.02.2022 in favor of the Financial creditor.

2. It is stated that even though the respondent and the co-borrowers agreed to repay the loan as per the schedule, despite reminders, they defaulted on the payment and the applicant served a legal notice on 23.05.2023. Since no repayment was made, the account was classified as NPA as on 04.07.2023 as per the RBI norms. The applicant issued a demand notice on 07.07.2023 under section 13(2) of the SARFESI Act, 2002. It is stated that both the respondent along with the borrowers raised their objections vide their communication dated 26.07.02023 to the demand notice and the applicant's legal counsel vide letter dated 09.08.2023 communicated non-acceptance of the representation and objections. The applicant took over the symbolic possession of the secured assets and issued public notice on 01.01.2024 for sale/auction of the assets. However no bids were received, hence fresh sale/auction process was initiated on 24.02.2024. The applicant further submitted that they served fresh legal notice on 27.02.2024 to all the respondents to repay the outstanding due. It is stated that as on 09.03.2024 an amount of Rs.4,83,07,243.00/- was outstanding and payable by the

respondents. As the respondents have still not paid the amount, this application is filed. The application is filed against the corporate debtor as respondent, while the loan has co-borrowers against whom the reliefs are sought in the application. The applicant has also submitted the Form D along with the statement of bank account with the application.

3. The respondents have filed their reply by affidavit raising objections to a power of attorney holder filing this application, who has no such authority and there is no board resolution placed on record to initiate legal proceedings against the respondent. Further it is stated that the respondent is facing temporary financial difficulty being a private company in the business of manufacturing textiles and is due to get some receivables. He has tried to settle the dispute with the financial creditor including a new buyer to purchase the property, but applicant was not ready to settle the dispute. He also submitted that he is trying to improve his temporary financial position, and hence in terms of the judgment by Hon'ble Supreme Court in Vidarbha Industries Power Ltd V Axis Bank Ltd., Civil Appeal No. 4633 of 2021

he sought time in repaying the amount due. He also stated that he has challenged the Auction (which failed to get bids) done by the applicant under section 17 of the SARFESI Act and the valuation done by the financial creditor is much below the actual value and he is trying to get a buyer who is willing to buy at a good price to repay the loan.

4. Heard both the parties and their submissions. The Debt is admitted and the financial creditor has its rights to file this application under Section 7 of IBC 2016 against the respondent and has his rights to proceed against the co-borrowers who have given the POA to secure this debt by the corporate debtor. Even though the respondent says he has financial difficulties, the debt has become due as per norms and is due and payable.

5. In view of the above, we pass the following orders:

ORDER

I. CP(IB) No. 126 of 2024 is allowed.

II. The CIRP is Ordered to be initiated against the corporate debtor – M. K. fashion Hub Private Limited.

III. The moratorium under section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of section14 (1) of the IBC, 2016.

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 the possession of the corporate debtor.

e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

IV. The order of moratorium under section 14 of the code shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

V. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of Section 14(2) to section 14(3) of IBC, 2016.

VI. As proposed by the Financial Creditor, we appoint Mr. Indrajit Mukherjee, having Registration No. IBBI/IPA-001/IP-P-01533/2018-2019/12450, email-

indrajitmukherjee15@yahoo.com, under section 13 (1)(c) of the Code to act as Interim Resolution Professional ("IRP") of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Resolution Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

VII. The IRP shall perform all his functions contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do

not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

VIII. This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

IX. The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

X. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

XI. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a

going concern as a part of obligation imposed by Section 20 of the IBC, 2016.

XII. The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

XIII. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

XIV. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST

(centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.

XV. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

6. Accordingly, the present application i.e., CP (IB)/126 (AHM) 2024 is allowed and stands disposed off.

-SD-

DR. V. G. VENKATA CHALAPATHY
MEMBER(TECHNICAL)

Sd-

CHITRA HANKARE
MEMBER(JUDICIAL)