



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-528(ND)/2022

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

In the matter of:

STATE BANK OF INDIA

... Petitioners/ Financial Creditor

VERSUS

M/S. VEE ESS JEWELLERS LIMITED

... Respondents/ Corporate Debtor

CORAM:

DR. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 24.01.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

The instant Company Application is filed by State Bank of India ('applicant') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Vee Ess Jewellers Private Limited ('Respondent/Corporate Debtor') having CIN: U36911DL2005PTC133464 on the ground that the Corporate Debtor had committed a default in payment of Rs.191,70,75,765.66/- (Rupees One Hundred Ninety One Crores Seventy Lakhs Seventy Five Thousand Seven Hundred Sixty Five and Piase Sixty Six only) as on 30.04.2022.



2. The Corporate Debtor i.e., M/s. Vee Ess Jewellers Private Limited having CIN: U36911DL2005PTC133464 is incorporated on 01.03.2006 under the provisions of the provisions of the Companies Act, 1956 having its registered office situated at 1127-28, 3rd Floor, K Block Gali No. 58, Naiwala, Gurudwara Road, Karol Bagh, New Delhi-110005. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-
 - a) The applicant submits that the Corporate Debtor being an erstwhile Partnership under the name and style of M/s. Vee Ess Jewellers had approached the applicant Bank for the grant of credit facilities in connection with their business and on the aforesaid request, the Applicant Bank granted various loan/ credit facilities to the Corporate Debtor to the tune of Rs. 22.20 crores vide its Sanction Letter dated 14.02.2005.
 - b) The applicant submits that pursuant to the incorporation of the Corporate Debtor under the name and style of 'M/s. Vee Ess Jewellers Private Limited' under the provisions of the Companies Act, 1956 on 01.03.2005, the Corporate Debtor gave an undertaking dated 30.06.2006 to the Applicant Bank requesting to change the name of all accounts relating to M/s Vee Ess Jewellers, a Partnership Firm to M/s Vee Ess Jewellers Pvt. Ltd. i.e. the Corporate Debtor as all the liabilities of M/s Vee Ess Jewellers, a Partnership Firm had been taken over by the Corporate Debtor vide Resolution dated 31.03.2005 and all Debit Balances created earlier or now onwards against sanctioned limits or otherwise or any charges/interest etc. due from M/s Vee Ess Jewellers, a Partnership Firm will be paid by the Corporate Debtor.



- c) The Applicant Bank submits that in consideration to the grant of the aforesaid loan/credit facilities to the tune of Rs.22.20 Crores, the Corporate Debtor, as borrower and Mr. Komal Jain, Mr. Sanjeev Verma, Mr. Ajit Singh, Mr. Kirti Jai Mr. Kamaljeet Karwal, Mrs. Surekha Karwal, Mr. Anil Kumar, Mr. Anurodh Kumar Bagai and M/s Ashoka Woolen Mills, a partnership firm, as Guarantors and security providers signed and executed various loan, guarantee and security documents on 11.07.2006.
- d) The Applicant Bank submits that the Corporate Debtor had duly availed the loan/credit facilities granted to it, however it failed to maintain financial discipline despite repeated requests and reminders from the Applicant Bank including vide its letters dated 28.04.2008, 07.05.2008, 29.05.2008, 07.02.2009, and 16.02.2009. The Applicant Bank further submits that the Applicant Bank had issued a Notice dated 28.08.2009 under Section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor, Guarantors and security providers to clear the outstanding dues of the Applicant Bank.
- e) The Applicant Bank submits that despite the several payment reminders and issuance of notice under SARFAESI Act, 2002, the Corporate Debtor remained irregular in conduct of the loan facilities and as such the Applicant Bank again, vide its Legal Demand Notice dated 13.11.2009, called upon the Corporate Debtor, Guarantors and security providers to pay the outstanding amount due and payable by them to the Applicant Bank.
- f) The Applicant Bank submits that the Applicant Bank had filed an Original Application bearing O.A. No. 40 of 2010 before the Ld. Debts Recovery Tribunal-II, New Delhi against the Corporate Debtor seeking recovery of Rs.62,23,916.80/- besides pendentelite and future interest and the said Original Application bearing O.A. No. 40 of 2010 was allowed by the Ld. Debts Recovery Tribunal-II, New Delhi vide its final order dated 07.07.2017 and pursuant thereto a Recovery Certificate dated 07.07.2017 bearing RC No. 194 of 2017 stood issued in favour of the Applicant Bank.
- g) The Applicant Bank further submits that in terms of the final order dated 07.07.2017, the Applicant Bank, after giving adjustment to all recoveries



made after filing of O.A. No. 40 of 2010, is still entitled to recover a sum of Rs. 191,70,75,765.66 (Rupees one hundred ninety one crores seventy lakhs seventy five thousand seven hundred sixty five and paise sixty six) as on 30.04.2022 besides interest from 01.05.2022.

h) The Applicant Bank further submits that the said R.C. No. 194 of 2017 is still pending adjudication and is next listed for hearing on 27.06.2022.

i) To prove the existence of debt and default therein, the Applicant Bank has placed reliance on the following documents:-

1. General Agreement for Grant of Loan for overall limit dated 11.03.2005 for Rs. 22.20 crores.
2. Agreement of Hypothecation of Goods and Assets dated 11.03.2005 for Rs. 22.20 crores.
3. Agreement of Hypothecation of Goods and Assets dated 11.07.2006 for Rs. 22.20 crores.
4. Sanction letter dated 21.12.2006 for Rs. 35 crores
5. Supplemental Agreement for Hypothecation of goods and assets dated 29.01.2007 for Rs. 35 crores
6. Statement of Account bearing nos. 10577025945 and 31745046028 duly certified in accordance with the Bankers Books Evidence act, 1891
7. Notice dated 28.08.2009 under section 13(2) of the SARFAESI Act, 2002
8. Copy of the recovery certificate bearing R.C. No. 194 of 2017 in O.A. No. 40 of 2010 dated 07.07.2017

4. This Adjudicating Authority vide its order dated 13.07.2022, had directed the Applicant Bank to issue notice to the Corporate Debtor as to why the application for initiating the CIRP should not be admitted against the Corporate Debtor. The Applicant Bank vide affidavit of service dated 22.08.2022 submitted that the notice to the Corporate Debtor had been sent through e-mail on the e-mail id of one of the directors of the Corporate Debtor since the registered office of the Corporate Debtor as per the MCA Master Data is not traceable. This Adjudicating Authority vide its order dated 25.08.2022 had directed the Applicant Bank to issue notice to respondents through



Publication. The Applicant Bank vide affidavit of Publication dated 10.10.2022 had placed on record the notice of the captioned petition in “Financial Express” (Delhi, English Edition) and “Jansatta” (Delhi, Hindi Edition) on 30.09.2022. Considering, the above said facts as the Corporate Debtor has not responded despite notices, the Corporate Debtor was set ex parte by this Adjudicating Authority’s order dated 11.10.2022.

5. Heard. Records perused. Before going into the merits of the present case, this Adjudicating Authority is of the view that the present application should first be tested on the grounds of limitation as the date of default as mentioned in Part-IV of Form-1 of the present application and relied by the Applicant Bank is (i) 30.09.2008: Account of the Corporate Debtor stood classified as NPA and (ii) Final Order dated 07.07.2017 was passed by Ld. Debts Recovery Tribunal-II determining the Default Liability of the Corporate Debtor. The issue to be decided here is as follows:-

“Whether a final judgment and decree of the DRT in favour of the financial creditor, or issue of a Recovery Certificate, would give rise to a fresh cause of action to initiate proceedings under Section 7 of the IBC?”

6. At this juncture, it will be advantageous to refer the judgement dated 04.08.2021 of the Hon’ble Supreme Court in **Dena Bank (now Bank of Baroda) v C. Shivakumar Reddy and Anr, (Civil Appeal 1650 of 2020)** wherein while dealing with the issue Whether a final judgment and decree of the DRT in favour of the financial creditor, or a Recovery Certificate, would give rise to a fresh cause of action to initiate proceedings under Section 7 of the IBC, the Hon’ble Supreme Court proceeded to hold that the Recovery Certificate in itself gave a fresh cause of action to the Bank to institute proceedings under Section 7 of IBC. The relevant part of the said judgement is reproduced herein below:-



“To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

7. The **Hon’ble Supreme Court of India in in Suo Motu Writ Petition (Civil)**

No. 3 of 2020 vide order dated 10.01.2022 took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/ suits/ appeals/ all other quasi-judicial proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both central and /or state) due to the outbreak of the COVID-19 pandemic and held as follows:-

- i. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, ***it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.***
- ii. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.



- iii. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. **In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.**
- iv. *****

8. Adverting to the facts of the present case, pursuant to the final order dated 07.07.2017 passed by the Hon'ble Debts Recovery Tribunal –II, a Recovery Certificate dated 07.07.2017 bearing RC No. 194 of 2017 stood issued in the favor of the applicant Bank. In the light of the **Dena Bank judgement (Supra)**, final order dated 07.07.2017 and recovery certificate dated 07.07.2017 passed by the DRT in favor of the Applicant Bank had given rise to a fresh cause of action to initiate CIRP proceedings under Section 7 of the IBC within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery. Further, considering the order dated **10.01.2022 of the Hon'ble Supreme Court of India in Suo Motu Writ Petition (Civil) No. 3 of 2020**, categorically at 5(I) AND 5(III) of the said order, the period from 15.03.2020 till 28.02.2022 stands excluded and the actual balance period of limitation i.e., 01.03.2022 to 07.07.2022 shall apply. The present application under Section 7 of the Code, 206 was filed on 28.05.2022, therefore, the present application filed under Section 7 of the Code, 2016 qualifies the test of limitation and is, therefore, within the Period of limitation.

9. With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.



10. The Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407**, held as follows :-

"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. 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.**"

"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."

11. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant Bank/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a



sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition ***I.B./528/ND/2022 stands admitted*** and CIRP of M/s. **Vee Ess Jewellers Limited** shall be initiated.

12. The petitioner in amended Part-III of the petition has proposed the name of Mr. Ashok Kumar Gupta as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-003/IP-N00010/2016-2017/10072. Mr. Ashok Kumar Gupta, having registration number IBBI/IPA-003/IP-N00010/2016-2017/10072 and email – id cmaashokgupt@gmail.com is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or*



continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
16. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Ashok Kumar Gupta to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
17. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.



18. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.
19. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.
21. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./528(ND)/2022 stands admitted.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N PRASAD)
MEMBER (J)**