

NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Item No. 27

IA 143/2021 IA 169/2021 IA 367/2021 IA 942/2021 IA 1917/2021 IA 2023/2021
IA 874/2022 in C.P. (IB)1967/MB/2019

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **20.10.2023**

NAME OF THE PARTIES: **CREATIVE GARMENTS PVT LTD V/S**
DILIP CHHABRIA DESIGN PVT LTD

Section 60(5) & 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 143/2021 IA 169/2021 IA 942/2021 IA 1917/2021 IA 2023/2021 IA 874/2022

- 1) Ld. Counsel for the Parties are present.
- 2) Heard Ld. Counsel for the Parties for a considerable time. Reserved for Orders.

IA 367/2021

- 1) Mr. A.K. Mishra, Ld. Counsel for the Applicant Resolution Professional and Mr. Yahya Batatawala, Ld. Counsel for the Respondent No. 1 are present.

2) The present Interlocutory Application has been filed by the Resolution Professional against Respondents, viz. Axis Bank Pvt Ltd and M/s BMW India Financial Services Private Limited, seeking the following Reliefs:

- a. *Allow this Interlocutory Application.*
- b. *Issue necessary directions and order to Respondent No. 1 to deposit the proceeds of Rs. 11 lac & Respondent No. 2 to deposit the proceeds of Rs. 94 lac received during the CIRP proceedings from the Suspended Directors, Erstwhile Directors & Personal Guarantors towards the settlement of Loan Account & discharge of liabilities as more particularly mentioned above in CIRP Account.*
- c. *For such other necessary reliefs as this Hon'ble Tribunal may deem fit and proper.*
- d. *Cost of the application be provided for.*

3) The Respondent No. 1 had granted the auto loan facility to the Corporate Debtor on the basis of the security documents executed between the Respondent No. 1 and the Corporate Debtor.

4) Hon'ble Supreme Court in the case of Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala [Civil Appeal No. 4613 Of 2000], has held that the liability of the guarantor and principal debtors are co-extensive and not alternative.

5) Further, the Hon'ble Supreme Court in the case of Lalit Kumar Jain vs. Union of India & Ors. [Transferred Case (Civil) No. 245/2020], has held that the liability of the guarantor / surety is not extinguished or absolved which arises out of an independent contract, in case, the liability of the borrower is discharged in relation

to the debt owed by it to its Creditors by operation of law, or due to insolvency or liquidation process.

6) The present Interlocutory Application seeks recovery of money from the Personal Guarantors of the Corporate Debtor by way of One Time Settlement. It is undisputed fact that this money does not belong to the Corporate Debtor and it came from the Personal Guarantors of the Corporate Debtor. Accordingly, the Resolution Professional does not have any right over this Money.

7) In that view of the matter, the present Interlocutory Application bearing IA No. 367 of 2021, is not maintainable; hence, disposed of.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Vedant Kedare

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**