

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

Company Petition No. 800/(IB)-MB-V/2021

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

In the matter of

DBS Bank India Limited,

(Formerly Known as DBS Bank Limited)

Registered Office at:

Ground Floor Nos. 11 & 12 & First Floor

Nos. 110 to 115 Capital Point, BKS

Marg, Connaught Place,

New Delhi 110001

And

Branch Office at:

19th Floor, Express Towers, Nariman

Point, Mumbai-400021

.... Petitioner/Financial Creditor

Vs.

M/s. Saisons Trade and Industry Private

Limited,

(Formerly Known as Saisons Technocom Private Limited)

Unit No. 416/C, B- Wing 4th Floor, Dattani

Plaza, Safed Pool, Sakinaka Junction, Andheri

(East), Mumbai-400072

...Corporate Debtor/Respondent

Order Reserved on: 02.03.2022

Order Pronounced On: 20.04.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Adv. Nikhil Rajani
For the Respondent : Adv. Akansha Jadhav a/w
Adv. Sheetal

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Petitioners/Applicant viz. 'DBS Bank India Limited'. (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Saisons Trade and Industry Private Limited' (hereinafter as '**Corporate Debtor**').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is Rs. 8,53,87,717/- with interest. The date of default is stated to be 20.04.2021.

Brief Facts-

3. DBS Bank India Limited is a banking company incorporated in the Companies Act, 2013 having its Registered Office at Ground Floor Nos. 11 & 12 & First Floor Nos. 110 to 115 Capital Point, BKS Marg, Connaught Place, New Delhi-110001, and Branch Office at 19th Floor, Express Towers, Nariman Point, Mumbai-400021.
4. The Petitioner has granted various facilities to the Corporate Debtor vide Sanction Letter dated 31.01.2014, upon the terms and conditions therein mentioned:

(INR Million)

Sr. No.	Nature of Facilities	Facility Limits	Sub-limits
A.	Multiline facilities Parent Limits (Trade Finance Facility as mentioned in sub-limits)	40.00	
	I. Purchase Side Financing		(40.00)
	1. Letter of Credit Facility		(40.00)
	2. Buyers Credit (BCU)		(40.00)
B.	Others		
	I. PCEFX		
	Total Facility Limits	40.00 + FX Facilities	(40.00) + FX Facilities

5. On 10.12.2014 the Personal Guarantors to the Corporate Debtor has given the Personal Guarantee in the event of default in the part of the Corporate Debtor.

6. The facilities given by the Petitioner were renewed, enhanced and amended on 15.07.2015, 18.03.2016, 11.12.2017, 10.02.2020 and 29.12.2020 and the repayment thereof were secured by executing various loan documents including Demand Promissory Note and Guarantees of the Personal Guarantees of the Personal Guarantors.
7. The aforesaid credit facilities were secured by Hypothecation of assets viz: stock in trade, raw material, goods in process semi-finished goods; bank accounts including receivables and hypothecation of book debts, trade receivables and cash flows of the Corporate Debtor. The said credit facilities were further secured by the personal guarantee of Mr. Ankit V. Shah and Mr. Siddharth Chimanlal Shah who had also mortgaged their respective immovable properties in favour of the Petitioner.
8. The Petitioner has enclosed the following documents in support of the Facility granted to the Corporate Debtor:
 - (a) Copy of the Memorandum of entry dated 19.10.2015;
 - (b) Copies of Memorandum of Entry creating recording of equitable mortgage fated 02.06.2016 along with declarations both dated 02.06.2016;
 - (c) Copy of Deed of Hypothecation dated 30.07.2015;
 - (d) Copy of supplemental Deed of Hypothecation dated 11.04.2016;
 - (e) Copy of supplemental Deed of Hypothecation dated 15.02.2020;
 - (f) Copy of the Joint Deed of Guarantee dated 10.02.2014;
 - (g) Copy of the Supplemental Guarantee dated 30.07.2015;
 - (h) Copy of the Supplemental Guarantee dated 11.04.2016;
 - (i) Copy of the Supplemental Guarantee dated 15.02.2020;

- (j) Copy of the facility letter bearing Ref No. CDT/ADMIN 049/2014 dated 31.01.2014 and duly acknowledged by the Defendant No. 1;
- (k) Copy of the letter of Lien and Set off dated 10.02.2014;
- (l) Copy of the Working Capital facility Agreement dated 10.02.2014;
- (m) Copy of the facility letter bearing ref No. CDT/ADMIN/550/2015 dated 15.07.2015;
- (n) Copy of the Supplemental Working Capital facility Agreement dated 30.07.2015;
- (o) Copy of the letter of lien and Set off dated 30.07.2015;
- (p) Copy of the Declaration dated 19.10.2015;
- (q) Copy of the facility letter bearing ref No. CDT/ADMIN/246/2016 dated 18.03.2016;
- (r) Copy of the Supplemental Working Capital facility Agreement dated 11.04.2016;
- (s) Copy of the facility letter dated 01.06.2016;
- (t) Copy of the facility letter bearing ref No. CDT/ADMIN/1027/2017 dated 24.11.2017 r/w. Modification letter dated 11.12.2017 and 21.05.2018;
- (u) Copy of the Demand Promissory Note dated 24.06.2019;
- (v) Copy of letter of Continuity dated 24.06.2019;
- (w) Copy of the facility letter bearing ref No. BSU/IBG3/297/2020 dated 10.02.2020;
- (x) Copy of Resolution dated 15.02.2020;
- (y) Copy of the Supplemental Working Capital facility Agreement dated 15.02.2020;
- (z) Copy of the facility letter bearing ref No. BSU/IBG 3/746/2020 dated 29.12.2020;

(aa) Copy of the Supplemental Working Capital facility Agreement dated 29.12.2020;

9. The Corporate Debtor had issued two cheques bearing Cheque No. 033925 dated 24.03.201 for an amount of Rs. 4,80,00,000/- and Cheque No. 033926 dated 31.03.2021 for an amount of Rs. 3,70,00,000/- drawn on Dena Bank towards payment of the outstanding dues, when the cheques were deposited for the payment both the cheques were returned with the remark “funds insufficient”.
10. On 03.05.2021 the Petitioner issued recall notice to the Corporate Debtor for the payment of the outstanding dues. However, there was no reply from the Corporate Debtor for the recall notice.
11. Thereafter the Petitioner on 18.05.2021 had issued notice under Section 138 of NI Act, 1881 and the Petitioner has initiated necessary proceedings under Section 138 of N.I Act, 1881 and also filed recovery proceedings in the Debt Recovery Tribunal-I, Mumbai by filling regular Original Application which are pending for hearing.
12. The Corporate Debtor has filed the reply on 14.02.2022 and indicated that they are not in a position to pay the dues of the Petitioner for an amount of Rs. 8,53,87,717/- on account of slump in business due to the impact of Covid-19 and the business of the Corporate Debtor has come to unprecedented gridding halt due to lockdown.

Findings:

13. Upon perusal of the Petition and after hearing both the parties, it is established that the Petitioner has granted Credit Facilities to the

Corporate Debtor wherein the money of Rs. 4,00,00,00/- was disbursed by the Petitioner and further the credit facilities were renewed, enhanced and amended on 15.07.2015, 18.03.2016, 11.12.2017, 10.02.2020, and 29.12.2020, the Corporate Debtor was not able to repay the amount and an amount of Rs. 8,53,87,717/- is due and outstanding. During the course of the hearing, the Corporate Debtor had admitted the liability hence, this Bench concludes that it is established beyond doubt that there is debt and default. Hence, the Petition is admitted.

14. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt and the Corporate Debtor failed to pay.

15. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.

16. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this

application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

17. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Sanjeev Kumar Jalan having registration No. IBBI/IPA-001/IP-P-01901/2020-2021/13053, having address at BDO Restructuring Advisory LLP, Ruturaj Apartment, Wing A, Room 9/10, Juhu Road, Santacruz West, Mumbai ,400049, having email id: sanjeev_jalan@yahoo.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
18. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
19. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

20. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
21. In view of the above, the Bench “**Allows**” the Company Petition No. **800/(IB)-MB-V/2021** u/s.7 initiating CIRP against the Corporate Debtor Renaissance Corporation Limited. The commencement of the Corporate Insolvency Resolution Process shall be, effective from the date of the Order.
22. Ordered Accordingly.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)