

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - I**

ITEM No.302  
C.P.(IB)/183(AHM)2023

**Proceedings under Section 7 IBC**

**IN THE MATTER OF:**

Wellworth Apparels Pvt Ltd  
V/s  
Cupid Estatecon Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on 16/04/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**CP(IB) No. 183 /AHM/ 2023**

*(An application 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 **M/s. Cupid Estatecon Private Limited.***

**M/s. Wellworth Apparels Private Limited.**

Having registered office address at:

Office No. M2, Maznine Floor, Pearl Plaza,

Tata Road No.2, Opera House,

Mumbai, Mumbai City – 400004.

**.... Applicant/Financial Creditor**

**VERSUS**

**M/s. Cupid Estatecon Private Limited**

Having its Registered office at

Kamleshbhai Ki Chawl, Block –B,

R.No.1, Samarvani Silvassa,

Dadar & Nagar Haveli – 396 230.

**.... Respondent/Corporate Debtor**

**Order pronounced on: 16.04.2024**

**CORAM:**

**MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**MR. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

M/s. Wellworth Apparels Pvt. Ltd.  
Vs M/s. Cupid Estatecon Private Limited

For the Applicant : Mr. Nandish Chudgar Adv.  
For Mr. K. Parth, Adv.  
For the Respondent : Ex-parte

**O R D E R**  
**(Per: Bench)**

1. The Present Application is filed on 13.07.2023 by the Applicant M/s. Wellworth Apparels Private Limited (hereinafter referred to as **“the Applicant/Financial Creditor”**) against the Respondent M/s Cupid Estatecon Private Limited (hereinafter referred to as **“the Respondent/Corporate Debtor”**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of its outstanding dues **Rs. 2,38,47,115/-** including interest. The date of default as stated to be 01.04.2018.

2. On perusal of Part-I of the Form-1 reveals that the Applicant/Financial Creditor is registered under the Companies Act, 1956 having CIN No. U17120MH2009PTC194116. The Applicant was incorporated on 15.07.2019 and has its registered office at Office No. M2, Maznine Floor, Pearl Plaza, Tata Road No.2, Opera House, Mumbai, Mumbai City – 400004. Further, the application is affirmed by one Mr. Hazur Bachan Singh, who is authorized by Board Resolution dated 09.05.2023 which is annexed at Annexure-B.
  
3. On perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is one M/s Cupid Estatecon Private Limited CIN No. U45202DN2006PTC000209 CIN No. U27203GJ2006PTC049228. The Respondent/Corporate Debtor was incorporated on 15.11.2006 and has its registered office at Kamleshbhai Ki Chawl, Block –B, R.No.1, Samarvani Silvassa, Dadar & Nagar Haveli – 396 230.
  
4. Part-III of the Form-1 reveals that the Applicant/Financial Creditor has proposed the name of the Interim Resolution

Professional (**'IRP'**) **Shri Modilal Dhanraj Pamecha**, having registration No. IBBI/IPA-001/IP-P01231/2018-2019/12127. He has filed his written communication annexed with the Application as Annexure-D as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant/Financial Creditor is Rs.2,38,47,115/- which includes principal amount of Rs.22,42,000/-, Rs. 2,05,62,285/- interest and Rs. 10,42,830/- overdue charge as on 15.05.2023.
6. Part-V of the Form-1 reveals that the total sum of Rs. 22,42,000/- was disbursed by the Applicant/Financial Creditor to the Respondent i.e. Rs. 15,61,000/- through cheque No. 00117432 and Rs. 6,81,000/- through cheque No. 00117423 of Canara Bank in terms of Demand Promissory Note dated 14.06.2013. The date of default is mentioned as 01.04.2018 and there is total outstanding of Rs.2,38,47,115/- which includes principal amount of Rs.

22,42,000/-, Rs. 2,05,62,285/- interest and Rs. 10,42,830/- overdue charge as on 15.05.2023.

7. The applicant relies upon the following documents:-

- a) Letter dated 03.06.2013 addressed by Cupid Estatecon Private Limited to Wellworth Apparels Private Limited requesting for financial assistance. The same is annexed hereto and is marked as Annexure- G.
- b) Board Resolution dated 05.06.2013 passed by Wellworth Apparels Private Limited in its Board Meeting held and convened on 05.06.2013 approving the granting of financial assistance to Cupid Estatecon Private Limited. The board resolution dated 05.06.2013 is annexed hereto and is marked as Annexure-H.
- c) Letter dated 05.06.2013 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited approving a sanction of loan of Rs 22,42,000/- Letter dated 05.06.2013 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited is annexed hereto and is marked as Annexure-L.
- d) Board Resolution dated 10.06.2013 passed by the Board of Directors of Cupid Estatecon Private Limited in the meeting held and convened on 10.06.2013 resolving that board has approved to avail a loan of Rs. 22,42,000/- from Wellworth Apparels Private Limited. The resolution dated 10.06.2013 is annexed hereto and is marked as Annexure-J.
- e) Demand Promissory Note dated 14.06.2013 executed by Cupid Estatecon Private Limited in favour of Wellworth Apparels Private Limited. Demand Promissory Noted dated 14.06.2013 is annexed hereto and is marked as Annexure-K.
- f) Letter dated 12.01.2016 addressed by Cupid Estatecon

Private Limited to Wellworth Apparels Private Limited confirming the outstanding balance due and payable. Letter dated 12.01.2016 is annexed hereto and is marked as Annexure-L.

- g) Letter dated 29.03.2018 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited requesting for repayment of the Loan Amount along with interest at contracted rate by the due date ie 01.04.2018. Letter dated 29.03.2018 is annexed hereto and is marked as Annexure-N.
- h) Letter dated 03.04.2018 addressed by Cupid Estatecon Private Limited to Wellworth Apparels Private Limited stating that the outstanding amount will be paid latest by 26.11.2018 Letter dated 03.04.2018 is annexed hereto and is marked as Annexure-O.
- i) Letter dated 28.11.2018 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited demanding repayment of the Loan Amount along with interest at contracted rate and overdue charges/ interest latest within 30 days failing which Wellworth Apparels Private Limited will be constrained to initiate legal proceedings. Letter dated 28.11.2018 is annexed hereto and is marked as Annexure-P.
- j) Letter dated 02.01.2019 addressed by Cupid Estatecon Private Limited to Wellworth Apparels Private Limited requesting to time extension of repayment of outstanding amount with interest Letter dated 02.01.2019 is annexed hereto and is marked as Annexure-Q.
- k) Letter dated 04.04.2019 addressed by Cupid Estatecon Private Limited to Wellworth Apparels Private Limited submitting Memorandum and Understanding dated 01-04-2019 decided between Cupid Estatecon Private Limited and Wellworth Apparels Private Limited to time extension as per terms and condition mentioned in memorandum and understanding for repayment outstanding amount. Memorandum and

Understanding dated 01-04-2019 and Letter dated 04.04.2019 is annexed hereto and is marked as Annexure-R (Collv),

- l) letter dated 20.07.2021 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited demanding repayment of the Loan Amount alongwith interest at contracted rate and overdue charges/ interest. Letter dated 20.07.2021 is annexed hereto and is marked as Annexure-S.
- m) letter dated 29.07.2021 addressed by Cupid Estatecon Private Limited to Wellworth Apparels Private Limited stating that due to Covid and lockdown we could not pay of principal sum of Rs. 22,42,000/- with interest thereupon memorandum as per and understanding. Letter dated 29.07.2021 is annexed hereto and is marked as Annexure-T.
- n) Letter dated 25.08.2021 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited demanding repayment of the Loan Amount alongwith interest at contracted rate and overdue charges/ interest latest by 31<sup>st</sup> December, 2021 failing which Wellworth Apparels Private Limited will be constrained to initiate legal proceedings. Letter dated 25.08.2021 is annexed hereto and is marked as Annexure-U.
- o) Letter dated 28.01.2022 addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited demanding repayment of the Loan Amount alongwith interest at contracted rate and overdue charges/interest latest within 30 days failing which Wellworth Apparels Private Limited will be constrained to initiate legal proceedings. Letter dated 28.01.2022 is annexed hereto and is marked as Annexure-V.
- p) Demand Notices dated 18.07.2022 and 26.04.2023 respectively addressed by Wellworth Apparels Private Limited to Cupid Estatecon Private Limited. Demand Notices dated 18.07.2022 and 26.04.2023 are annexed

hereto and is marked as Annexure-W (Collv.)

- q) Master Data of Wellworth Apparels Private Limited is annexed hereto and is marked as Annexure-X.
- r) The information of default email from NeSL and Certificate under from D received from the information utility i.e the NeSL is attached hereto email and certificate received under Form D, is annexed hereto and is marked as Annexure-Y.

8. Service proof has been filed on 14.09.2023 vide inward Diary No. D-3501, upon service, the reply has been filed under diary no. D-3823 dated 04.10.2023 by the Corporate Debtor. In the reply, the respondent does not raise objections so as to disbursement of loan amount, the loan agreement, execution of demand promissory note. The respondent has pleaded that, due to liquidity crises, respondent is not able to repay the said loan amount along with interest accrued thereon. It is further pleaded in the reply as follows.

- i) Pursuant to the discussions and negotiations, the said financial assistance shall be extended further and the repayment be deferred till 26.11.2018.
- ii) On account of the rough phase and financial crunch faced by the Respondent, the Respondent was not able

to make repayment on 28.11.2018. The repayment was deferred further upto 31.03.2021 pursuant to further negotiations. The Applicant had agreed for such deferment.

- iii) Thereafter, since the financial position of the Respondent / Corporate Debtor had not improved, the repayment as per the above referred understanding was not made. Respondent / Corporate Debtor had several times orally requested the Applicant to defer the repayment and had made efforts for further negotiations. However, the Applicant has not been confirming the further deferment.
- iv) On account of a temporary financial crisis that the Respondent / Corporate Debtor has not made the repayment but Respondent has all the intentions to make the payment along with the accrued interest, if some time is granted. Respondent has further undertakes to make the payment within a period of 24 months.

9. The Applicant/Financial Creditor as well as the respondent/Corporate Debtor has filed their written synopsis which is taken into consideration by us.

10. A compliance affidavit was filed by the Applicant/ Financial Creditor on 22.01.2024 vide inward Diary No. D-390 by one Mr. Hazur Singh, the authorized officer of the Applicant to place on record the balance sheet as on 31.03.2022 of the Respondent in compliance of the order dated 29.11.2023.
11. A compliance affidavit was filed by the Applicant/ Financial Creditor on 21.03.2024 vide Diary No.D-2508 by one Mr. Hazur Singh, the authorized officer of the Applicant to place on record the revised calculation sheet of interest on yearly basis along with the total amount in compliance of the order dated 09.02.2024.
12. We have heard learned Counsel for the applicant and perused the record. It is not in dispute that the loan was sanctioned and disbursed by the applicant to the respondent company and that documents were executed by the respondent company, including the demand promissory note. From the averments made in the reply, it is clear that the corporate debtor has admitted its liability toward the amounts borrowed. The default has been established by the

applicant herein and in support thereof, a record of default with information utility is placed on record from which it is clear to us that the amount in default is more than Rs. 1.00 Crore. It is seen that the Applicant has mentioned the date of default in Form-1 as 01.04.2018, whereon the NESL record of default states the same as 01.04.2018 with status “Deemed to be Authenticated.” Letter dated 29.07.2021 by the respondent extends limitation till 28.07.2024 and hence the debt is under limitation.

13. The present application is complete in terms of Section 7 (5) of the Code. The Applicant/Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

14. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

*28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating*

*authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*

*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.*

15. In view of the facts as stated *supra* and also in view of the ‘financial debt’ which is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
16. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **Cupid Estatecon Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 7 of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- 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 Securitisation 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.*
- (iii) The order of moratorium under section 14 of the Code shall come to 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 the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.
- (v) As proposed by the Financial Creditor, we appoint **Mr. Modilal Dhanraj Pamecha**, with Registration No: IBBI/IPA-001/IP-P01231/2018-2019/12127 under

section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
  
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's 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.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (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) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance 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.

(xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after 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.

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

17. Accordingly, this Application **CP(IB)/183/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-Sd-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

Mehul Desai

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**