

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II**

C.P.(IB)-768(MB)/2022

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

In the matter of

**Encore Asset Reconstruction Company
Private Limited**

Having registered office at: Caddie Commercial tower, Regus Business Centre, 5th Floor, Aerocity (DIAL) South-West Delhi, New Delhi-110037.

.....Financial Creditor

Vs

Three Leaf Foods Private Limited

Having Registered Office at: Shop No.4, first Floor, Tapadia Cine Market, N-1, CIDCO, Aurangabad, Maharashtra-431003.

.....Corporate Debtor

Order delivered on: 18.08.2023

CORAM:

**SHRI SHYAM BABU GAUTAM
HON'BLE MEMBER (T)**

**SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor : Adv. Arohit Virmani
For the Corporate Debtor : Non Appeared (*Ex-parte*)

ORDER**Per- Shyam Babu Gautam, Member Technical**

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Encore Asset Reconstruction Company Private Limited (for brevity 'Financial Creditor') through its Assistant Manager, Mr. Virendra Ghanwat, who has been duly authorised vide Board Resolution dated 13.04.2017 and Authority Letter dated 29.08.2021, for initiating Insolvency Resolution Process (CIRP) against Three Leaf Foods Private Limited (for brevity 'Corporate Debtor') for default in repaying **₹8,18,74,633**, as on 31.08.2021.
2. On perusal of the Company Petition, it reveals that the NKGSB Co-operative Bank Limited (hereinafter referred to as NKGSB Bank) advanced a Cash Credit Loan of INR 1,30,00,000/- to the Corporate Debtor vide Loan Agreement dated 31.05.2016, for a period of 12 months. NKBS Bank advanced Mortgage Loan of INR 2,95,00,000/- to the Corporate Debtor vide Loan Agreement dated 31.05.2016 for a period of 120 months. NKBS Bank advanced Term Loan of

INR 70,00,000/- to the Corporate Debtor vide Loan Agreement dated 31.05.2016, for a period of 84 months. NKBS Bank advanced Term Loan of INR 34,00,000/- to the Corporate debtor for a period of 84 months and issued a Sanction letter dated 27.05.2016, to the corporate Debtor. Four Loan Agreements for Loan A/c No. 0069130100000016, Loan A/c No. 0069301300002041, Loan A/c no. 0069301300002042 and Loan A/c No. 0069301300002043 were executed between NKGSB Bank and the Corporate Debtor. Further, various documents such as Demand promissory Note, Deed of guarantee, agreement to create Mortgage, Composite deed o Hypothecation, letters of Lien were executed by the Corporate Debtor in respect of various loan facilities availed. Further, the facilities and accounts of the Corporate Debtor were declared as a non-performing asset ("NPA") by NKGSB Bank in accordance with directions and guidelines issued by RBI. Various part payments were made by the Corporate Debtor inter alia on various dates commencing from 08.08.2017 and 21.10.2017.

3. NKGSB Bank transferred all the four Loan Accounts, Agreements and all security documents executed by the parties to Encore Asset reconstruction Company Private Limited, Financial Creditor (in its capacity as a Trustee of EARC-Bank- 017 Trust) through an Assignment Agreement dated 28.06.2019. Further, on 29.06.2019 and 29.06.2021, the Financial Creditor recovered certain amounts from the

Corporate Debtor. Further, the Financial Creditor issued a demand notice, calling upon the Corporate Debtor for repayment of an outstanding amount of INR 8,01,22,803/- as on 30.06.2021 with further interest at contractual rates from 01.07.2021 till the realization of the same. In such circumstances, the Financial creditor has filed the present petition seeking CIRP against the Corporate Debtor.

4. In addition to this **Loan Agreements** dated 31.05.2016, this Financial Creditor has executed the mortgage deed. This Applicant/Financial Creditor has also filed **Copy of the Statements of Accounts of the Corporate Debtor in the books of NKGSB Bank as well as that of the Financial Creditor reflecting the various outstanding amounts due and repayable to the Financial creditor under the four loan agreements.** As per the records, the registry of this court as well as the Applicant issued notices to the Corporate Debtor but it failed to be present on various occasions. Moreover, the Corporate Debtor has not filed any reply to the petition and was set **ex-parte** on 06.07.2023.

5. On having seen the loan disbursement and documents especially loan agreements ascertained between the parties conferring obligation upon the Corporate Debtor to repay the Loan amount including interest, we are of the considered view that the Petitioner/Financial Creditor has proved the “existence of debt” and “default”. We are further satisfied that the petition has been filed well within the period of

limitation. Besides, the averments made in the petition have not been controverted at all by the Corporate Debtor. Under the said circumstances, since the debt and default on the part of the Corporate Debtor being proved and also by looking at the consent given by an Insolvency Professional, we hereby admit this petition by appointing **Ms. Prajakta Menezes** (Insolvency Professional) as IRP with a direction to the IRP to compute this claim by deducting the payments, if any made by the Corporate Debtor. The Petitioner shall pay the remuneration of the IRP as well as initial costs to the IRP until constitution of the Committee of Creditors. Accordingly, this petition is admitted with the direction as follows: -

a. **The above Company Petition (IB) 768(MB)/2022 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Three Leaf Foods Private Limited.**

b. This Bench hereby appoints **Ms. Prajakta Menezes, having Registration No: IBBI/IPA-001/IP-P01349/2018-2019/12016; address: 416, Crystal paradise, Dattaji Salvi Marg, Off Veera Desai Road, Andheri West- Mumbai- 400053;** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 2 Lakh towards the initial CIRP cost by way

of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

6. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**