IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA/827/MB/2022 IN
CP (IB) No.529/MB/2021
And
CP (IB) No.529/MB/2021
Under Section 7 of the I&B Code, 2016

In the matter of:
Pegasus Assets Reconstruction Private Limited
[CIN: U65999MH2004PTC144113]
…Financial Creditor/Applicant
V/s
Shri Balaji Entertainments Private Limited
[CIN: U92190MH2002PTC136254]
...Corporate Debtor/Respondent
Order Dated: 20.04.2022

Coram:

Mr. Rajesh Sharma Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Ayush J Rajani, PCS a/w Ms. Khushboo Shah, Advocate i/b AKR Advisors.
For the Respondent(s)	:	Mr. Abhijeet Sinha a/w Mr. Rajeev Ravi, Advocates.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being CP (IB) No.529/MB/2021 filed by Pegasus Assets Reconstruction Private Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Shri Balaji Entertainments Pvt Ltd, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Financial Creditor is a company incorporated under the Companies Act, 1956 and registered as a Non-Banking Financial Company (NBFC) with the Reserve Bank of India (RBI) as an Asset Reconstruction Company (ARC). This application is filed by Mr. P S Ravendernath, Senior Vice President of the Financial Creditor authorized vide its Board Resolution dated 31.01.2019 ('Annexure 1' on page 20 of the main Company Petition), claiming a total default of Rs.35,90,56,629/- (Rupees thirty-five crore ninety lakh fifty-six thousand six hundred twenty-nine only).

3. The Date of Default as mentioned in the Petition is 01.06.2019. The date of classification of the Corporate Debtor as a Non-Performing Asset (NPA) is 02.12.2019 in the Petition. The Petition has been filed on 18.05.2021.

4. The case of the Financial Creditor is as under:

a. The Financial Creditor submits that it has sanctioned the following credit facilities (Principal and Interest Amount) to the Corporate Debtor outstanding as on 30.04.2021 as under:

i. LRD Term Loan:

Sr. No.	Particulars	Amount (in Rs.)
1.	Principal Amount Outstanding	25,56,75,547
2.	Interest	4,94,98,403
	Total (A)	**30,51,73,950**

ii. Overdraft Facility:

Sr. No.	Particulars	Amount (in Rs.)
1.	Principal Amount Outstanding	4,33,21,393
2.	Interest	1,05,61,286
	Total (B)	**5,38,82,679**

iii. The total amount of debt outstanding as on 30.04.2021 was Rs.35,90,56,629/- (Rupees thirty-five crore ninety lakh fifty-six thousand six hundred twenty-nine only) i.e [Total (A) + Total (B)] as mentioned in the tables above.

b. While covering the chain of events with regards to the above-mentioned credit facilities, the Financial Creditor submits that the Corporate Debtor is involved in the business of Restaurants, Hospitality Service Industry, etc. and providing services for business and industry including interior decoration property development and training and technical consultancy while also providing amenities to the lessee of the mortgaged property in the instant case.

c. While highlighting the parties involved in the given case, the Financial Creditor submits that M/s Universal Textile Waterproof Co. India, a Partnership Firm (hereinafter referred to as 'M/s Universal Textile') is the Principal Borrower in the given case, while the Corporate Debtor is the Co-Borrower and Corporate Guarantor for the loans granted to M/s Universal Textile.

d. Explaining the history of the transaction, the Financial Creditor submits that the SVC Co-operative Bank had initially sanctioned Term Loan of Rs.2037.87 lakh and Overdraft limit of Rs.423.29 lakh against property vide its Sanction Letter dated 18.06.2011 ('Annexure 8' at page 229 of the Petition). Subsequently SVC Co-operative Bank sanctioned an LRD (Term Loan) vide sanction letter dated 19.07.2018 ('Annexure 9' at page 234 of the Petition) whereby the original Term Loan facility was reduced to nil and was replaced by an amount of Rs.2456 crore. Hence, the total amount sanctioned by the bank is Rs.2879.29 crore. The details of the said Term Loans and Overdraft facility are mentioned below:

Facility	**Existing**	**Addition/ Reduction**	**Total**
Overdraft Facility	423.029	0.00	423.29
Term Loan	1223.00	(1223.00)	0.00
Term Loan	2037.87	(2037.87)	0.00
Fresh LRD Term Loan against lease rentals & amenities charge receivable from Seya Industries Limited	0.00	2456.00	2456.00
Total Exposure			**2879.29**

e. The Financial Creditor also submits that M/s Universal Textile had given its mortgaged property on lease and repayments with respect to the loan taken were routed through the lease rental receivable. SVC Co-operative Bank and M/s Universal Textile executed the necessary security documents to secure the repayment of loan and the Corporate Debtor had given Corporate Guarantee for the said loan ('Annexure 13' at page 256 of the Petition) while Mr. Amit Rajani and Ms. Pooja Rajani executed Personal Guarantees in favour of SVC Co-operative Bank ('Annexure 6' at page 56 of the Petition). A 'Deed of Mortgage' dated 31.07.2018 ('Annexure 14' at page 267 of the Petition) was executed between the Corporate Debtor in its capacity as Co-Borrower (referred to as "Borrower No. 2" in the said Mortgage Deed).

f. The Financial Creditor further submits that M/s. Universal Textile committed default on 01.06.2019 (Record of Default with CIBIL annexed as 'Annexure 18' at page 331 & 347 and 'Date of Default – Confirmation' annexed as 'Annexure 20' at page 358-B of the Petition) thereby failing to repay its dues pursuant to which the loan account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 02.12.2019 in the books of SVC Co-operative Bank ('NPA Certificate' annexed as 'Annexure 20' at page 358A of the Petition).

g. SVC Co-operative Bank had sent notice under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI") dated 09.12.2019 to repay the total principal amount due aggregating to Rs.29,89,96,940/- as on 30.11.2019 ('Annexure 21' at page 359 of the Petition).

h. The Financial Creditor further submits that as on 27.02.2020 a 'Deed of Assignment' was executed (annexed as 'Annexure 7' at page 60 of the Petition) between SVC Co-operative Bank Limited and the Financial Creditor whereby all the loans and outstanding dues from M/s Universal Textile as well as Corporate Debtor in its capacity as the Co-Borrower and Corporate Guarantor came to be assigned to the Financial Creditor.

i. The Financial Creditor as a part of its written submission dated 01.04.2022 has submitted 1) ledger copies of SVC Co-operative Bank Ltd evidencing that the Corporate Debtor is a member of the said Co-operative Bank and was receiving dividends to the extent of 100 shares (bearing Dist. No. 14603192 to 14603291) ('Exhibit A' of the written submission) and 2) Minutes of the Meeting of Board of Directors of Shri Balaji Entertainment Private Limited held on 24.07.2018 ('Annexure 10' at page 238 of the Petition) where the Corporate Debtor itself states that *"The company is already a member of the SVC Co-op. Bank Ltd."*. In addition to this, it has also been submitted that a Police Complaint was filed by the Corporate Debtor against the Financial Creditor ('Exhibit B' of the written submission).

j. The Financial Creditor had submitted a Convenience of Compliance dated 14.03.2022. The same has been taken on record and duly considered.

k. The total amount of debt due and payable as on 30.04.2021 by the Corporate Debtor in the books of the Financial Creditor 'Post-Assignment of Debt' stood at Rs.35,90,56,629/- and therefore it has filed a Company Petition under Section 7 of the I&B Code seeking admission for initiation of the corporate insolvency resolution process of the Corporate Debtor.

5. The case of the Corporate Debtor is as under:

a. Mr. Amrit Rajani, Director of the Corporate Debtor submits via reply dated 29.11.2021 on behalf of the Corporate Debtor that he is well acquainted with the facts and circumstances of the case and that he is duly authorized by the Corporate Debtor to file the said Affidavit in Reply. Although it is important to note that no form of 'Authorization Letter" authorizing Mr. Amrit Rajani to act on behalf of the Corporate Debtor was submitted.

b. The Corporate Debtor submits that the above-mentioned affidavit in reply was submitted with the limited purpose of opposing the admission of the captioned Company Petition.

c. The Corporate Debtor submits that the given petition was unwarranted, tainted with mala fide motives and was a complete abuse of the process of law. It also stated that the sole purpose of the present company petition filed by the Financial Creditor was to pressurize the Corporate Debtor to submit to the 'Illegal

Demands' of the Financial Creditor and that such an application should be dismissed at the threshold itself.

d. The Corporate Debtor further submits that for the initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), there must be a specific meeting of the board of directors and post discussion, necessary resolution for initiation of CIRP by a conscious application of mind must be passed. In the given case the same was not followed by the Financial Creditor.

e. The Corporate Debtor submits that originally the loan facilities were given to M/s. Universal Textile Waterproof Co. India (M/s Universal Textile) which is a partnership firm and not a corporate person and thus not falling within the definition of a corporate debtor. Therefore, the present petition cannot be filed against the Corporate Debtor as it does not fall within the definition of 'Corporate Guarantor' under Section 5(5A) of the I&B Code and is liable to be dismissed.

f. The Corporate Debtor further submits that the Corporate Debtor is not a Borrower or Co-borrower since it had not received any amount whatsoever from SVC Bank. Also, the Corporate Debtor submitted that by merely using the word 'Co-borrower', a person does not become a co-borrower and therefore this cannot evidence the existence of Financial Debt as stated in the company petition.

g. The Corporate Debtor in its submission further stated that the fresh financial facilities which appeared to have been issued by the SVC Bank to M/s Universal Textile appeared to have been issued contrary to the guidelines and regulations issued by the RBI from time to time which also included prohibition on evergreening of loans. Therefore, provisions of section 142 and 143 of the Contract Act, 1875 are attracted over here and the contract of guarantee is invalid and not enforceable.

h. The Corporate Debtor submits that the Financial Creditor has failed to appreciate in its company petition that there is no document placed on record which would show that the Corporate Guarantee of the Corporate Debtor was invoked and therefore to this extent the application was incomplete and liable to be dismissed.

i. The Corporate Debtor also submits that the Financial Creditor has failed to place on record any document to show that the principal borrower or the Corporate Debtor was a member of the predecessor Assignor i.e SVC Bank which was a Multi-State Co-operative Bank and that Financial Facilities would have not been forwarded if the principal borrower was not its member. On non-availability of such documentary evidence, the Corporate Debtor submits that the company petition is incomplete and liable to be dismissed.

6. Both the Financial Creditor and Corporate Debtor have submitted their Written Submissions and the same have been duly considered. In addition to this, the Convenience Compilation has also been duly considered.

Findings / Observations:

7. We have heard the submissions made by the counsel on both the sides and perused the records.

8. We have prudently gone through the pleadings available on record and observed as under:

9. Board of Directors Meeting not conducted:

    a. One of the contentions raised by the Corporate Debtor in its affidavit in reply dated 29.11.2021 was that the present application filed by the Financial Creditor was defective and lacking material information as for the initiation of CIRP of the Corporate Debtor. It was contended that there should be a specific meeting of the board of directors and only post such discussion a necessary resolution should be passed for initiation of CIRP. As stated in its affidavit in reply, this process was not followed by the Financial Creditor when deciding on initiating CIRP against Corporate Debtor and therefore the said Company Petition was incomplete and liable to be dismissed.

    b. When initiating CIRP under Section 7 of the I&B Code, there is no requirement for holding a board of directors meeting for determining whether a CIRP should be initiated against the Corporate Debtor on part of the Financial Creditor. The Corporate Debtor is just trying to give unnecessary excuses in order to avoid initiation of CIRP.

    c. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor with respect to the petition being incomplete and defective as no board of directors meeting was held by the Financial Creditor for initiation of CIRP against the Corporate Debtor.

10. Not a Corporate Guarantor:

a. The Corporate Debtor in its affidavit in reply dated 29.11.2021 contended that since the original loan facilities were given to M/s. Universal Textile Waterproof Co. India (M/s Universal Textile) which was a partnership firm and not a corporate person, it did not fall within the meaning of a "Corporate Debtor" as defined under Section 3(8) of the I&B Code. In such a case, the present Company Petition filed against the Corporate Debtor, who was termed as a Corporate Guarantor under sanction letters dated 18.06.2011 ('Annexure 8' at page 229 of the Petition) and 19.07.2018 ('Annexure 9' at page 234 of the Petition), would not stand as the Corporate Debtor does not fall within the meaning of "Corporate Guarantor" as defined under Section 5(5A) of the I&B Code and therefore the present petition was liable to be dismissed.

b. The Financial Creditor in its petition under 'Annexure 8' on page 229 and 'Annexure 9' at page 234 of the petition provided a copy of the sanction letters whereby financial facilities were granted to M/s Universal Textile. Under the said document, the Corporate Debtor (i.e Shri Balaji Entertainment Private Limited) were referred to as Corporate Guarantors as well as Co-Borrowers and authorised representative of the Corporate Debtor had signed these documents under both these headings. Therefore, in the given case, the Corporate Debtor is not to be treated solely as a Corporate

Guarantor but also as a Co-Borrower irrespective of the fact that it had not received any amount directly from SVC Bank.

c. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor with respect to the petition being incomplete and defective as the Corporate Debtor did not fulfil the requirements of being termed as a Corporate Guarantor.

11. Not a Co-Borrower:

a. The Corporate Debtor in its affidavit in reply dated 29.11.2021 contended that since it had not received any amount directly from SVC Bank, it was not a Borrower or Co-Borrower. The Corporate Debtor also contended that by merely using the word 'Co-Borrower' one does not become a co-borrower and therefore there was no evidence of Financial Debt as stated in the Company Petition.

b. The Financial Creditor in its petition under 'Annexure 8' on page 229 provided a copy of the sanction letter whereby financial facilities were granted to M/s Universal Textile. Under the said document, the Corporate Debtor (i.e Shri Balaji Entertainment Private Limited) were referred to as Corporate Guarantors as well as Co-Borrowers. In addition to this, authorised representative of the Corporate Debtor had signed these documents under the heading of "Corporate Guarantee" as well as "Co-Borrowers" (As seen on page 233 of the Petition). This highlights that the Corporate Debtor had agreed to accept and abide by all the terms and conditions of the Facility Letter.

c. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor with respect to the petition being incomplete and defective as the Corporate Debtor did not fulfil the requirements of being termed as a Co-Borrower.

12. Non-Invocation of Corporate Guarantee:

a. The Corporate Debtor in its affidavit in reply dated 29.11.2021 contended that since the Financial Creditor had failed to place on record a document which would show that the Corporate Guarantee of the Corporate Debtor was invoked, the Company Petition was liable to be dismissed on grounds of it being incomplete.

b. The Financial Creditor in its petition submitted a Section 13(2) notice dated 09.12.2019 ('Annexure 21' at page 359 of the Petition) issued under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 whereby the Corporate Debtor (termed as Co-Borrower/Corporate Guarantor in the said notice) among others was called upon to clear the default.

c. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor with respect to the petition being incomplete and defective as the Financial Creditor failed to invoke the Corporate Guarantee of the Corporate Debtor before filling company petition for initiating CIRP, particularly when the Corporate Debtor itself is a Co-Borrower/Corporate Guarantor and Section 13(2) notice dated 09.12.2019 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was duly used.

13. Membership in a Co-operative Bank is pre-requisite:

a. The Corporate Debtor in its affidavit in reply dated 29.11.2021 contended that since the Financial Creditor had failed to place on record a document which would show that the Principal Borrower or Corporate Debtor was a member of SVC Bank, the company petition was incomplete and liable to be dismissed. The Corporate Debtor contented that since neither the Principal Borrower or Corporate Debtor was a member of SVC Bank the Financial Facilities would have not been forwarded to the Principal Borrower.

b. The Corporate Debtor in its Written Submission dated 01.04.2022 submitted ledger copies of SVC Co-operative Bank Ltd where it can be clearly seen that the Corporate Debtor is a member of SVC Co-operative Bank Ltd and was receiving dividends to the extent of 100 shares (bearing Dist. No. 14603192 to 14603291) (annexed as 'Exhibit A' of the written submission). Further the Financial Creditor also submitted Minutes of the Meting of Board of Directors of Shri Balaji Entertainment Private Limited held on 24.07.2018 (annexed as 'Annexure 10' at page 238 of the Petition) where the Corporate Debtor itself states that "*The company is already a member of the SVC Co-op. Bank Ltd.*".

c. Considering the documentary evidence submitted by the Financial Creditor as stated above, it is quite evident that the Corporate Debtor as well as the Principal Borrower were indeed a member of the Financial Creditor.

d. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor with respect to the petition being incomplete and defective as the Financial Creditor had failed to place on record a document which would show that the Principal Borrower or Corporate Debtor were members of the Financial Creditor.

14. On perusal of the documents submitted by the Applicant Financial Creditor, it is clear that there exists a financial debt and the debt is in default and also the outstanding amount is more that the threshold limit of Rs.1,00,00,000/- (Rupees one crore only). Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor and that there is a Debt due & payable by the Corporate Debtor. Default has also been established herein. Therefore, the Application filed by the Financial Creditor is liable to be admitted.

15. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.

16. The Applicant has proposed the name of Mr. Gajesh Labhchand Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01697/2019-2020/12588] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

The Corporate Debtor has filed an Interlocutory Application bearing **IA/827/MB/2022** dated 29.11.2021 praying for dismissal of the main Company Petition. The Bench is of the considered view that the matter has been heard on merit and is reserved for orders. Therefore, there is no fundamental reason to deal with this IA separately as the Corporate Debtor has dealt his contentions in his reply filed in the main Company Petition. Hence, in view of this, the Interlocutory Application filed by the Corporate Debtor is hereby dismissed and disposed off.

This Application being **CP (IB) No.529/MB/2021** filed under Section 7 of I&B Code, 2016, presented by Pegasus Asset Reconstruction Private Company, Financial Creditor/ Applicant against **M/s Shri Balaji Entertainments Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to:

a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b) a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

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

VII. That this Bench appoints Mr. Gajesh Labhchand Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01697/2019-2020/12588] as an Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-	Sd/-
Kishore Vemulapalli Member (Judicial)	Rajesh Sharma Member (Technical)

20.04.2022