



IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT-V, MUMBAI BENCH

C.P.(IB) /748/MB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of **Micro Capitals Private Limited** having its registered office at Shop no. 35, Sonam shopping Centre CHS Ltd, Old Golden Nest, Mira-Bhayander-East Thane, MH- 401105

.....Financial Creditor/Petitioner

V/s

KSS Limited, having its registered office at Unit 101 A and 102, 1st Floor, plot No.B-17, Maurya landmark II, Andheri (West), Mumbai: 400 053

.....Corporate Debtor/Respondent

Order Reserved on: 07.12.2022

Order Pronounced on: 24.01.2023



Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via video conferencing)

For the Petitioner: Mr. Vedchetan Patil, Advocate.

For the Respondent: Mr. Nikhil Rungta, Advocate.

Per: Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above Company Petition is filed by **Micro Capitals Private Limited**, (hereinafter referred as "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **KSS Limited**, (hereinafter referred as "**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter referred to as the "**Code**" read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a resolution of an unresolved Financial Debt of **Rs. 67,11,69,217/-**

Brief Facts:

2. The Corporate Debtor had issued 8% optionally convertible bonds of Rs. 23 Crores on 29th January, 2010 to SBI Global Factors Limited for discharging a loan of the equivalent sum outstanding as on 17th



September 2009. Thereafter, a dispute arose between the parties and the litigation went up to the Hon'ble Supreme Court. Eventually the matter was settled before the Hon'ble Supreme Court and vide the order dated 17th February, 2014. The Hon'ble Supreme Court directed SBI Global Factors Limited to return the 8% Optional Convertible Bonds and directed the Corporate Debtor to pay a sum of Rs. 10 Crores upfront and remaining 13 Crores according to a repayment schedule. The Corporate Debtor paid a sum of Rs. 10 Crores on 07.03.2014 but it could not pay the remaining amount of Rs. 13 Crores as directed by the Hon'ble Supreme Court.

3. As the Corporate Debtor was not in a position to make the payment of the balance amount of Rs.13 crores, as directed by the Hon'ble Supreme Court, the Corporate Debtor approached the Petitioner for extending of financial assistance for the purposes of re-payment of the said amount of Rs.13 crores to SBI Global Factors Limited. The Petitioner agreed to extend the financial assistance to the Corporate Debtor and offered to make payment of the balance amount of Rs.13 crores to SBI Global Factors Limited as per the following schedule:-

Rs. 6 crores — on or before 15th July 2014;

Rs. 2 crores — on or before 15th August 2014;

Rs. 5 crores — on or before 15th September 2014.

The above schedule of payment was approved by the Hon'ble Supreme Court by its Order dated 09.05.2014.



4. Thereafter, the Petitioner entered into an Agreement with the Corporate Debtor thereby reducing to writing the terms and conditions subject to which the said financial assistance of 13 crores was extended in lieu of the aforesaid 8% Optionally Converted Bonds of the value of Rs. 10 crores (Collateral Bonds) as and the way of security to the Petitioner.
5. As per the terms of the Agreement, if the Corporate Debtor does not get the Principle Bonds converted into Equity, the Principle Bond will be treated as a loan and the Corporate Debtor will be liable to refund, the said sum of Rs. 13 crores together with an interest @ 8 % per annum on the entire amount of Principle Bonds (Rs. 13 crores) and Collateral Bonds (Rs. 10 crores) Rs. 23 crores from 29th January 2010, along with the penal interest @ 2% per annum.
6. Thereafter, the Corporate Debtor informed the Petitioner that the financial assistance of Rs. 13 crores and Collateral bonds of Rs. 10 crores could not be converted into Equity as the necessary permissions from SEBI and Stock Exchanges was not received. Accordingly, as per the Agreement, the Bonds were to be converted into Equity shares till 31st March 2021 and in case it was not done, the entire amount had to be treated as loan.
7. After the said date, the Petitioner on several occasion through oral and written communication asked for repayment of loan along with interest. However, the Corporate debtor instead of making the



payment, requested for further extension of time to repay the loan along with the interest. The Petitioner states that, in view of the recurring default even after giving extension, the said loan along with interest and penal interest has not been paid by the Corporate Debtor.

8. The Petitioner claims that it has filed the present Company Petition pursuant to the breaches committed by the Corporate Debtor under the Agreement. As result of the breaches by the Corporate under the Agreement, the Corporate Debtor has become liable to pay an amount of **Rs.67,11,69,217/-** to the Petitioner which includes principle of 13 Crores and interest amount of Rs. 54,11,69,217.58./- The date of default is 1st April, 2021 as the Bonds were to be converted into Equity. Further, the Petitioner submits that the Corporate Debtor has, in its Affidavit in Reply, unequivocally admitted the said default and has not raised any dispute whatsoever in this regard.

Reply filed by the Corporate Debtor:

9. The Corporate Debtor had filed the Affidavit-in-Reply before this Bench on 13.09.2022, and categorically submitted as follows:
- i. The Corporate Debtor states that it availed the financial assistance of 13 crores from the Petitioner as per the terms and conditions of the Agreement dated 03.06.2014.
 - ii. Further, the Corporate Debtor states that there is no dispute between the parties that the financial assistance of Rs. 13



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crores was provided by the Petitioner to the Corporate Debtor under the Agreement and that the Corporate Debtor had in due performance of its obligations under the agreement transferred/deposited the 8% Optionally Converted Bonds totally valued at 23 crores with the Petitioner. Further, the Petitioner had by a Letter dated 16 August 2018, called upon the Corporate Debtor to convert the said 8% Optionally Converted Bonds into Equity and that the said conversion was not done by the Corporate Debtor. As a result, the condition contained in the Agreement, triggered and consequently, the Corporate Debtor became liable to make payment of an amount of **Rs.67,11,69,217/-** to the Petitioner.

- iii. The said default by the Corporate Debtor occurred on 1st April 2021, in the middle of the pandemic during which period the Corporate Debtor was undergoing grave financial hardship. Even as on date, the Corporate Debtor states that they are undergoing severe financial stress due to the after effects of the pandemic and not in a position to discharge its financial debt in default.
- iv. The Corporate Debtor further states that, they are prepared to make payment of the financial debt in default in instalments over a period of five years. A schedule in this regard can be mutually arrived between the Corporate Debtor and the Petitioner.



FINDINGS

10. We have heard the Counsel for the Parties and have perused the material available on record.
11. The Corporate Debtor has candidly admitted in the reply that as per the Agreement dated 3rd June, 2014 entered into between the Petitioner and the Corporate Debtor, the latter had availed of financial assistance of Rs. 13 Crores following which 8% Optionally Converted Bonds of Rs. 13 Crores were transferred in favour of Financial Creditor and it was agreed that the Corporate Debtor would convert the bonds into equity and on failure to convert, the Bonds would be treated as loan of Rs. 13 Crores repayable with interest @8% per annum on the total value of Bonds of Rs. 23 Crores from 29.01.2010 besides penal interest of 2% per annum. The Bonds were to be converted on or before 31st March, 2021.
12. It is pertinent to note that, the Corporate Debtor sought an additional period of 6 months to make the payment via letter dated 13.05.2021 but failed to repay. Thereafter, the Petitioner issued a Demand Letter dated 11.11.2021, calling upon the Corporate Debtor to repay the outstanding amount within 15 days from the receipt of the said letter. However, the Corporate Debtor failed to pay the outstanding dues.



13. Furthermore, the Counsel for the Petitioner has brought the attention of this Tribunal to the Letter dated 22.12.2021, issued by the Corporate Debtor to the Petitioner, the same is extracted below for ready reference:

Dear Sirs,

We are in the receipt of your Letter dated 11th November 2021 addressed to us and in reply thereto we have to state to you as under:

- 1. By your dated 15th April 2021, you have recalled the amount of Rs. 13 crores advanced by you to SBI Global Factors on our behalf.*
- 2. By our reply dated 13th May 2021, we have clearly stated that due to the ongoing Corona pandemic, we are not in a position to presently refund you the said amount of Rs. 13 crores together with interest @8% per annum along with penal interest @2 p.a. on the entire amount of Rs. 23 crores from 29th January 2010. We have further sought an extension of 6 months during which we have undertaken to endeavour to make the said payments to you.*
- 3. We would like to put it on record that although the said period of 6 months is over, the said pandemic is ongoing and the whole world is suffering due to the*



said pandemic. Hence, we request you to further grant us some more time to refund the said amounts to you.

4. *In the circumstances , without the prejudice to our rights and contentions, we call upon you to give us some more time to refund the said amount to you.*
5. *We would like to put on record that , of inspite of the aforesaid , you choose to initiate any legal action, the same shall be defended by us, as your entire risks as to costs and consequences, which you may please to take note of.*

As above-mentioned in para 3 of the Letter, it is clear that the Corporate Debtor failed to pay even after the expiration of extended period 6 months.

14. The Corporate Debtor in its Affidavit-in-Reply stated that, they are willing to pay the outstanding amount in instalments within a span of 5 years which can be mutually agreed by both the parties. However, it is noteworthy to mention that, the Corporate Debtor has not honoured its earlier commitment to repay and defaulted in repaying the said loan as per the Agreement dated 03.06.2014.
15. In the present matter, the two essential conditions for the admission of the Petitioner under Section 7 of the Code, i.e.



existence of '**debt**' and '**default**', appear to have been clearly fulfilled.

16. The requirements as prescribed under the Code have been completed by the Petitioner. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2. Therefore, the Bench is of the view that this Petition deserves to be admitted. It is ordered accordingly in terms of the following order:

ORDER

- a. The above **Company Petition No. (IB) 748 (MB) of 2022** is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **KSS Limited**.
- b. The Petitioner has proposed the name of Insolvency Professional, **Mr. Dharmendra Dhelariya**, Registration No: **IBBI/IPA-001/IP-00251/2017-2018/10480** residing at A/201, Suryadeep Tower, Nr. Nazvneet Prakashan, Gurukul Rd, Mem Nagar, Ahemdabad: 300052 as the Interim Resolution Professional Insolvency Professional. The IRP proposed by the Petitioner, is hereby appointed as 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. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in



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favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee.

- 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 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; 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



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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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly ,CP(IB)/748/(MB)/2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)