

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1253/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

ICICI Bank Limited

[CIN: L65190GJ1994PLC021012]

...Financial Creditor/Applicant

V/s

Rasiklal Sankalchand Private Limited

[CIN: U36900MH2000PTC125362]

...Corporate Debtor/Respondent

Order Dated: 07.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Rahul Dev, Advocate.

For the Respondent(s) : Mr. Monaal Davawala, Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being C.P. (IB) No. 1253/NCLT/MB/C-IV/2020 filed by ICICI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Rasiklal Sankalchand Private Limited,

Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

The Application is filed by Ms. Gavish Malhotra, Legal Manager of Financial Creditor vide its Board Resolution dated 27.10.2017, claiming total default amount of Rs.40,74,40,000/- (Rupees forty crore seventy-four forty thousand only).

2. The date of Default is as mentioned in the Part IV of Petition is 31.12.2019. The Petition is filed on 10.09.2020.
3. The case of the Financial Creditor is as under:
 - a) The Corporate Debtor in the year 2015, had approached the Financial Creditor for availing credit facilities for its business purposes. Pursuant to the request of the Corporate Debtor, the following financing agreements were entered into between the Financial Creditor and the Corporate Debtor:
 - i. Credit Arrangement Letter dated 16.06.2015 whereunder the Financial Creditor inter alia sanctioned an amount of Rs.10,00,00,000/- (Rupees ten crore only) as a Rupee Term Loan and Rs.45,00,00,000/- (Rupees forty-five crore only) as working capital facility in the form of cash credit in favour of the Corporate Debtor on the terms and conditions as more particularly stated therein.
 - ii. Corporate Rupee Loan Facility Agreement dated 24.06.2015 was executed between the Financial Creditor and the Corporate Debtor by which an amount of Rs.10,00,00,000/- (Rupees ten crore only) was granted by the Financial Creditor

to the Corporate Debtor inter alia for the purpose of takeover of term loan from Indian Overseas Bank.

- iii. Facility Agreement dated 24.06.2015 between Financial Creditor and Corporate Debtor by which an amount not exceeding Rs.45,00,00,000/- (Rupees forty-five crore only) was granted by the Financial Creditor to the Corporate Debtor inter alia for the purpose of meeting the working capital requirements of the Corporate Debtor.
- iv. Deed of Hypothecation dated 24.06.2015 executed by the Corporate Debtor inter alia hypothecating the Assets as and by way of charge as security for repayment of the credit facilities along with interest, commissions, costs, charges, expenses payable by the Corporate Debtor under the financing agreements.
- v. Credit Arrangement Letter dated 14.06.2017 issued by the Financial Creditor inter alia granting a Gold Metal Loan Facility for an amount of Rs.9,00,00,000/- (Rupees nine crore only) in favour of Corporate Debtor to utilised by the Corporate Debtor for jewellery manufacturing.
- vi. Master Gold Facility Agreement dated 15.06.2017 whereunder the Financial Creditor granted an amount of Rs.9,00,00,000/- (Rupees nine crore only) to the Corporate Debtor inter alia for the purpose of manufacturing of jewellery products for sale in domestic market by the Corporate Debtor.

- b) Total amount of debt granted by the Financial Creditor under the various credit facilities sanctioned/disbursed in favour of Corporate Debtor are as follows:

Type of Facility	Date of disbursement	Amount granted/disbursed
Working Capital Facility ("Cash Credit")	28.06.2015	Rs.35,00,00,000/-
Rupee Term Loan	28.06.2015	Rs.5,00,00,000/-
Gold Metal Loan	16.06.2017	Rs.9,00,00,000/-
Total		Rs.49,00,00,000/-

- c) By e-mails dated 10.10.2019, 14.10.2019 and 15.10.2019 followed by a letter dated 18.10.2019, the Financial Creditor requested the Corporate Debtor to clear the outstanding overdue in respect of the Rupee Term Loan Facility and Working Capital Facility granted by the Financial Creditor.
- d) By a letter dated 31.10.2019, the Financial Creditor further requested the Corporate Debtor to clear the outstanding amounts under the Gold Metal Loan Facility.
- e) Thereafter, by letter dated 11.11.2019 addressed by the Financial Creditor, the Financial Creditor inter alia sought clarification from the Corporate Debtor in respect of the news items published by various news agencies concerning defaults in the payments to its depositors' and serious criminal allegations against the Corporate Debtor and its Directors. Vide the same letter, the Financial Creditor once again requested the Corporate Debtor to clear all outstanding dues payable as on date. There was no response to the

said letter nor the Corporate Debtor paid any part of the outstanding overdues.

4. The Financial Creditor issued Loan Recall Notice dated 17.02.2020 inter alia recalling the Rupee Term Loan Facility due under the Working Capital Facility and the interest overdue on the Gold Metal Facility. The Financial Creditor called upon the Corporate Debtor to forthwith repay a sum of Rs. 37,19,60,000/- as on 31.01.2020 along with applicable interest, penal interest, premium, charges etc.
5. The Corporate Debtor has filed its Preliminary Affidavit of Reply dated 04.10.2021 and submits as under:
 - a) The Corporate Debtor denies that an amount of Rs.40,74,40,000/- (Rupees forty crore seventy-four lakh forty thousand is due and payable to the Financial Creditor. The Corporate Debtor being an MSME, has borne a lot of the difficulties owing to the lockdown announced on account of the pandemic COVID-19. Prior to the same, the Corporate Debtor was making regular and timely payments to all its creditors.
 - b) The Corporate Debtor has written letters dated 22.07.2021 and 29.07.2021 showing its willingness to settle the disputed claims once and for all. It was pointed out that due to misleading and fake media reports in various newspapers, the business of the Corporate Debtor suffered a huge loss resulting in severe financial consequences. Revival has been tough considering the unprecedented situation created by the onset of the pandemic COVID-19. After repeated follow-ups by the Corporate Debtor there has been no response to any of the letters.

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- c) The Corporate Debtor is ready and willing to make a payment of Rs.22 crore i.e. more than 50% of the amount claimed to be in default within a period of 3 months as full and final settlement of all its dues with the Financial Creditor subject to release of all the documents pertaining to the directors, guarantors and properties of the Corporate Debtor once the entire payment is made.
- d) Thus, the Corporate Debtor humbly submits that the Hon'ble Tribunal may take cognizance of the issue in its entirety and direct the Financial Creditor to consider its offer and take it up with the higher authorities of the Financial Creditor as it is confident of an amicable solution to the present impasse.
6. The Financial Creditor has filed the Written Submissions dated 16.03.2022 and submits as under:
- a) The credit facility granted to the Corporate Debtor were enhanced/modified/supplemented from time to time by way of following sanction/credit arrangement letters issued by Financial Creditor:
- i. Credit Arrangement Letter dated 11.12.2015 wherein the Financial Creditor inter alia modified the original sanction to include two additional immovable properties as security for repayment of the Rupee Term Loan Facility.
 - ii. Renewal Credit Arrangement Letter dated 28.09.2016 issued by the Financial Creditor inter alia renewing the Working Capital Facility on the same terms and conditions as applicable to the Working Capital Facility for a further period up to 15.09.2017.

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- iii. Credit Arrangement Letter dated 14.06.2017 issued by the Financial Creditor inter alia sanctioning/granting a gold Metal Loan Facility for an amount of Rs.9,00,00,000/- in favour of the Corporate Debtor to be utilised by the Corporate Debtor for jewellery manufacturing.
 - iv. Renewal Credit Arrangement Letter dated 26.04.2018 issued by the Financial Creditor inter alia renewing the Working Capital Facility on the same terms and conditions as set out in the Annexure thereto for a further period up to 14.03.2019.
 - v. Renewal Credit Arrangement Letter dated 10.03.2019 issued by the Financial Creditor inter alia renewing the Working Capital Facility on the same terms and conditions as set out in the Annexure thereto for a further period up to 28.03.2020.
- b) Thereafter, in the period of September, 2019, the Corporate Debtor defaulted in payment of monthly interest under the respective loan accounts. By E-mail dated 10.10.2019 and 15.10.2019 followed by a letter dated 18.10.2019, the Financial Creditor requested the Corporate Debtor to clear the outstanding overdue. However, the Corporate Debtor failed to clear the outstanding amounts.
- c) By a letter dated 28.05.2018, the Corporate Debtor acknowledged the debt owed by it as on 02.05.2018. Further, by a letter dated 30.08.2018, the Corporate Debtor acknowledged its liability as on 27.08.2018 payable under credit facilities.
7. The Financial Creditor has filed the Account Statements of the Corporate Debtor maintained by the Financial Creditor from

16.06.2015 till 31.07.2020 which at pp 758-928 as Exhibit 'JJ' of the Petition.

8. The Financial Creditor has submitted Credit Information Report (CIBIL) dated 08.05.2020 for particulars of debt of Corporate Debtor which is attached at pp 653-754 as Exhibit 'HH' of the Petition.
9. The Financial Creditor has issued Loan Recall Notice dated 17.02.2020 to the Corporate Debtor claiming a total sum of Rs.37.196/- crore which is at pp 554-562 as Exhibit 'CC' of the Petition.

Findings:

10. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
11. We have prudently gone through the pleadings available on record. The Financial Creditor had sanctioned credit facilities in the form of a Rupee Term Loan of Rs.10,00,00,000/- and a Working Capital Facility not exceeding of Rs.45,00,00,000/- in favour of the Corporate Debtor.
12. The Corporate Debtor has neither disputed the disbursement of credit facilities by the Financial Creditor nor denied the existence of financial debt and default by the Corporate Debtor.
13. It is observed by the Bench that the Corporate Debtor on several occasions asked time to settle the matter. However, even after giving many opportunities to the Corporate Debtor, the Corporate Debtor failed to pay the outstanding amount to the Financial Creditor. When the matter last listed on 11.03.2022, the Corporate Debtor appeared and asked for further time to settle the matter. At the time of hearing, the counsel for the Financial Creditor clearly indicated that no payment

has been received from the Corporate Debtor so as to prove the *bonafide* of the Corporate Debtor. Hence, the matter was Reserved for Order after hearing both the sides.

14. The Corporate Debtor has time and again acknowledged its liability as seen from the records. It is observed that the Corporate Debtor issued a letter to the Financial Creditor wherein the Corporate Debtor has admitted an amount of Rs.27,76,67,442.58/- as due and payable by the Corporate Debtor. The said letter is as follows:

RASIKLAL SANKALCHAND JEWELLERS
TIMELESS COLLECTIONS. TIMELESS RELATIONS.

ACKNOWLEDGEMENT OF DEBT & CONFIRMATION OF SECURITY
TO BE ISSUED BY BORROWER

Date :

To,
ICICI Bank Limited
ICICI Bank Towers,
Bandra-Kurla Complex,
Bandra (E) Mumbai - 400 051

Dear Sirs :

Re: Working Capital Facility aggregating to Rs. 350.00 mn

I / We hereby acknowledge the correctness of the balance of Rs. 27,76,67,442.58 due from me / us as on 02nd May 2018 as per details given hereunder in respect of the above Working Capital Facility governed by the Agreement dated 24th June 2015 entered into by me / us with you and we confirm and acknowledge that the same is secured by mortgage of hypothecation of moveable fixed assets and current assets, besides security / Guarantee provided by Jayesh Shah, Nilesh Shah, Parul Shah, Neeta Shah, Jayesh Shah HUF, Nilesh Shah HUF, Zenil Shah and Vatsal Shah

Sr.No.	Type of credit facility	Balance due (Rs)
1.	Cash Credit	27,76,67,442.58
	Total	27,76,67,442.58

This constitutes acknowledgement of our indebtedness, with a view to extend the period of limitation as provided by Section 18 of the Limitation Act, 1963 and confirmation of existence and continuation of security therefor.

Yours faithfully,
For RasiklalSankalchandJewellersPvt.Ltd.

RASIKLAL SANKALCHAND JEWELLERS PVT. LTD.
Signature of J.R. Shah ← Sign by J.R. Shah
Directors: J.R. Shah

Affix Revenue Stamp
& Authorised Official to sign across thereon.

RASIKLAL SANKALCHAND JEWELLERS PVT. LTD.
Signature of Nilesh Shah ← Sign by Nilesh Shah
Directors: Nilesh Shah

Signature of the same Authorised Official
Below the Revenue Stamp.

NOTARY
HEMANT JANGAL
MUMBAI
MAHARASHTRA
Regn. No. 4702
Expiry Date
20-10-2024
GOVERNMENT OF INDIA

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15. The Financial Creditor has time and again extended the Credit Facility to which the Corporate Debtor duly acknowledged by admitting the debt as due and payable to the Financial Creditor by the Corporate Debtor.
16. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Financial Creditor. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the Corporate Debtor.
- a) 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.
17. The Applicant has proposed the name of Mr. Santanu T Ray, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00360/2017-2018/11055] 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

18. This Application being C.P. (IB) No. 1253/NCLT/MB/C-IV/2020 filed by ICICI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Rasiklal Sankalchand Private Limited, Corporate Debtor, for initiating

Corporate Insolvency Resolution Process (CIRP) 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

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- 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. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Santanu T Ray, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00360/2017-2018/11055] as 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.
- e) The Financial 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).

- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) 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 Whats App. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Kishore Vemulapalli
Member (Judicial)

07.06.2022

Sd/-
Rajesh Sharma
Member (Technical)