



**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**MUMBAI BENCH-I**

Item 06

**C.P. (IB)/749(MB)2022**

CORAM:

SH. SHYAM BABU GAUTAM  
HON'BLE MEMBER (T)

SHRI.H.V. SUBBA RAO  
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON **27.02.2023**

NAME OF THE PARTIES: - **Janaseva Sahakari Bank Ltd**  
**V/s**  
**Enki Glass Industry Pvt Ltd**

*Appearance (via video-conference):*

For the Applicant : Adv Avinash Khanolkar a/w Adv  
Surekha Yadav

For the Respondent : Adv. Vijaykumar Tiwari

Section 7 of the IBC, 2016

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**ORDER**

1. The present petition is filed by **Janseva Sahkari Bank Limited, Pune [Identification No: UBD.MH.863P]** (hereinafter referred to as “the Financial Creditor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Enki Glass Industry Private Limited, [CIN: U26100MH2007PTC173049]** (hereinafter referred to as “**the Corporate Debtor**”).
2. The Corporate Debtor was incorporated on 13.08.2007 under Companies Act, 1956. Its registered office is situated at 294,



Bhavani Peth Jalgaon, Tal. Jalgaon, Dist. Jalgaon.

Maharashtra Hence, this Tribunal has the jurisdiction to entertain this petition.

3. The total amount of debt claimed to be in default is Rs.9,33,28,529.05/- (Rupees Nine Crore Thirty-Three Lakhs Twenty Eight Thousand Five Hundred and Twenty Nine only) Out of this, the Principal amount as on 31.07.2021 is Rs.7,49,52,729.05/- towards term loan (Ac number 172/165) and working capital demand loan (A Number 174/1104) is Rs.1,83,75,800.10/- totaling to Rs. 9,33,28,529.05/-. The date of default is 30.06.2013.
4. This is an application filed by the Applicant against the Respondent for an amount of Rs. 1485.28 lakhs under consortium advance on 28.02.2009. As on 31.07.2021 for working capital demand loan (A/c number 174/1104) is 1,83,75,800.10/- plus unapplied interest and legal expenses and charges in case of suit filed accounts. Total outstanding 9,33,28,529.15/- Jalgaon Peoples Co-op Bank (lead bank) had issued the notice under SARFAESI Act on 06.11.2013. Accordingly, symbolic possession u/s 13(4) of SARFAESI Act has been taken and on and notice of the same has been



published. Symbolic possession of the mortgaged properties was taken on 28.04.2014. The Corporate Debtor's account has been declared as NPA 30.06.2013 pursuant to the guidelines of the Reserve Bank of India.

5. The Corporate debtor submits that the lead Banker, Jalgaon Peoples Co-operative Bank Limited with the consent of Corporate Debtor made a publication on 28<sup>th</sup> February, 2018 in newspaper to take the possession of the property. Most pertinently, Corporate Debtor has extended full Co-operational to the financial creditor to recover the dues by settling the Industrial Properties as prescribed. A copy of the Newspaper Publication dated 28<sup>th</sup> February, 2022 is annexed to the Reply as Annexure "A".
6. That the consortium of Jalgaon Peoples Co-operative Bank Limited has made an invitation for expression of interest to sale the assets of the Corporate Debtor with due consent of the Corporate Debtor. Subsequently, M/s. Primex Enterprises was turned out to be a successful highest bidder in the bidding process. Therefore, to give an effect to the esteemed transaction the Deed of Conveyance executed between 1) M/s. Oasis Ceramics Private Limited – Confirming



Party 1, 2) Enki Glass Industries Private Limited -Confirming  
Party 2, 3) Jalgaon Peoples Co-operative Bank Ltd Consortium  
Leader/Vendor and 4) Primex Enterprises Purchaser on 28<sup>th</sup>  
February, 2019. A copy of Deed of Conveyance executed on  
dated 28<sup>th</sup> January, 2019 is annexed to the Reply as  
Annexure “**B**”.

7. Pursuant to execution of Deed of Conveyance dated 28<sup>th</sup>  
January, 2019, lumpsum consideration amount was payable  
to the Jalgaon Peoples Co-operative Bank Ltd-Consortium  
Leader/Vendor at agreed consideration of Rs. 14,50,00,000/-  
towards sale of Industrial property to M/s. Primex  
Enterprises. Therefore, it was acceded that M/s. Primex  
Enterprises shall make a payment of Rs. 14,25,00,000/-  
(Fourteen Crores Twenty-Five Lacs) and Balance Rs.  
25,00,000/- (Twenty-Five Lacs) shall be paid by the  
confirming party i.e. 1) M/s. Oasis Ceramics Private Limited  
and 2) Enki Glass Industries Private Limited from their own.
8. That purchaser i.e M/s. Primex Enterprises paid a sum of  
Rs.4,57,00,000/- (Four Crore Fifty-Seven Lacs Only) out of  
total Rs.14,25,00,000/- (Fourteen Crores Fifty-Seven Lacs)



within prescribed time limit in pursuance to the Deed of Conveyance executed.

9. It is further submitted that, upon normalcy of the COVID-19 pandemic situation, the Primex Enterprises (Purchaser) has sent a letter on 31<sup>st</sup> May, 2022 to the Jalgaon Peoples Co-operative Bank Limited – **Consortium Leader** expressing their inclination to make a balance payment of Rs.9,68,00,000/- within 30 days from the date of issue of letter, only with a pre-condition to obtain No Objection Certificate from all the Consortium Member including the Lead Member – A copy of letter issued by Primex Enterprises (Purchaser) dated 31<sup>st</sup> May, 2022 is annexed to the Reply as Annexure “**C**”.
10. That in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred, and if 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, the said ratio is laid down in the matter of Surrender Trading Company Vs. Juggilal Kamlapet Jute Mills Company Limited and others (Supreme Court), Civil Appeal No. 8400 of 2017 decided on September 19, 2017.

11. Heard both sides, upon perusing the reply this bench did not find merit in the submissions or any serious dispute regarding the debt and default committed by the Corporate Debtor. Ld. Counsel appearing for the Corporate Debtor except praying for time on the pretext that they are going to enter into consent terms with the Financial creditor did not raise any legal plea in opposing the above Petition. Therefore, under these circumstances there is no point in postponing admission of the present Company Petition.
12. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned.



As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

13. The Financial Creditor has proposed the name of **CS Anagha Anasingaraju**, Registration No. IBBI/IPA-002/IP-N00247/2017-18/10732, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
14. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
15. It is, accordingly, hereby ordered as follows: -



- (a) The petition bearing **CP (IB) 749/MB/C-I/2022** filed by **Janseva Sahkari Bank Limited, Pune**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Enki Glass Industry Private Limited** the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act,  
2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:
  - (i) 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;
  - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order



for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **CS Anagha Anasingaraju**, Registration No. IBBI/IPA-002/IP-N00247/2017-18/10732, having address 1-2, Aishwarya Sankul, G A Kulkarni Path Opp. Joshi Railway Museum, Kothrud, Pune 411038 Email: rp.anagha@kanjcs.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.



- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (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).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard



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to the Registry of this Court **within seven days** from the  
date of receipt of a copy of this order.

(k) Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM  
Member (Technical)

27.02.2023  
SAM/Jagdish

Sd/-

H.V. SUBBA RAO  
Member (Judicial)