IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) 2098/MB/C-IV/2019

Under section 7 of the Insolvency & Bankruptcy Code, 2016

In the matter of

One Capitall Limited
[CIN:U67120MH2008PLC181072]

…Financial Creditor

Versus

Syglak Laboratories Private Limited
[CIN:U24230MH2004PTC149815]

…Corporate Debtor

Order Delivered on: 22.10.2019

Coram:

Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

Financial Creditor: Mr Aurup Dasgupta a/w Ms Sonam Ghiya I/b M/s Jhangiani, Narula and Associates

Corporate Debtor: Mr Gaurav Vadehra, Director of the Corporate Debtor

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by One Capitall Limited [CIN:U67120MH2008PLC181072] ("the Financial Creditor"), a

company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Authorised Signatory, Hirendra Kranti, on the basis of a Board Resolution dated 05.04.2018 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Syglak Laboratories Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a Private company limited by shares and incorporated on 03.12.2004 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its CIN is U24230MH2004PTC149815. Its registered office is at F-14, MIDC Kulgaon, Badlapur East, Thane, Maharashtra 421503. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 27.05.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.2,78,68,955.00 (Rupees two crore seventy-eight lakh sixty-eight thousand nine hundred and fifty-five only) as principal and Rs.11,48,483.00 (Rupees eleven lakh forty-eight thousand four hundred eighty-three only) inclusive of ₹7,81,054/- as normal interest and ₹3,67,429/- as delayed interest inclusive of cheque bouncing changes as on 01.11.2018 and 07.03.2019 as stated at p.7 of the Petition, to be the dates of default.

4. The case of the Financial Creditor is as follows: -

(a) In Nov 2017, the Corporate Debtor approached the Financial Creditor to avail a loan of ₹2,86,00,000/- (Rupees two crore and eighty-six lakh only). The said loan amount was also sanctioned by the Financial Creditor on 22.12.2017 (para 1 of Part IV at page 5 of the Petition);

(b) The Loan Agreement in this regard was executed on 06.02.2018. The loan amount of ₹2.86 crore was to be repaid within a period of sixty months (para 1 of Part IV at page 6 of the Petition);

(c) The disbursement was completed on 09.02.2018 by NEFT (para 1 of Part IV at page 3 of the Petition);

(d) To secure the loan, the Corporate Debtor executed English mortgage of its Flat No.9A, 'CENCED', Plot No318, Pali Hill Road, Union Park, Khar (West), Mumbai 400 052, together with five fully paid-up shares of ₹50/- each of Cenced Cooperative Housing Society Limited, comprised in Share Certificate No.41 dated 01.09.1977 (para 1 of Part V at page 8 of the Petition);

(e) The Financial Creditor received the Security Deposit of ₹86.00 lakh on 07.02.2018 (para 2 of Part V at page 9 of the Petition);

(f) Mr Gaurav Vadhera, Director of the Corporate Debtor, and Mrs Rita Lav Kumar Vadhera, also executed personal guarantees, and also handed over post-dated cheques on behalf

of the Corporate Debtor and on their own behalf (para 3 to 6 of Part V at page 9 of the Petition);

(g) The cheques issued by the Corporate Debtor have bounced on 01.11.2018 (for a sum of ₹18,94,948/-), 07.03.2019 (for a sum of ₹18,77,945/-) and 07.03.2019(for a sum of ₹2,45,725/-). (para 8 at page 11 and 12 of the Petition).

5. Copy of the Board Resolution for initiating the present petition has been placed on record as **Exhibit '1'** at p.14 of the Petition. Copies of the In-principle Sanction Letter dated 22.12.2017 issued by the Financial Creditor towards sanction of loan to the Corporate Debtor have been placed as **Exhibit '2'** at pp.15-17. The said Sanction Letter dated 22.12.2017 provides for interest, to be charged at the rate of 12.60% per annum (Sl No.10 at p.16 of the petition). The Loan Agreement has also attached as **Exhibit '3'** at pp.18-71 (Schedule I of the Loan Agreement at pp.56-58, with the missing page numbers 37 and 38 being handed over during the course of arguments). The particulars of default has been attached as **Exhibit '4'** at pp.72-73 of the Petition. The Bills of Exchange drawn by the Corporate Debtor in favour of the Financial Creditor are placed at **Exhibit '11'** at pp.192-249 of the Petition. The details of the cheques issued by the Corporate Debtor which have bounced on 01.11.2018 and 07.03.2019 are placed on record at pp.379-387.

6. The total debt due and payable to the Financial Creditor is Rs.2,86,00,000.00 (Rupees two crore eighty-six lakh only), as mentioned at page 5 of the Petition.

7. Mr Gaurav Vadhera, Learned Director appeared on behalf of the Corporate Debtor and made his submissions.

8. In its reply dated 05.09.2019, the Corporate Debtor has set up the following defence:-

   (a) The Corporate Debtor is a micro-scale manufacturing unit registered under the Micro, Small & Medium Enterprises (MSME) Act, 2006. It is a company manufacturing speciality chemicals having high value-addition, mainly for export. It has 14 employees (para 1 at page 1 of the Reply);

   (b) Due to demonetisation, GST, economic slow-down etc. the Corporate Debtor's turnover fell from ₹2.50 crore to ₹50 lakh. In spite of using up the fixed deposit of its shareholders, the Corporate Debtor was in dire need of urgent infusion of funds in order to survive and revive (para 2 at page 2 of the Reply);

   (c) The Corporate Debtor may be allowed to avail the benefit of the special provisions of section 240A(1) of the IBC read with rule 11 of the NCLT Rules, 2016, and allow Mr Gaurav Vadhera, Director of the Corporate Debtor, to submit his self-resolution plan for resolving the debt of the Financial Creditor in a time-bound manner (para 18 at page 7-8 of the Reply).

9. We have heard the arguments of both sides and perused the records.

10. It is noted that the affidavit in reply dated 05.09.2019 of the Corporate Debtor, admits the liability and states that the Corporate Debtor is not in position to repay the debt, also establishes the existence of debt and default.

11. There is no dispute with reference to the disbursement of the loan amount by the Financial Creditor. There is no dispute also that the Corporate Debtor has defaulted in repayment of the loan amount as per the terms of the Loan Agreement dated 06.02.2018 (pp.18-71). The only substantive defence taken by the Corporate Debtor is that it may be allowed to avail itself of the benefit of section 240A of the IBC, which stipulates that the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises. This applies in a post-admission scenario and cannot be considered at the stage of admission.

12. 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 of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the 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.

13. The Financial Creditor has proposed the name of **Mr. Ashish Avinash Saoji,** Registration No.IBBI/IPA-001/IP-P01268/2018-19/12510, as the Interim Resolution Professional of the Corporate Debtor.

14. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB)2098/MB/C-IV/2019** filed by **One Capitall Limited [CIN:U67120MH2008PLC181072],** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Syglak Laboratories Private Limited [CIN: U24230MH2004PTC-149815],** 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) That 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) **Mr Ashish Avinash Saoji,** Registration No.IBBI/IPA-001/IP-P01268/2018-19/12510, having address at Flat No.107, Kanchanganga Estate, Borkute Layout, Narendra Nagar, Nagpur, 440015 [email: ashishsaoji@gmail.com, Mobile: 9325091651], 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 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.1,00,000/- (Rupees one 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) The 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) A copy of this Order be sent 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 to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

SD/- **SD/-**

RAVIKUMAR DURAISAMY **RAJASEKHAR V.K.**
Member (Technical) **Member (Judicial)**

22.10.2019