



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

IA 350/2023

IN

CP (IB) No. 841/MB-IV/2022

Under **Section 7** of the I&B Code, 2016

In the matter of:

Central Bank Of India

...Financial Creditor/Applicant

V/s

Syntex Trading & Agency Private Limited,

[CIN: U51909MH2016PTC287425]

...Corporate Debtor/Respondent

Order Dated: 09.06.2022

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Abdullah Qureshi, Advocate.

For the Respondent(s) : Mr. Ankit Lohia, Advocate.

Per: Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 841/MB/C-IV/2022 originally filed on 22.06.2022 by Mr. Gaurav Kumar Jain, Assistant General



Manager of Central Bank Of India, Financial Creditor/Applicant, authorized vide a Board Resolution dated 10.04.2012, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) in the case of Syntex Trading & Agency Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The case of the Financial Creditor is as under-

- 2.1 The Financial Creditor had, vide sanction letters dated 24.03.2015 and 05.12.2016, sanctioned Term Loan of Rs. 125.00 crore and Rs. 187.50 crore to Anjana Retail Infrastructure Private Limited and RJ Texcot Private Limited respectively and, pursuant thereto executed a Term Loan Agreements dated 27.03.2015 and 14.12.2016 with Anjana Retail Infrastructure Private Limited and RJ Texcot Private Limited respectively.
- 2.2 Thereafter, Anjana Retail Infra Private Limited (ARIPL) and RJ Texcot Private Limited (RJTPL) were merged with Syntex Trading & Agency Private Limited (Corporate Debtor herein) vide order dated 02.08.2018 passed by Hon'ble NCLT, Mumbai. The Managing Committee board of the Financial Creditor vide letter dated 23.09.2019 had approved the Amalgamation of Anjana Retail Infra Private Limited. and RJ Texcot Private Limited with Syntex Trading & Agency Private Limited and permitted consolidated sanctioned limits for Syntex Trading & Agency Private Limited.
- 2.3 Pursuant thereto, the Financial Creditor had sanctioned a fresh term loan vide sanction letter dated 16.12.2019 to the Corporate Debtor and the Financial Creditor had entered into Loan Agreement dated 23.09.2021 with the Corporate Debtor.



- 2.4 These facilities are secured by Pledge of shares of Future Market Network Limited (FMNL) & Future Enterprises Limited (FEL) & Future Consumer Limited (FCL) shares equivalent to 0.50 times of outstanding Term Loan at all times as per the original sanctioned terms. However, shares of FEL & FMNL were pledged to the Bank to secure credit facility sanctioned to the Borrower Company. The following agreements were executed in furtherance of the same-
- a) Escrow of receivables from FRL & FLFL by way of tripartite agreement between the company, FRL/FLFL and the bank.
 - b) Assignment of Master Lease Agreement in favor of Bank on borrowers rights under the said agreement.
 - c) Undertaking and commitment by FRL/FLFL to pay agreed rentals under unconditional and irrevocable master lease agreement between FRL & company and tripartite agreement between the bank, FRL/FLFL & company.
- 2.5 A default was committed by the Corporate Debtor on 30.09.2020. The Corporate Debtor requested for One Time Restructuring (OTR) under Resolution Framework for COVID-19 related Stress announced by RBI vide its circular dated 06.08.2020 and the same was sanctioned by the Financial Creditor by executing OTR dated 21.05.2021. The date of default under the OTR is stated to be 31.03.2022. The date of NPA is 29.12.2020 based on original default date prior to such re-structuring.
- 2.6 The Corporate Debtor failed to honour the debt obligations under OTR towards repayment of principal and interest which have fallen due for repayment on 31.03.2022. The said accounts of the Corporate Debtor were downgraded to SMA-2 category with effect from on 31.03.2022.



- 2.7 Under RBI guidelines on Resolution Framework for COVID-19 related stress dated 06.08.2020 & 07.09.2020, If the borrower is in default with any of the signatories to the ICA (Inter Creditor Agreement) at the end of the review period, the asset classification of the borrower with all the lending institutions, including those who did not sign the ICA, shall be downgraded to NPA from the date of implementation of Resolution plan or the date from which the borrower had been classified as NPA before implementation of the Plan, whichever is earlier. Since OTR has failed in the account, the actual date of NPA was ascertained at 29.12.2020 (90 days from actual date of actual default i.e. 30.09.2020).
- 2.8 Consequent upon failure of the OTR, all the concessions pertaining to the OTR sanction came to withdrawn and the dues have been calculated manually as per the last sanction prior to the implementation of OTR. The Financial Creditor has claimed a total amount of Rs. 420,13,90,040.33 (Rupees Four Hundred and Twenty Crore Thirteen Lakhs Ninety Thousand and Forty and Thirty Three paise Only) as on 29.05.2022 along with interest and other charges. It is stated that the Financial Creditor have taken the outstanding as on 31.03.2021 and calculated the dues in all the accounts as provided in the ledger attached to the petition as Exhibit C.
- 2.9 The Financial Creditor sent a default notice dated 04.05.2022 to the Corporate Debtor informing them of their default and calling-forth for making payments of the outstanding dues. The Corporate Debtor replied to the said default notice vide letter dated 07.06.2022



and while acknowledging their liability, sought time to repay the outstanding dues.

3. The Corporate Debtor vide its Reply dated 16.12.2022 has stated that it is engaged in the business of leasing of in-store retail assets and selling and trading of goods.

3.1 The Corporate Debtor states that the covid-19 Pandemic affected the business of the Future Group Companies (Group) significantly which led to liquidity issues within the Group, and to overcome the liquidity issues, the Group tried to implement a Scheme of Arrangement with the Reliance Group wherein the Reliance Group would have acquired the retail, and wholesale and logistics and warehousing business assets of the Group and the proceeds from the transaction would have significantly reduced the debt across the group. However, the requisite approval from secured creditors for the said Scheme of Arrangements could not be obtained.

3.2 The substantial part of the loan has been repaid by the Corporate Debtor and only the balance amount of Rs.420.14 crores is pending, against which one Future Corporate Resources Private Limited (FCRPL) i.e. one of the Corporate Guarantor of the Corporate Debtor has by means of security, executed Deed of Guarantees in favour of the Financial Creditor dated 23.12.2019 and dated 21.05.2021 respectively in respect of the said loan facilities.

3.3 The Financial Creditor is also secured by a Pledge Agreement dated 23.12.2019 whereby FCRPL along with Future Capital Investment Private Limited (FCIPL) and Central Departmental Stores Private



Limited (CDSPL) pledged the equity shares of Future Retail Limited (FRL).

- 3.4 The Corporate Debtor further states that, in lieu of the Restructuring of Credit Facilities, the Corporate Guarantor, FCRPL executed another Agreement dated 21.05.2021 for the Pledge of Shares wherein FCRPL along with Future Capital Investment Private Limited and Central Departmental Stores Private Limited pledged 1,30,00,000 shares of Future Enterprises Limited and 3,10,50,000 shares of Future Market Networks Limited.
- 3.5 The Corporate Debtor states that the claim of the Applicant is hit by section 10A of the Insolvency and Bankruptcy Code, 2016. A reference can be made inter alia to the Averments in the Application, and the Computation of Claim. A holistic reading of the entire application indicates that the date of default also includes and accounts for the default during the period contemplated by section 10A of the Code, which starts from 25.03.2020. As per the case of the Financial Creditor, the date of default in the instant case is 30.09.2020 and therefore the claim of the Financial Creditor is barred under Section 10 A of the Code.
- 3.6 The Corporate Debtor asserts that it is already taking steps to monetize its assets and repay the amount as due and payable to the Financial Creditor. It is also stated that the Lender would be well within their rights to invoke the Pledge Agreement and liquidate the Pledged Securities by way of Open Market Sale for recovery of their dues.



- 3.7 The Corporate Debtor had also submitted a One Time Settlement proposal dated 23.11.2022 and vide a letter dated 02.12.2022 addressed to the Financial Creditor, and informed the Financial Creditor about the further course of action for settlement of the dues by 31.03.2023. It is stated that no fruitful purpose would be served if the Corporate Debtor is subjected to the Corporate Insolvency Resolution Process when the Corporate Debtor is already in the process of monetizing its assets to repay the debt as due and payable to the Financial Creditor. Similar views have been taken by the Hon'ble Supreme Court of India in *Transmission Corporation of Andhra Pradesh v. Equipment Conductors and Cables*, (2019) 12 SCC 697; *Swiss Ribbons Private Limited v Union of India & Ors* (2019) 4 SCC 17 and *Invent Asset Securitisation and Reconstruction Private Limited. Vs. Girnar Fibres Limited*. 2022 SCC OnLine SC 808.
- 3.8 That notwithstanding the above, it is well settled that the Insolvency and Bankruptcy Code, 2016 is a beneficial legislation which puts the corporate debtor back on its feet and is not mere recovery legislation for creditors and the same has been upheld by the Hon'ble Supreme Court of India in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* (2018) 1 SCC 353.
- 3.9 It is also stated that the Present Company Petition has been filed while suppressing material facts from this Hon'ble Tribunal. It is stated that the Respondent has failed to disclose that as much as Five (5) different proceedings have been filed for enforcement of the same debt against the Corporate Guarantors and Personal Guarantors. The Financial Creditor has been abusing the provisions of the Code as a recovery tool by filing simultaneous applications



against the Corporate Debtor and the Guarantors seeking initiation of resolution process. This effectively would result in both; the Corporate Debtor as well as the Corporate Guarantor being forced into insolvency in respect of the same debt.

4. The Corporate Debtor filed an IA 350/2023 pleading for dismissal of the petition on the ground that (a) the claim of the Applicant is hit by Section 10A of the Insolvency and Bankruptcy Code, 2016; (b) The Financial creditor is seeking enforcement of same debt in multiple proceedings; and (c) financial creditor holds securities more than the amount of debt. It was pleaded that the Hon'ble Bombay High Court in its recent judgment passed in the matter of *Deserve Exim Private Limited. Vs. Yes Bank Limited.* held that an Interlocutory Application raising issues of jurisdiction ought to be decided first before dealing with other issues at hand. These grounds are also taken in the written submissions filed prior to filing of this IA.
5. The applicant financial creditor filed reply dated 16.02.2023 stating that
 - 5.1 The law permits a creditor to pursue simultaneous proceedings against the Corporate Debtor and its guarantors. In the Report of the Insolvency Law Committee, February 2020 under Chapter 7, para 7.3, has categorically remarked that the creditor is at liberty to proceed against either the debtor, the surety, or both. Further, a Three Judge Bench of Hon'ble Supreme Court in *Laxmi Pat Surana v Union Bank of India and Anr. (Civil Appeal No. 2734 of 2020)* held in the judgement dated 26.03.2021 that when the principal borrower has committed a default, it would enable the creditor to proceed against both the principal borrower and the guarantor simultaneously since the obligation of the guarantor is co-



extensive and coterminous with that of the principal borrower to defray the debt as prescribed under Section 128 of the ICA.

- 5.2 The law merely grants the Respondent an option of enforcing the securities executed in the Respondent's favour and there is no compulsion under the law that a secured creditor must first enforce the securities in their favour and only then proceed with other legal remedies.
- 5.3 The securities in form of pledge of shares of associate companies executed in favour of the Applicant, including the primary security in form of first charge, on all the fixed assets and the all receivables of the Corporate Debtor is presently insufficient to satisfy the debt of the Corporate Debtor. The Applicant pledged shares of Future Market Network Limited and Future Enterprises Limited as Collateral Security with the Respondent but the value of the said Collateral Security has considerably reduced from Rs. 49.14 Crores to Rs. 22.46 Crores as on 10.02.2023 and is further set to diminish on account of substantial financial crisis faced by the Future Group.
- 5.4 Section 10A is not applicable to the present petition as the date of default has been ascertained as the date on which the terms of the OTR were defaulted i.e., 31.03.2022. It is the case of the Applicant that since the date of NPA has been mentioned as 29.12.2020, the date of default would thereby be 3 months prior i.e. 30.09.2022, which is the original date of default under the Sanction Letter dated 24.03.2015, 05.12.2016 and 16.12.2019, and would thereby result in the present Company Petition falling under the ambit of Section 10A of the Code. The Applicant Financial Creditor states that it has taken the NPA date as



29.12.2020 instead of 30.04.2022 in compliance with Clause 48 of Annex of the Resolution Framework for COVID-19 related Stress announced by RBI vide its Circular dated 06.08.2020 (RBI Circular) that deals with the procedure to be followed if the restructuring package is defaulted on by the borrower.

Findings-

6. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.

6.1 This Bench finds that the Applicant had sanctioned a one time restructuring pursuant to RBI guidelines and the Corporate Debtor failed to honour its obligations under such restructuring. Consequently, a fresh default came into existence when the Corporate debtor defaulted towards repayment of Principal interest which fell due for repayment on 31.03.2022. This Bench feels that the date of NPA is stated as 29.12.2020 in Part 4 in accordance with Clause 48 of Annexure 2 of RBI Circular dated 06.08.2020 on Resolution Framework for Covid 19 related stress, which stipulates that account of borrowers under restructuring shall be classified as NPA with reference to original date of default in case the borrower defaults on the restructured obligations. Since, the initial date of default ceases to exist upon One-time Restructuring of the debt owed to the Financial Creditor, the said date of default cannot be taken as a cause of action for the present petition. Instead the cause of action for the present petition is the date of default in making payment under the Restructured obligations i.e. 31.03.2022. Accordingly, the present petition is not barred under section 10A of the Code.



- 6.2 It is trite law that the Financial Creditor can proceed simultaneously against the Principal borrower, the Corporate guarantor and the other guarantors. Further, sufficiency of the security is not a relevant factor in a proceeding u/s 7 of the Code in a case where the financial debt, having been restructured, again came to be in default as this indicates the financial difficulty the Corporate Guarantor is going through. This Bench notes that the Hon'ble Supreme Court in the case of ***M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC***, held that “*Even assuming that NCLT has the power to reject the application under Section 7 if there were good reasons to do so, in the facts of the case, the conduct of the appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the application under Section 7*”.
- 6.3 The Corporate Debtor has pleaded that no fruitful purpose would be served if the Corporate Debtor is subjected to the Corporate Insolvency Resolution Process when the Corporate Debtor is already in the process of monetizing its assets to repay the debt as due and payable to the Financial Creditor and placed reliance on decisions by the Hon'ble Supreme Court of India in ***Transmission Corporation of Andhra Pradesh v. Equipment Conductors and Cables, (2019) 12 SCC 697; Swiss Ribbons Private Limited vs. Union of India & Ors (2019) 4 SCC 17 and Invent Asset Securitisation and Reconstruction Private Limited. Vs. Girnar Fibres Limited, 2022 SCC OnLine SC 808***. This Bench finds that in case of *Transmission Corporation of Andhra Pradesh (supra)*, the issue was whether a disputed debt can trigger admission into CIRP process under IBC; In case of *Girnar Fibres Limited (supra)*, the issue was



on determination of date of default; and in Case of *Swiss Ribbons (supra)*, the Hon'ble SC emphasised that IBC is for resolution and not for recovery, hence, the decisions cited by the Corporate Debtor in its defence are distinguishable and do not support the contentions. This Bench finds that the Financial Creditor, even though stated to be holding securities more than the amount of debt, has considered it appropriate to resolve the financial difficulty of the Corporate Debtor by filing of present application under IBC, which is a beneficial legislation to resolve the defaults of a Corporate Debtor. The present application is in interest of the Corporate Debtor as contemplated in the Code and does not appear to be an attempt to recover.

- 6.4 We find that there exists a “financial debt” within the meaning of Sec. 5(8) of the Code and the default in repayment of such debt thereof. 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 Applicant and there is default by the Corporate Debtor in payment of debt amount. We do not have any other objection on record against the application filed for initiation of CIRP against the Corporate Debtor.
7. In view of the above, we find that the present petition is fit for admission under Section 7 of the Code for initiation of CIRP against the Corporate Debtor.
8. The Applicant has proposed the name of Mr. Avil Jerome Menezes, a registered insolvency resolution professional having Registration Number- [IBBI/IPA-001/IP-P00017/2016-2017/10041] and



Email- avil@caavil.com 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

This Application being C.P. (IB) No. 841/NCLT/MB/C-IV/2022 filed under Section 7 of I&B Code, 2016, filed by Mr. Gaurav Kumar Jain, Assistant General Manager of Central Bank Of India, Financial Creditor/ Applicant against Syntex Trading & Agency 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. 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. Avil Jerome Menezes, a registered insolvency resolution professional having Registration Number - [IBBI/IPA-001/IP-P00017/2016-2017/10041] and Email- avil@caavil.com 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.



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- e) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, 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 WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/LRA-Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)