

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

5. C.P.(IB)-37/(MB)/2023

CORAM:

SHRI SHYAM BABU GAUTAM
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 28.07.2023**

NAME OF THE PARTIES: Savannah Lifestyle Private Limited
V/s
Shaila Clubs And Resorts Private
Limited

APPEARANCE :

FOR THE FINANCIAL CREDITOR : Adv. Shivani Bhandary

FOR THE CORPORATE DEBTOR : Adv. Rahul Sarda

FOR THE INTERVENOR IN IA 2595/2023 : Adv. Rahul Gaikwad

Section: 7 of Insolvency and Bankruptcy Code, 2016

ORDER

The matter is taken up for pronouncement of order in respect of the Company Petition. **C.P. (IB)-37/(MB)/2023** is **admitted** vide **separate order sheet**. Counsel appearing for the Corporate Debtor sought the stay of the pronouncement of the operation part of the Order. Having considered submissions of the Counsel appearing for the Corporate Debtor at considerable time, this Bench rejected his request for stay.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)
28.07.2023
Sushil

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 37/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy

(Application to Adjudicating Authority)
Rules, 2016

In the matter of

**Savannah Lifestyle Private Limited
..... Applicant/ Financial Creditor**

Versus

**Shaila Clubs and Resorts Private Limited
..... Corporate Debtor**

Order Delivered on :- 28.07.2023

Coram:

Shyam Babu Gautam

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances:

For the Financial Creditor: Adv. Sandeep Bajaj, Vipul Jai, Shivani
Bhandary, Mayank Biyani, Shruti

For the Corporate Debtor: Adv. Punthi Shah a/w Adv. Nupoor Maharaj

ORDER

Per:- Shyam Babu Gautam, Member Technical

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Shaila Clubs and Resorts Private Limited, (“**the Respondent**”) alleging default in payment of a Financial Debt.
2. The Corporate Debtor Company was incorporated on 02.05.2005 under the Companies Act, 1956. The Authorized Share Capital of the Respondent/Corporate Debtor Company is Rs. 3,00,00,000/- and the Paid-up Share Capital is Rs. 2,70,00,000/-.
3. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of total outstanding financial Debt of Rs. 9,16,43,081/- (Rupees Nine Crores Sixteen Lakhs Forty-Three Thousand and Eighty-One Only). The Principal amount due is Rs. 8,97,73,098/- (Rupees Eight Crores Ninety-Seven Lakhs Seventy- Three Thousand and Ninety-Eight Only) and Interest on the Principal amount at the rate of 16% p.a. The default on the part of the Corporate Debtor occurred on 07.05.2005 i.e. the date on which the loan account was declared as Non-Performing Asset.
4. The Financial Creditor submits that the Corporate Debtor had availed a loan of Rs. 4,75,00,000/- from Vasantdada Shetkari Sahakari Bank (hereinafter referred to as “the Bank”). Since the Corporate Debtor was unable to repay the amount to the Bank and hence a Recovery Certificate was issued on 23.02.2012 by the Deputy Registrar,

Cooperative Societies against the Corporate Debtor for an amount of Rs. 5,11,51,489/- (Rupees Five Crores Eleven Lakhs Fifty-One Thousand Four Hundred and Eighty Nine Only). As per the said Recovery Certificate, the Bank was entitled to recover its outstanding dues with interest @ 16% from the Corporate Debtor.

5. Further, in the year 2018, a Company Petition was filed in this Tribunal against the same Corporate Debtor by another Financial Creditors and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor vide Order dated 29.10.2021. In view of the said CIRP, the Corporate Debtor were not in a position to pay the outstanding dues to the Bank. Further, the Bank being a Co-operative Bank is undergoing liquidation and was desirous of recoveries.
6. The Bank in the CIRP of the Corporate Debtor initiated vide Order dated 29.10.2021 filed a claim of Rs. 8,97,73,098/- with the Resolution Professional (RP) of the Corporate Debtor out of which a claim of Rs. 8,38,53,727.51/- was admitted. Further, as per the Minutes of Order dated 20.10.202, the Financial Creditor had paid Rs. 2,50,00,000/-. Since, the Bank despite its efforts could not recover the outstanding dues from the Corporate Debtor, an offer to settle the loan account of the Corporate Debtor was offered to the Financial Creditor vide letter dated 06.08.2022. Vide the said letter, the Bank offered to close the loan account of the Corporate Debtor for a sum of Rs. 77,16,350/-.
7. The said offer was accepted by the Financial Creditor subject to the assignment of the loan account of the Corporate Debtor in favour of the Applicant. Subsequently, in accordance with the settlement of loan account letter dated 06.08.2022, the Bank and the Financial Creditor herein executed a Minutes of Order dated 20.10.2022 thereby recording

the terms of the assignment of the loan account of the Corporate Debtor in favour of the Financial Creditor and the same were filed in the Hon'ble High Court of Bombay on 21.10.2022.

8. As per the said terms of the Minutes of Order, the Financial Creditor paid an amount of Rs. 87,92,000/- to the Bank and accordingly the loan account of the Corporate Debtor along with all the rights and securities, mortgages, charges, remedies and benefits attached thereto as a secured loan stood assigned in favour of the Financial Creditor and hence the Financial Creditor stepped into the shoes of the Bank and the Financial Creditor of the Corporate Debtor.
9. In compliance with the Order dated 21.10.2022 passed by the Hon'ble Bombay High Court, on receipt of the amount of Rs. 87,92,000/-, the Liquidator of the Bank issued a No Objection Letter dated 28.10.2022 to the then Resolution Professional of the Corporate Debtor stating that the loan account of the Corporate Debtor had been cleared by the Financial Creditor and loan account stands assigned in favour of the Financial Creditor. Further, the Resolution Professional of the Corporate Debtor issued a letter dated 16.11.2022 conveying his no objection to the assignment of the loan account of the Corporate Debtor in favour of the Financial Creditor.
10. Hence, the Corporate Debtor had availed the loan from the Bank and the said loan account of the Corporate Debtor was assigned in favour of the Financial Creditor as per the Minutes of Order dated 20.10.2022 and the Order dated 21.10.2022 passed by the Hon'ble Bombay High Court. Subsequently, the Corporate Debtor failed to repay the said outstanding amount and there exists a debt and default.

11. The Corporate Debtor filed its Reply dated 13.04.2023 in their defence. the Corporate Debtor has raised the issue of limitation and states that the debt is time barred as per the Limitation Act and the Petition deserves to be dismissed as it is not filed within 3 years from the date of default. The Financial Creditor has illegally entered in to the assignment to revive the time barred debt.
12. The Corporate Debtor submits that there is no outstanding financial debt owed by the Corporate Debtor to the Financial Creditor and the Financial Creditor does not come within the meaning of Section 5 (7) of the Code.
13. Further, vide circular dated 24.09.2021, Reserve Bank of India issued master directions namely the Reserve Bank of India (Transfer of Loan Exposures) Direction, 2021 which provided guidelines on assignment of loans by Banks or other financial institutions. The said directions clearly stipulated that the assignment/transfer/acquiring of any loans can only be done to the entities referred to as 'lenders' which do not include private parties. Therefore, the assignment of loan by the Bank to the Financial Creditor is illegal.
14. Further, after the account of the Corporate Debtor was declared as NPA, the Bank proceeded with the recovery proceeding against the Corporate Debtor in terms of the Mortgage Deed due to which the Bank obtained the recovery certificate from Deputy Registrar of Co-operative Societies. Further, the Certificate obtained in the year 2012 has since become barred by limitation as period of 3 years from 23.02.2012 expire much prior to the filing of the present petition.

15. Further, the Corporate Debtor states that there does not exist a lawful assignment of Loan under which the Financial Creditor claims to step into the shoes of the Bank. Further, there is no disbursement of loan amount for a consideration of time value of money. There is also no written financial contract between the Financial Creditor and the Corporate Debtor setting out the terms of the transactions. The Corporate Debtor has prayed for the dismissal of the Petition.

FINDINGS

16. We have heard the submissions of the Counsel appearing for the Financial Creditor and Counsel appearing for the Corporate Debtor.

17. On perusal of the documents annexed to this Petition, it is seen from the Order dated 21.10.2022 passed by the Hon'ble High Court of Bombay wherein the court had recorded that the dispute between the parties has been settled and the parties have signed the Minutes of Order which are annexed with the Order. The said Minutes of the Order recorded that the Bank had assigned the loan account of the Corporate Debtor with all rights and securities, mortgages, charges, remedies and benefits thereto as a secured loan in favor of the Financial Creditor herein.

18. Further, as regards the fact as to whether the debt is time barred, it is worth mentioning that even if the limitation period is taken to be three years as per the Corporate Debtor, the Petition is still within limitation because of the acknowledgements of debt by the Corporate Debtor by showing the same in its Financial Statements right from the Financial Years 2008-2009 till 2019-2020. Hence, in accordance with Section 18 of the Limitation Act, 1963 which extends the period of

limitation upon an acknowledgment of debt, there is an acknowledgment of debt from the date of default. Hence, in view of the aforesaid acknowledgements of debt given by the Corporate Debtor in its Financial Statements which give rise to a fresh period of limitation from the date of the last acknowledgment of liability i.e. from Financial Year 2008-2009 up to 2019-2020. The Petition is well within time. Moreover, the Corporate Debtor was admitted in to CIRP vide Order dated 29.10.2021 passed by this Bench which was set aside vide Order dated 01.12.2022 by Hon'ble NCLAT. The period during which the Corporate Debtor remained in Moratorium is also liable to be excluded while counting the period of limitation. Hence the limitation period stands extended.

19. It is evident that the Corporate Debtor has admitted its liability which is reflected through its Balance Sheets of every Financial Year. Further, in "*Asset Reconstruction Company V/s Bishwal Jaiswal and Anr*" it has been held that Section 18 of the Limitation Act would apply every time the Corporate Debtor acknowledges its liability in writing to the debt of the Financial Creditor triggering a fresh period of limitation.
20. Further, the Financial Statements of the Corporate Debtor clearly reflects that the loan in question is a Short-Term Borrowings of the Corporate Debtor raised from VSSB i.e. the Bank Vasantdada Shetkari Sahakari Bank. The end notes to the Financial Statements also mentions that the VSSB Loan account of the company has been NPA.
21. Considering the above facts that the Corporate Debtor has admitted its liability and the same is reflected through the Balance

Sheets for every Financial Year which are duly signed by the directors of the Corporate Debtor, the present Petition deserves to be admitted.

22. Accordingly, the Petition is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB) -37(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Shaila Clubs and Resorts Private Limited.**

- b. This Bench hereby appoints **Mr. Milind Kasodekar**, Registration No: IBBI/IPA-002/IP-N00116/2017-18/10285 as the 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 cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- 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 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**