



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Company Petition No. (IB)-638 (ND)/2021

IN THE MATTER OF SCHEME OF AMALGAMATION:

YES BANK LIMITED.	...	Applicant/ Financial Creditor
Versus		
MOTHERS PRIDE EDUCATION PERSONNA PRIVATE LIMITED	...	Respondent/ Corporate Debtor

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016.

Order pronounced on 04.01.2023

Coram:

**MR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced in open court vide separate sheets.

(IB)-638 (ND)/2021 *is allowed.*

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**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

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**SH. P.S.N. PRASAD
MEMBER (JUDICIAL)**



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-638 (ND)/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

YES BANK LIMITED

APPLICANT/FINANCIAL CREDITOR

Vs.

MOTHERS PRIDE EDUCATION PERSONNA PRIVATE LIMITED

RESPONDENT/CORPORATE DEBTOR

Order delivered on: 04.01.2023

Coram:

SH. PATIBANDLA SATYANARAYANA PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application has been filled by Yes Bank Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company Mothers Pride Personna Private Limited, referred to as the corporate debtor.

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Company Petition No. (IB)-638 (ND)/2021

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2. It is appropriate to mention that the applicant Yes Bank Limited is a company registered under the Companies Act, 1956 on 21.11.2003 with the registered office situated at YES Bank Tower, YES Bank House, Off western Express Highway, Santacruz East Mumbai-400055.
3. Mr. Amandeep Singh Bajaj, duly authorized on behalf of applicant vide Resolution dated 06.12.2019 has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code. A copy of the Resolution has been placed on record.
4. The Respondent Company Mothers Pride Education Personna Private Limited (CIN No. U80302DL2004PTC126750) against whom initiation of Corporate Insolvency Resolution Process has been prayed for was incorporated on 02.07.2004 having its registered office situated at 11/77 West Punjabi Bagh, New Delhi-110026. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
5. The case of the applicant precisely is that the Corporate Debtor has approached the Financial Creditor for grant of loan facility for the purpose of refinance of existing facility utilized for

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upgradation/renovation and expansion of schools, reimbursement of capex already incurred in school and balance towards future capex in school. The financial creditor sanctioned the loan facility in favour of the Corporate Debtor and in pursuance of the same 3 loan agreements were executed on 10.02.2018 being Term Loan I amounting to INR 45,600,000/- which was disbursed on 14.03.2018, Term Loan II amounting to INR 35,550,000/- which was disbursed on 16.03.2018 and Term Loan III amounting to INR 322,850,000/- which was disbursed on 18.09.2018 detailing the terms and conditions of the loan facility agreed between the parties. In view of the non-payment of the Term Loans by the Corporate Debtor, the Applicant herein declared the account of the Corporate Debtor as Non-Performing Asset on 29.09.2019. The total debt due from the Corporate Debtor as on 20.07.2021 is INR 254,551,104.43/- . The Applicant herein issued a Loan Recall notice on calling upon the Corporate Debtor to repay the entire remaining dues amounting to INR 209,023,667/- within 7 days.

6. The Applicant also submitted in his petition that they have also filed O.A. against the Corporate Debtor before the DRT on 22.10.2020 and the same is pending for adjudication till date.
7. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Ganga Ram Agarwal, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00874/2019-2020/12777

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resident of 14254, A T S One Hamlet, Sector 104, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301, with email - id ganga.agarwal@aaainsolvency.com. Mr. Ganga Ram Agarwal has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Ganga Ram Agarwal as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

8. The applicant has placed following documents and submissions on record to prove its claim:-

- i. Certified copy of the computation sheet for working of interest and days of default.
- ii. Copy of entries in a Bankers Book in accordance with the Bankers Book Evidence Act, 1891.
- iii. Copy of facility letter bearing No. YBL/DEL/1811/2017-18 dated 30th December, 2017 issued by YBL in favour of Corporate Debtor.

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- iv. Copy of loan agreement dated 10.02.2018 with respect to term loan I for INR 45,600,000 executed between YBL and Corporate Debtor.
- v. Copy of loan agreement dated 10.02.2018 with respect to term loan II for INR 35,550,000 executed between YBL and Corporate Debtor.
- vi. Copy of loan agreement dated 10.02.2018 with respect to term loan III for INR 322,850,000 executed between YBL and Corporate Debtor.
- vii. Copy of first paripassu charge on land of M/s Happy Motel & Resorts (Ind) Pvt. Ltd. located at khampur, Delhi as per Memorandum of entry and owner's declaration dated 08.08.2018 and 29.06.2018 respectively created in favour of YBL.
- viii. Copy of first paripassu charge on land of M/s Better Construction Pvt. Ltd. located at khampur, Delhi as per Memorandum of entry and owner's declaration dated 08.08.2018 and 29.06.2018 respectively created in favour of YBL.
- ix. Copy of first paripassu charge on residential property located at C22, friends colony, east, Delhi as per Memorandum of entry and owner's declaration dated 08.08.2018 and 29.06.2018 respectively created in favour of YBL.

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- x. Copy of first pari passu charge on residential property located at C22, Friends Colony, East, Delhi as per Memorandum of entry and owner's declaration dated 08.08.2018 and 29.06.2018 respectively created in favour of YBL.
- xi. Copy of first pari passu charge on institutional property located at Sector 5, Rohini, New Delhi as per Memorandum of entry and owner's declaration dated 08.08.2018 and 29.06.2018 respectively created in favour of YBL.
- xii. Copy of first pari passu charge on current assets including fee, receivables and all moveable fixed assets of Presidium/Mothers Pride schools under the Corporate Debtor.
- xiii. Copy of Loan recall notice dated 8th November, 2019 issued by YBL to the Corporate Debtor.
- xiv. Copy of the loan account statement of Corporate Debtor from 10.02.2018 till 20.07.2021.

9. The matter was posted for hearing on various dates; however there was no representation by the Corporate Debtor. First ex-parte order was passed on 02.03.2022, later on the Corporate Debtor filed an Interlocutory Application IA/1862/ND/2022 for setting aside the Ex-parte order but the said Application was dismissed vide order dated 31.05.2022 due to the fact that there was no substantial ground put forth

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by the respondent to set aside the ex-parte order and also as the proceedings before the Tribunal are to be completed within 14 days, whereas, this said petition is pending since August 2021. Moreover, the respondent was continuously served notice since October 2021 but the respondent failed to appear every time which indicates the intentions of the respondent is to prolong the matter only. Later, the matter was reserved for order on 06.12.2022.

10. We have heard Ld. Counsels for the Applicant and perused the averments made in their application. Since, the Corporate Debtor chose not to file any reply and the said Application was ultimately proceeded ex-parte, also we don't have the benefit of having any counter arguments against the Applicant. Therefore, this Application needs to be disposed on the basis of the material brought on record by the Applicant only. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is of Rupees one crore or more; an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

11. The applicant clearly comes within the definition of Financial Creditor. The material placed on record as stated in the paras above further confirms that respondent has debt due and has committed default in repayment of the outstanding financial debt. On a perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the

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same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

12. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of the outstanding financial debt and default of the same by the corporate debtor.
13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted. The Applicant has proposed the name of Mr. Ganga Ram Agarwal, having registration number IBBI/IPA-002/IP-N00874/2019-2020/12777 having email - id ganga.agarwal@aaainsolvency.com to be appointed as an Interim Resolution Professional for corporate debtor.
14. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
15. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Ganga Ram Agarwal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from

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the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 the possession of the corporate debtor.”
(e)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*”

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and

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Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

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18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

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(DR. BINOD KUMAR SINHA)

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(PSN PRASAD)

MEMBER (J)