

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 124/KB/2023

**[An Application 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:

Tata Capital Limited

... Financial Creditor/ Applicant.

Versus

Glory Furnishers Private Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: March 22, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant:

**Mr. Avishek Guha, Adv.
Ms. Urmila Chakraborty, Adv.
Ms. Arunika Dutta, Adv.
Mr. Kaushik De Sarkar, Adv.**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** The Court congregated through hybrid mode.
- 2.** Heard the Learned Counsels for both parties at length.
- 3.** This application has been preferred by **Tata Capital Limited**, hereinafter referred to as "**Financial Creditor**" or "**Applicant**" under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "**I&B Code**" against the **Glory Furnishers Private**

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Limited, hereinafter referred to as “**Corporate Debtor**” or “**Respondent**”, seeking a direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process (for brevity “**CIRP**”) in respect of the Corporate Debtor herein.

4. The amount claimed to be in default is **Rs. 2,83,97,243.24/-** as on 29.03.2023, together with interest, default interest, future charges and commission. The Date of Default is claimed as **02.02.2023** which is seven days from the date of legal demand notice dated 25.01.2023, annexed at Pages 248-255 to the application.

Factual Conspectus:

5. That, at the request of the Corporate Debtor, **Glory Furnishers Private Limited**, the Financial Creditor, **Tata Capital Limited** vide a sanction letter dated 22.09.2015, granted Rs. 70 Lakh to the Corporate Debtor, as Channel Finance/ Inventory Funding Facility/ Trade Advance facilities. The copy of the sanction letter dated 22.09.2015 along with the Channel Finance Agreement dated 23.09.2015 is annexed at Pages 33-62 to the application.
6. Further, the Corporate Debtor, vide a revival letter dated 06.09.2016 annexed at Pages 63-64 to the application, had acknowledged the debt and confirmation of security and acknowledged its indebtedness to the financial creditor to the tune of Rs. 70,00,000/-.

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- 7.** That, on 29.08.2016, the Corporate Debtor approached the financial debtor again for renewal cum enhancement of the channel finance/Inventory Funding/Trade Advance facilities to the tune of Rs. 80,00,000/- along with the existing loan amount of Rs. 70,00,000/- totalling to an amount of Rs. 1,50,00,000/- which was sanctioned by the financial creditor vide a sanction letter annexed at pages 65-69 to the application.
- 8.** Again, on 18.08.2017, the Corporate Debtor approached the financial debtor for renewal cum enhancement of the channel finance/Inventory Funding/Trade Advance facilities to the tune of Rs.50,00,000/- along with the existing loan amount of Rs.2,00,00,000/- which was sanctioned by the financial creditor vide a sanction letter.
- 9.** Further, on 21.08.2017, the Corporate Debtor acknowledged the debt and confirmation of security vide a revival letter dated 21.08.2017 and acknowledged its indebtedness to the financial creditor to the tune of Rs. 70,00,000/-.
- 10.** That, on 08.10.2018, the Financial Creditor upon being approached by the Corporate Debtor for renewal cum enhancement of the existing facilities sanctioned the Corporate Debtor Channel Finance/Inventory Funding Facility/Trade Advance to the tune of Rs. 1,00,00,000 along with the existing loan amount of Rs. 2,00,00,000/- totalling to the amount of Rs.3,00,00,000/- vide a sanction letter dated 8th of October, 2018.

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- 11.** On 10.10.2018 the Corporate Debtor had further acknowledged the debt and confirmation of security vide a revival letter dated 10.10.2018 and acknowledged its indebtedness to the Financial Creditor to the tune of Rs.2,00,00,000/-.
- 12.** On 2nd December, 2019, the Corporate Debtor once again approached the Financial Creditor for renewal of existing facilities credit facilities of Channel Finance/Inventory Funding Facility/Trade Advance to the tune of Rs.3,00,00,000/- vide a sanction letter.
- 13.** Further, on 6th December, 2019, a renewal letter was executed by the Corporate Debtor in favour of the Financial Creditor wherein the Corporate Debtor also acknowledged indebtedness to the Financial Creditor to the tune of Rs.1,92,00,000/- as on 05.12.2019. A channel finance loan cum guarantee agreement dated 06.12.2019 was also executed by and between the Corporate Debtor and Financial Creditor.
- 14.** On 12th October, 2020 a term loan facility under the scheme of a Guaranteed Emergency Credit Line was also sanctioned by the Financial Creditor in favour of the Corporate Debtor to the tune of Rs. 59,90,000/- to provide funding under the scheme for operation/restart of business due to the COVID-19 crisis vide a sanction letter.
- 15.** On 30th November, 2020 the Corporate Debtor the Financial Creditor renewed the existing Channel Finance facilities to the tune of Rs.300. Lacs vide a sanction letter.

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- 16.** Further, on 1st December, 2020 a deed of Corporate Guarantee was executed by MC Industries Ltd and a deed of Guarantee was also executed by the directors of the Corporate Debtor in favour of the Financial Creditor.
- 17.** On 10th December, 2020 a renewal letter was executed by the Corporate Debtor in favour of the Financial Creditor wherein the Corporate Debtor also acknowledged indebtedness to the financial creditor to the tune of Rs.2,99,00,000/- as on 09.12.2020. A channel finance loan cum guarantee agreement was also executed by and between the Corporate Debtor and Financial Creditor.
- 18.** On 4th June, 2021 the Financial Creditor vide an addendum sanction letter for a term loan further revised the terms of the loan facilities yet again granted to the Corporate Debtor vide a sanction letter dated 30th November, 2020 upon request of the Corporate Debtor. A change of terms letter dated 13/07/2021 was also executed by the Corporate Debtor in favour of the Financial Creditor.
- 19.** Further, on 13th July, 2021 a change of terms letter was also executed by the Corporate Debtor in favour of the Financial Creditor.
- 20.** On 14th December, 2021 the Corporate Debtor further requested the financial creditor to renew the existing channel finance facilities which were granted by the Financial Creditor vide a sanction letter to the tune of Rs. 2,63,00,000/-. A

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capping letter dated 17th of December, 2021 was executed by the Corporate Debtor in favour of the Financial Creditor requesting to cap the limit of the Channel Finance facility at Rs. 2,63,00,000. Several other documents were executed by the Corporate Debtor in favour of the financial creditor, the loan cum guarantee agreement dated 17th of December, 2021 and the renewal letter dated 17th December, 2021 wherein the Corporate Debtor acknowledged its indebtedness to the financial creditor to the tune of Rs. 2,62,00,000/- as on 16.12.2021.

- 21.** That, on 17th December, 2021 a capping letter was executed by the Corporate Debtor in favour of the financial creditor requesting to cap limit of Channel Finance facility at Rs. 2,63,00,000. Several other documents were executed by the Corporate Debtor in favour of the Financial Creditor, the loan cum guarantee agreement dated 17th of December, 2021 and the renewal letter dated 17th of December, 2021 wherein the Corporate Debtor acknowledged its indebtedness to the financial creditor to the tune of Rs.2,62,00,000/- as on 16.12.2001.

Submissions of the Financial Creditor herein:

- 22.** The Learned Counsel for the Financial Creditor would draw our attention to the statement of accounts of the Corporate Debtor to substitute the credit facilities availed from the Financial Creditor, accompanied by a foreclosure statement supported by a certificate under Section 65B of the Indian Evidence Act, 1872 annexed at Page 259-289 to the application, evincing

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disbursement of the loan amount and the default in making payment in respect of that financial facilities.

- 23.** It is submitted that on 25th January, 2023, the Financial Creditor had issued a legal demand notice to the borrower as well as the guarantors demanding immediate repayment of the entire outstanding dues amounting to Rs. 2,20,18,378.21/- plus interest payable to the Financial Creditor within 7 days from the date of this notice.
- 24.** The Learned Counsel for the Applicant would take us to the NESL report annexed at Pages 297-312, as Annexure “A4” to the Application, which confirms “Debt” and “Default” and the “Date of Default”.

Submissions by the Respondent in opposition to the Applicant:

- 25.** Per contra it is submitted that the alleged debt of the Applicant is frivolous and mala fide and the same is disputed. The application has been preferred maliciously and fraudulently to extort money from the alleged Corporate Debtor.
- 26.** It is claimed that the Corporate Debtor has been the wholesale dealer of Godrej for more than 46 years of business experience along with a good reputation in the market. However, after the sad demise of the key director of the Corporate Debtor Riddhi Pratim Banerjee on 11th February, 2021 during pandemic situation of Covid-19, Godrej started to disturb the flow of business by way of non-cooperation in business of the Corporate Debtor, that was being run by two lady directors, one

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of them aged 38 years with two minor daughters who had lost her husband Riddhi Pratim Banerjee and her mother-in-law aged 67 years has lost her only one son Riddhi Pratim Banerjee.

- 27.** It is further contended that the Corporate Debtor several times requested for settlement of dues to help them run the business with Godrej by way of withdrawing the stop billing instruction from Godrej, but all in vain.
- 28.** Further, it is asserted that the collusion of the Financial Creditor and Godrej was highlighted in the reply dated 19.08.2023 to the notice issued by the Financial dated 04.08.2023.

In Counter, the Submissions of the Applicant:

- 29.** It is contended that the dispute between any third party and the Corporate Debtor is inter-se dispute and has no bearing on the financial transactions entered between the Corporate Debtor and the Financial Creditor. That, the Performance of the Contract between the Financial Creditor and the Corporate Debtor was never dependent on any sort of contract between the Corporate Debtor and Third Party. Hence, the Corporate Debtor cannot take the plea that due to non-performance on the part of a third party, Corporate Debtor has failed to pay dues of the Financial Creditor. The Corporate Debtor had admitted "Debt" and "Default" which till date remains unpaid.
- 30.** Reliance has been placed on the e-mail dated 30th September, 2023 sent by the Corporate Debtor to the Financial Creditor,

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wherein the Respondent, Corporate Debtor has categorically admitted its liability towards the Financial Creditor. The said communication was duly replied to by the Financial Creditor vide an e-mail dated 19th October, 2023. It is submitted that the Corporate Debtor has suppressed said communication with malafide intentions to mislead this Adjudicating Authority.

Analysis and Findings:

- 31.** We have noted that through a sanction letter dated 22.09.2015 along with a Channel Finance Agreement dated 23.09.2015, a loan of Rs. 70 Lakh was sanctioned, which has been revived as well as renewed on several occasions from 2016 to 2021, through various sanction letters and agreements.

- 32.** Further, we would note that the NeSL report, annexed at Pages 297-312, supplied by the applicant, envisages the Record of Default (hereinafter referred to as “**RoD**”) in Form D, as information utility under 21(1) of the Insolvency and Bankruptcy Board of India (Information Utility) Regulations, 2017 issued to the Financial Creditor herein. The RoD shows that the Corporate Debtor has a total outstanding amount due and payable to the Financial Creditor of Rs. 2,29,36,232/- and Date of Default is reflected as on 28.08.2022. The relevant extract is reproduced hereunder:

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NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility

**FORM D
RECORD OF DEFAULT (RoD)**

(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)


This Record of Default is issued to the Financial Creditor M/s TATA CAPITAL FINANCIAL SERVICES LIMITED in respect of the default of debt as per details given below:-

(a) Name of the Submitter: M/s TATA CAPITAL FINANCIAL SERVICES LIMITED
 (b) Schedule-2 Bank (Y/N): N
 (c) Name of Corporate Debtor: M/s GLORY FURNISHERS PVT LTD
 (d) Unique Debt Identifier Number: AADCT6631L_6010984
 (e) Registered Address: 11th Floor, Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai
 (f) Total Outstanding Amount: 22936232.00
 (g) Default Amount: 22936232.00
 (h) Date of Default: 28-08-2022
 (i) Status of Authentication of Default: DEEMED TO BE AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated / Disputed / Deemed to be authenticated)	Authentication completed on
(49)	11-04-2023 09:20:34	*DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	27-04-2023 17:39:58

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

Registered Office : Gresham Assurance House, 4th Floor, Sir P.M. Road, Fort, Mumbai-400001.
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Thus, as per the Information Utility, the total outstanding amount due and payable to the Financial Creditor is more than the threshold financial limit as prescribed under Section 4 of the I&B Code and the application is filed on 02.06.2023, not barred by limitation in terms of Section 238(A) of the I&B Code

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read with Article 137 of the Limitation Act, 1963, as laid down in ***B. K. Educational Services (P.) Ltd. v. Parag Gupta & Associates*** reported in [2019] 11 SCC 633.

- 33.** We have further noted that the Corporate Debtor in its Reply has not raised any dispute regarding the Information Utility, debt and default on its part. However, the Respondent has submitted that after the demise of their director, Ridhi Pratim Banerjee, the flow of the business of the company has been flurried. In a summary proceeding, this Court examines the records that show the debt which is disbursed, and such is in default on the part of the Corporate Debtor herein. At this juncture, we would rely upon the judgement rendered in ***Vipul Himatlal Shah v. Teco Industries, Partnership*** reported in **2022 SCC OnLine NCLAT 209** where the Hon'ble NCLAT held that:

*“16. In the light of the detailed discussion as above, it is clear that **in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility**, more so when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier.”*

(Emphasis Added)

- 34.** Thus, in terms of the enumerations above, we **ALLOW** this instant application bearing **Company Petition (IB) No. 124/KB/2023** filed under **Section 7 of the I&B Code**, and

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accordingly, we order the initiation of the **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **TATA CAPITAL LIMITED (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. Glory Furnishers Private Limited (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/Corporate Debtor, as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset or any legal right or beneficial interest therein;*

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- 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 (54 of 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.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** 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.
- vi.** The Applicant has proposed the name of **“Mr. Vikky Dang”**, Address: **B-11, near Mangal Bazar Gurudwara, Vishnu**

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Garden, New Delhi - 110018, Email ID: vikkydang@gmail.com, Registration No.: IBBI/IPA-003/00359/2021-22/13763 as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, as per the requirement of Rule 9(l) 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 with the Board or IBBI. In addition, further necessary disclosures have been made by **“Mr. Vikky Dang”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Vikky Dang”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, 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 I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application

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under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the

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progress of the CIR Process in respect of the Corporate Debtor.

- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), West Bengal, Kolkata by all available means 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.

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- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 35.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 36.** Post the Company Petition **06/05/2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 22nd Day of March, 2024.

Bose, R. K. [LRA]/ SG [Steno]