



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

**CP (IB) No.347/MB-IV/2021**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Swikrutee Finance Private Limited**

[CIN: U67190MH2010PTC202333]

...Financial Creditor/Applicant

V/s

**Western Hill Foods Limited**

[CIN: U15400MH2008PLC184574]

...Corporate Debtor/Respondent

**Order Dated: 03.11.2022**

*Coram:*

Mr. Manoj Kumar Dubey  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Ms. Astha Ojha a/w Mr. Nishit Druva, Mr. Prakash Shinde, Ms. Aalisha Sharma and Ms. Meghna Arvind i/b MDP & Partners, Advocates.

For the Respondent(s) : None.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an application being C.P. (IB) No. 347/MB-IV/2021 filed by Swikrutee Finance Private Limited, the Financial Creditor/Applicant,

under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Western Hill Foods Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Devdas P Nair, representative of the Financial Creditor vide its Board Resolution dated 16.03.2021, claiming total default of Rs.3,35,42,485/- (Rupees three crore thirty-five lakh forty-two thousand four hundred eighty-five only) as on 15.03.2021.
3. The Date of Default as mentioned in the Petition is 28.02.2020. The Petition is filed on 31.03.2021.
4. The case of the Financial Creditor is as under:
  - a) The Financial Creditor has granted Facility to the Corporate Debtor to the tune of Rs.2,96,00,000/- (Rupees two crore ninety-six lakh only).
  - b) The details of the Sanction Letters are as follows:
    - i. Sanction Letter dated 31.05.2016 – Rs.50,00,000/- Interest at the rate of 12% p.a. on half yearly rest, Tenure- 12 Months;
    - ii. Sanction Letter dated 26.08.2016 – Rs.20,00,000/- Interest at the rate of 12% p.a. on half yearly rest, Tenure- 12 Months;
    - iii. Sanction Letter dated 27.03.2017 – Rs.50,00,000/- Interest at the rate of 09% p.a. Tenure - 12 Months;
    - iv. Sanction Letter dated 02.05.2017 – Rs.25,00,000/- Interest at the rate of 07% p.a. Tenure - 12 Months;

- v. Sanction Letter dated 13.07.2017 – Rs.10,00,000/- Interest at the rate of 07% p.a. Tenure - 12 Months;
- vi. Sanction Letter dated 08.11.2019 – Rs.25,00,000/- Interest at the rate of 07% p.a. Tenure - 12 Months;
- vii. Sanction Letter dated 27.12.2019 – Rs.51,00,000/- Interest at the rate of 07% p.a. Tenure - 12 Months;
- viii. Sanction Letter dated 29.01.2019 – Rs.62,00,000/- Interest at the rate of 07% p.a. Tenure - 12 Months.

Total Sanctioned Amount: Rs.2,96,00,000 /- (Rupees two crore ninety-six lakh only)

5. The Financial Creditor has filed Confirmation of Accounts for period of 01.04.2015 to 31.03.2017, at p.91, 01.04.2017 to 31.03.2018, at p.92, 01.04.2018 to 31.03.2019, at p.93 and 01.04.2019 to 31.03.2020, at p.94 of the Petition.
6. The Financial Creditor has issued the Loan Recall Notice dated 28.02.2020 to the Corporate Debtor claiming total amount of Rs.3,13,89,055/- (Rupees three crore thirteen lakh eighty-nine thousand fifty-five only) due as on 15.02.2020.
7. On 25.08.2021, the matter was listed and the Court Notice was issued to the Corporate Debtor. On 21.12.2021, the Counsel for the Corporate Debtor appeared and submitted that the Petition was served upon the Corporate Debtor on 31.03.2021 and Court Notice was served upon the Corporate Debtor on 01.11.2021. Vide order dated 02.02.2022, the Financial Creditor was directed to issue Personal Notice upon the

Corporate Debtor. In view of the said order, the Financial Creditor issued Personal Notice dated 14.02.2022 and the same was served upon the Corporate Debtor on 18.2.2022. Hence, as none appeared on behalf of the Corporate Debtor and no reply has been filed by the Corporate Debtor, vide order dated 04.04.2022, the Corporate Debtor was set ex-parte in the matter.

*Findings:*

8. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.
9. The Corporate Debtor has not filed its Affidavit in Reply. The Bench has given several opportunities to the Corporate Debtor to file the Reply in the matter. However, the Corporate Debtor chose not to file the Reply in the matter.
10. It is observed by the Bench that the Financial Creditor has provided Facility to the Corporate Debtor. For this purpose, various Sanction Letters were issued by the Financial Creditor.
11. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.
12. 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. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the

application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.

13. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
14. The Applicant has proposed the name of Mr. Vijay Nirmalkumar Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00536/2017-2018/10961] 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. 347/MB-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Swikrutee Finance Private Limited, Financial Creditor/ Applicant against Western Hill Foods 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. Vijay Nirmalkumar Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00536/2017-2018/10961], E-mail: vijay\_jain@yahoo.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.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- 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 Whats App. **Compliance report of the order by Designated Registrar is to be submitted today**

Sd/-

Manoj Kumar Dubey  
Member (Technical)  
03.11.2022

Sd/-

Kishore Vemulapalli  
Member (Judicial)