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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/75/(CHE)/2021

*(Filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **Milan Textile Enterprise Private Limited***

City Union Bank Ltd

Represented by its Manager: Legal,
Mr.R.M.Renganath,
149, T.S.R.Big Street,
Kumbakonam,
Thanjavur District – 612 001

... Financial Creditor

-Vs-

Milan Textile Enterprise Private Limited

No.12-13-14, Amman Sannathi,
Madurai – 625 001

...Corporate Debtor

Along with

IA/839/(CHE)/2021

(Filed under Rule 11 r/w 32 of NCLT Rules, 2016)

*In the matter of **Milan Textile Enterprise Private Limited***

Milan Textile Enterprise Private Limited

No.12-13-14, Amman Sannathi,
Madurai – 625 001

...Petitioner/Corporate Debtor

-Vs-

1. City Union Bank Ltd

Represented by its Manager: Legal,
Mr.R.M.Renganath,
149, T.S.R.Big Street,
Kumbakonam,
Thanjavur District – 612 001

... Respondent/Applicant Bank

2. The Deputy Commissioner of Income Tax
(Benami Prohibition)/ The Initiating Officer,
O/o. The Deputy Commissioner of Income Tax
(Benami Prohibition)
Room No.104, I Floor,
Income Tax Investigation Wing Building,
No.46, M.G.Road, Nungambakkam,
Chennai – 600 034.

... Proposed Respondent
(In I.A.No.844/2021)

Along with

IA/844/CHE)/2021

(Filed under Rule 11 r/w 32 of NCLT Rules, 2016)

*In the matter of **Milan Textile Enterprise Private Limited***

Milan Textile Enterprise Private Limited
No.12-13-14, Amman Sannathi,
Madurai – 625 001

...Applicant/Corporate Debtor

-Vs-

City Union Bank Ltd
Represented by its Manager: Legal,
Mr.R.M.Renganath,
149, T.S.R.Big Street,
Kumbakonam,
Thanjavur District – 612 001

... Respondent/Applicant Bank

Order Pronounced on 21st March 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Mr.R.Sivaraman, Advocate

For Corporate Debtor : Mr. T.Lajapathi Roy, Advocate
Ms. T.Tamil Malar, Advocate

COMMON ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This Application has been filed by one **CITY UNION BANK LTD.**, (hereinafter referred to as 'Financial Creditor') on 18.03.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **MILAN TEXTILE ENTERPRISE PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. The registered office address of the Financial Creditor as per the Application is stated to be situated at No.49, T S R Big Street, Kumbakonam – 612001, Thanjavur District. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr. R.M.Renganath, Manager, Legal of the Financial Creditor duly authorized by Power of Attorney dated 16.10.2020 placed at Annexure No.III in the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited

company incorporated under the Companies Act, 1956 on 20.12.2005 with CIN: U51311TN2005PTC058472. The registered office of the Corporate Debtor as per the application is situated at No.12-13-14, Amman Sannathi, Madurai – 625 001, TamilNadu.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Gopalsamy Ganesh Babu, Reg. No. IBBI/IPA-002/IP-N00246/2017-18/10731.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.8,04,86,434/- (Rupees Eight Crores Four Lakhs Eighty Six Thousand Four Hundred and Thirty Four only) as on 01.03.2021, which is due and payable by the Corporate Debtor together with interest. The date of default as stated in the application is 30.06.2018, 31.05.2018 & 26.07.2018.

6. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default and the same is placed at Annexure – I of the Application typeset filed by the Financial Creditor.

7. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor approached the Financial Creditor for certain

credit facilities for business requirements and the Financial Creditor had extended financial assistance to the Corporate Debtor. The Corporate Debtor had borrowed a total sum of Rs.5,20,00,000 (Rupees Five Crores Twenty Lakhs only) under the following loan accounts as detailed below by the Financial Creditor :

NATURE OF FACILITY	LOAN A/c No.	AMOUNT SANCTIONED	DATE WHEN AVAILED	DATE OF NPA
OLCC	116120000132170	Rs.1,75,00,000/-	19.10.2011	30.06.2018
OLCC	116120000132179	Rs.2,10,00,000/-	19.10.2011	31.05.2018
CUB-OSL SPECIAL	501812080024451	Rs.1,35,00,000/-	30.12.2016	26.07.2018
	TOTAL	Rs.5,20,00,000/-		


8. In respect of the aforesaid loan accounts, the Corporate Debtor had executed ON DEMAND Promissory Notes and other loan documents from time to time for the loan availed by them. The learned Counsel for the Financial Creditor submitted that apart from executing the Promissory Notes, the Corporate Debtor had executed a Memorandum of Deposit of Title Deed registered vide Document bearing No.5105/2010 dated 18.10.2010 in favour of the Financial Creditor.

9. Thereafter, it was submitted that the Corporate Debtor had failed to adhere to the terms and conditions and despite repeated request made by the Financial Creditor to pay the amount together with interest, the Corporate Debtor failed to pay and committed default in repaying the amount due to the Financial Creditor. Thus, the three Loan Accounts of the Corporate Debtor had been classified as Non-

Performing Asset on 30.06.2018, 31.05.2018 and 26.07.2018 respectively in accordance with the guidelines relating to asset classifications issued by the Reserve Bank of India. Further, the Corporate Debtor till date has not discharged their total liability. Therefore to recover the outstanding debt, the Applicant is left with no other option rather to approach this Tribunal for initiation Corporate Insolvency Resolution Process against the Corporate Debtor.

10. The Learned Counsel for the Corporate Debtor had filed a counter wherein the Corporate Debtor had admitted the outstanding liability of Rs.5,20,00,000/- (Principal Amount) in para 6 of the Counter Affidavit. Further, in para 8 of the Counter it was submitted by the Corporate Debtor that the Financial Creditor issued notice under section 13(2) of SARFAESI Act, 2002 on 30.08.2018 for a default of 14,14,61,066/- for almost 12 accounts.

11. The Learned Counsel for the Corporate Debtor in para 12 of the Counter submitted that the Applicant Bank had declared the Corporate Debtor Company's loan account as Non – Performing Asset (NPA) ON 31.05.2018, whereas the present application is filed before this Tribunal only on 30.06.2021 with a delay which is barred by limitation and therefore not maintainable.



12. The Learned Counsel for the Corporate Debtor in para 14 of the counter wherein it was stated that the present application is filed against three loan facility in which the schedule property is attached before the Adjudicating Authority under the Prohibition of Benami Property Transaction Act, 1988 vide Reference No. R-1929/2020. The Corporate Debtor is unable to settle the loan credits only due to the above attachment. Therefore, the initiating officer/the Deputy Commissioner of Income Tax (Benami Prohibition), Chennai is also a necessary party in this present Application filed by the Financial Creditor.

13. It was further submitted by the Corporate Debtor that the Financial Creditor has also filed an application bearing O.A.No.497 of 2019 before Hon'ble DRT, Madurai against the Corporate Debtor for recovery of debts of Rs.19,73,47,599/- and this parallel application in CP/IB/75/2021 filed before this Tribunal for default in loan amount to tune of Rs.8,04,86,434/- with interest for the very same loan facility would amount to forum shopping and hence the present application should be dismissed.

14. The Learned Counsel for the Financial Creditor had filed a rejoinder to the Counter wherein it was stated that the Corporate Debtor admitted the debt amount of Rs. 5,20,0000/- (Principal amount) in para 6 of the counter. Further, with respect to the Forum shopping

aspect raised by the Corporate Debtor, it is trite law that section 238 of the IBC, 2016 envisaged that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law and the same has been observed by the Hon'ble NCLAT in the matter of *Punjab National Bank vs M/s. Vindhya Cereals Pvt Ltd* in C.A.No.854 of 2019.

15. The learned Counsel for the Financial Creditor further submitted that the Hon'ble NCLAT in the matter of *Unigreen Global Private Limited vs Punjab National Bank & Anr.* in C.A.No.81 of 2017 has confirmed that a matter pending before DRT cannot be a ground to reject an application under the IBC, 2016.

16. With regard to the limitation aspect is concerned, the Financial Creditor submitted that the Corporate Debtor has made a false statement that the Present application was filed only on 30.06.2021. In response to that the Financial Creditor submitted that the Present application was filed on 18.03.2021 based on the loan accounts which has become NPA on 31.05.2018 and therefore the present application is filed well within the period of limitation.

17. The Learned Counsel for the Corporate Debtor has filed an additional counter which is taken on record.

INTERLOCUTORY APPLICATIONS (IA) FILED BY THE RESPONDENTS:

18. Respondents have filed the following IA's before this Tribunal under Rule 11 read with Rule 32 of NCLT Rules, 2016:

- i. IA/839/2021
- ii. IA/844/2021

19. In so far as IA/839/2021 is concerned, the same was filed to implead the Deputy Commissioner of Income Tax (Benami Prohibition) as a proposed respondent, as the said proposed Respondent had initiated proceedings before the Adjudicating Authority, Prohibition of Benami Property Transaction Act, 1988.

20. The IA/844/2021 was filed to keep present Application bearing CP/IB/75/2021 before this Tribunal in abeyance till the matter in Reference No. R-1929/2020 on the file of the Adjudicating Authority, Prohibition of Benami Property Transaction Act, 1988.

21. It is no longer *res integra* that proceedings under Section 7 of IBC, 2016 is filed for Insolvency Resolution of the Corporate Debtor and not for recovery of money from the Corporate Debtor. In so far as Application under Section 7 of IBC, 2016 is concerned, the Adjudicating Authority is required to satisfy that there is a 'debt' and 'default' on the part of the Corporate Debtor. Once the same is adjudicated, then the Adjudicating Authority is required to initiate Corporate Insolvency

Resolution Process as against the Corporate Debtor in terms of Section 7(5) of IBC, 2016. In view of the same, the IA/839/2021 and IA/844/2021 filed by the Respondent is devoid of merits and accordingly stand **dismissed**.

22. In so far as the main CP/IB/75/CHE/2021 is concerned, after hearing the submissions made by the Learned Counsel for both the parties and after perusing the records, this Adjudicating Authority is of the view that the existence of debt and default had been proven beyond reasonable doubt. Furthermore, the Corporate Debtor admitted the outstanding liability to the tune of Rs.5,20,00,000/- in para 6 of the Counter Affidavit.

23. Albeit, the Corporate Debtor has raised various grounds like present application is barred by limitation, and that the present application is a parallel application, where DRT proceedings already pending before DRT, Madurai would amount to forum shopping. In so far as the said contentions raised by the Corporate Debtor, the date of NPA is 31.05.2018 and if the said date is to be construed as the date of default then the present Application was filed before this Tribunal as early as on 18.03.2021 and as such the present Application is not barred by limitation. Further, we are of the considered view that there is no dispute regarding the Corporate Debtor owes money to the

Financial Creditor and therefore the debt and default is clearly established.

24. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial

creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

25. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

26. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

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 licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

27. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues



arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

28. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

29. The Financial Creditor has proposed the name of **Mr. Gopalsamy Ganesh Babu (babu@finrespro.com)**, Reg. No. **IBBI/IPA-002/IP-N00246/2017-18/10731** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also



upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 05.01.2023.

30. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

32. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

33. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

34. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

35. Post this CP/IB/75/CHE/2021 for hearing on **23.05.2022**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

SriramAnanth.V