

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III**

C.P.(IB)-565(MB)/C-III/2023

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

M/s. Wellworth Apparels Private Limited

Having Registered Office at: Office No. M2, Maznine Floor, Pearl Plaza, Tata Road no. 2, Opera House, Mumbai City- 400004.

.....Financial Creditor/Applicant

Vs

M/s. Dhruvi Properties Private Limited

Having Registered Office at: Paras Centre A, Office No. 127, 1st Floor, TATA Rad No. 2, Opera House Mumbai City 400004.

.....Corporate Debtor/Respondent

Order Pronounced on: 15.12.2023

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Manoj Mishra
For the Corporate Debtor: Non present

ORDER

Per: - Smt. Lakshmi Gurung (Judicial Member).

1. The Present **Company Petition (IB)-565(MB)/2023** has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **M/s Wellworth Apparels Private Limited, (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (“CIRP”) against **M/s Dhruvi Properties Private Limited (“Corporate Debtor/ Respondent”)** for default in repayment of loan.

Background Facts

2. The Corporate Debtor, vide request letter dated 18.04.2016, approached the Financial Creditor for availing a loan of Rs. 2,00,00,000/- (Rupees Two Crores Only) for the purpose of expansion in real estate business.
3. Accepting the request of the Corporate Debtor, the Petitioner disbursed an amount of Rs. 2 (two) Crores in favour of the Corporate Debtor. The details of the disbursement amount are tabulated below: -

Sr. No.	Date	Cheque No.	Bank Name	Disbursement Amount
1.	27.07.2016	CBCA01673	Corporation Bank	1,00,00,000/-
2.	03.08.2016	CBCA0673	Corporation Bank	1,00,00,000/-
			Total	2,00,00,000/-

4. The Corporate Debtor has executed a Demand Promissory Note (“**DPN**”) dated 04.08.2016 in favour of the Petitioner to repay the principal sum of Rs. 2 (two) Crores along with interest @22% p.a. quarterly compounding on principal balance on 01.04.2021 i.e., at the end of 5 (five) years.
5. On 30.03.2021, the Petitioner sent a letter to the Corporate Debtor, requesting to pay the entire principal sum of Rs. 2 Crores along with due interest by 01.04.2021. Instead of making the payment of the debt, the Corporate Debtor, vide letter dated 05.04.2021 expressed its deep regret

in not honoring its commitment and further requested the Petitioner to defer the repayment till 25.11.2021.

6. Taking into consideration the difficulties faced by the Respondent, the Petitioner accepted the request of the corporate Debtor by way of deferring the repayment of the sums owed to the Petitioner till 25.11.2021. However, the Corporate Debtor failed again to repay the amount.
7. Further, the Petitioner issued a letter upon the Corporate Debtor on 29.11.2021, calling upon the Respondent to repay the entire dues within 30 (thirty) days, failing which the Petitioner would be constrained to resort to legal measures for recovery of the amounts owed to the Financial Creditor. In response to this, the Corporate Debtor sought for more time to pay the entire amount of principal along with interest.
8. Thereafter, the Petitioner sent a reminder letter on 01.03.2022 requesting the Corporate Debtor for repayment of the entire sum of Rs. 2,00,00,000/- (Rupees Two Crores Only) along with due interest from the date of DPN i.e., 04.08.2016.
9. Subsequently, the Petitioner and the Corporate Debtor entered into Memorandum of Understanding dated 07.03.2022, by virtue of which, the Petitioner further extended the tenure of the loan and in terms of the understanding reached between the parties, the Corporate Debtor was obliged to repay the entire outstanding amount by 31.08.2022.
10. Consequently, the Petitioner issued letter on 07.09.2022, reminding the Corporate Debtor to honour its commitments. In response to which, the Respondent sent a reply on 12.09.2022, requesting for further extension of time for repayment of the outstanding amount.
11. The Petitioner issued a Demand Notice dated 20.12.2022 and a Final Demand notice dated 03.05.2023, calling upon the Corporate Debtor to repay the entire amount within a period of 10 days, failing which the

Petitioner would be constrained to approach this Tribunal for initiating insolvency process against the Respondent.

12. In view of the above background the Financial Creditor has filed the present petition stating that the Corporate Debtor owes to the Petitioner a total outstanding amount of Rs. 8,67,80,364/- (Rupees Eight Crores Sixty-Seven Lakhs Eight Thousand Three Hundred Sixty-Four Only). As per Part IV of the petition, **date of default is 01.04.2021.**

Findings

13. Apart from the Demand Notices issued by the Financial Creditor, Court notice was also issued to the Respondent, vide order dated 07.07.2023, directing the Corporate Debtor to file reply within two weeks and to appear in person or through Advocate on next date of hearing. On 16.08.2023, this Court noted that *“Notice sent to the Corporate Debtor through registry was duly served as per the track report. Corporate Debtor did not choose to appear despite notice. Hence, service of notice on Corporate Debtor is held sufficient and Corporate Debtor is set ex-parte.”* Thereafter, the matter was listed on 12.09.2023 and 28.11.2023 but the Corporate Debtor did not appear.
14. Heard the Ld. Counsel for the Petitioner and carefully examined the Annexure attached to the Petition.
15. The Petitioner has annexed copies of the following documents with the Petition:
 - i) Request Letter dated 18.04.2016 issued by the Corporate Debtor.
 - ii) Approval Letter of the Petitioner dated 15.07.2016.
 - iii) Board Resolution dated 20.07.2016 passed by the Board of Directors of the Corporate Debtor.
 - iv) Demand Promissory Note dated 04.08.2016 issued by the Corporate Debtor in favour of the Petitioner.
 - v) Memorandum of Understanding dated 07.03.2022.

- vi) Final Demand Notice dated 03.05.2023 along with acknowledgement of receipt by the Respondent.
- vii) Record of Default (RoD Certificate) dated issued by NeSL with status showing Authenticated.

In view of the above documents, the Petitioner has successfully proved the debt and default by the Corporate Debtor.

16. We rely upon the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, which clearly held that-

“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 receipt of a notice from the adjudicating authority.

*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.”*

(Emphasis Provided)

17. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.

18. We are of the considered view that the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Also the Petition filed is within limitation as date of default is 01.04.2021 and petition is filed on 27.06.2023. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Modilal Dhanraj Pamecha** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.
19. Accordingly, this Company Petition is **admitted** with the following directions:
- a. **The above Company Petition (IB) 565(MB)/2023 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Dhruvi Properties Private Limited**.
 - b. This Bench appoints **Mr. Modilal Dhanraj Pamecha**, *having Registration No: IBBI/IPA-001/IP-P-01231/2018-2019/12127, Address: C-802, Padmarag Co-op Hsg Ltd., J.B. Nagar, Andheri (E), Mumbai- 400059* 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 Lakh 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 directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
 - 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. 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.
20. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

21. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA