

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

CP (IB) 3951/MB/C-I/2019

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

**Invent Assets Securitization and Reconstruction
Private Limited**

[CIN: U61100WB1994PTC065277]

Corporate Office:

Bakhtawar Suite B, Ground Floor, Backbay
Reclamation Scheme, Block No.III, 229,
Nariman Point Mumbai - 400021.

Registered office:

107, Jolly Maker Chambers No.2, 225,
Nariman Point, Mumbai – 400021

... Financial Creditor /Petitioner

Versus

Starlite Jewels Private Limited

[CIN: U00111PN1993PTC072336]

203 2nd Floor Development Seepzs,
Near Existing Seepzs, Jogeshwari
Vikhroli Link Rd, Mumbai - 400093.

... Corporate Debtor /Respondent

Order Delivered on: 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Charles De Souza,
Advocate.

For the Corporate Debtor : Ms. Suyesha Kakarla, Advocate.

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Invent Assets Securitisation And Reconstruction Private Limited, acting in its capacity as Trustee of Invent/1314/P6 Trust (“the Financial Creditors”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Starlite Jewels Private Limited** (“the Corporate Debtor”).
2. The present Petition was filed on 08.11.2019 before this Adjudicating Authority on the ground that a loan for a sum of Rs.5,83,65,000/- (Rupees Five crores eighty three lakhs sixty-five thousand only) along with interest at the rate of 16.75% p.a. is payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is Rs.41,08,63,314.07 (Rupees Forty-one crores eight lakhs sixty-three thousand and three hundred fourteen and paise seven only). The date of default stated to be is 31.03.2008.
4. The Corporate Debtor is a private company limited by shares incorporated on 29.07.2002 under the Companies Act, 1956, with the Registrar of Companies, Mumbai. Its registered office is at 203 2nd Floor Development Seepzs, Near Existing Seepzs, Jogeshwari

Vikhroli Link Rd, Mumbai - 400093.

Submissions made by the Financial Creditor:

5. The Financial Creditor submits that it is a Company incorporated under the provisions of Companies Act, 1956 and registered with Reserve Bank of India as an Asset Reconstruction Company u/s.3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI) had acquired the financial assets of the Corporate Debtor from Union Bank of India vide Registered Assignment Agreement dated 16.07.2014 (**Exhibit-B @ Pg.14-65 of CP**).
6. The Financial creditor further submits that on October 10, 2003, Union Bank of India (i.e. the predecessor in title of the Financial Creditor advanced certain financial facilities to the Corporate Debtor as detailed in Part IV of the above Company Petition. By a sanction letter dated November 7, 2006' the financial facilities advanced to the corporate debtor were revised. Thereafter, by a sanction letter dated January 15, 2007 the financial facilities were once again revised by the predecessor in title of the Financial Creditor and the Corporate Debtor was granted ad hoc credit facilities of Rs. 100 lacs for a period of 90 days only. Pursuant to these revisions / restructurings the Corporate Debtor was entitled to 3 facilities vis Packing Credit, FDBC and a Term Loan as under :

Facility	Principal outstanding as per Assignment Agreement	Total Outstanding as on 31.07.2019
Packing Credit	12,62,000.00	86,70,848.78

Cash Credit – II	569,64,000.00	39,52,41,458.28
Term Loan	1,39,000.00	69,51,011.01
Total	583,65,000.00	41,08,63,314.07

7. Further the Financial Creditor submits that the facilities were secured by various documents executed *inter alia* by the Corporate Debtor including a Memorandum for Creation of Equitable Mortgage, demand promissory notes, a Packing Credit Agreement, a letter of continuity, a Letter for Hypothecation of Bills, a General Loan Agreement, a Term Loan Agreement, a Memorandum and Extension of Memorandum and a Letter of Guarantee. The charge in favor of the lender regard was duly registered with the Registrar of Companies. The details of Securities held by the Financial Creditor are as follows:

Particulars of security held, date of its creation, its estimated value as per the creditor.

Particulars of Security held by the Financial Creditor	Particulars of security held:			
	Estimated Value as per the Applicant			
	Sr. No.	Security Details	FMV (Rs. In lakhs)	DSV (Rs. In lakhs)
	1.	Commercial Office	531.11	424.89
	2.	Plant & Machineries	1.14	0.80
		Total	532.25	425.69

Details of Security —

Immoveable Property as mentioned in the Original Application:

First Charge by way of equitable mortgage of the Unit No.203, Block No.1, Seepz, Near Jogeshwari Vikhroli Link Road, MIDC, Andheri (East), Mumbai – 400096 together with the plant and machinery and fixtures stock, raw material etc. as are lying therein and as more particularly set out in the Memorandum annexed to the Application, standing in the name of the company.

Moveable Property as mentioned in the Original Application:

- (a) Gold, Silver, Platinum, Diamond, alloys, consumables and other stock in trade etc. as set out in 1st Schedule to Packing Credit Agreement dated 13.12.2005.
- (b) Bills of Exchanges as set out in the Letter of Hypothecation of Bills dated 08.11.2006.
- (c) Laser fume, casting Machines, Micro Bracer was Burn out furnace, Blower, Dust Collector, Embedding machine, Motors, Ultrasonic cleaner, Air Conditioners, Computers, safe Air pump, steel burs, special steel instruments, furniture fixtures, electrical fittings, dustings, MS revolving stand, Air compressor, Dry vacuum cleaner, stabilizers, magnetic polisher, vulcanize stripping machine, water cooler and etc. lying at Gala No.203 Block No.1 Seepz, Andheri(E), Mumbai – 400096 and as described the Term Loan Agreement (SD-19) dated 21.10.2003.
- (d) Margin : On raw materials & finished goods – 33.33% and On book-debts <90 days – 40%

Name of Documents	Date of last Creation/Extension
Memorandum of Deposit of Title Deeds	22.10.2003
Letter of allotment No. MIDC/831 issued by MIDC in favour of Mr. Jatin Ramniklal Thakkar and other partners of M/s. Bhakti Impex	01.07.2002
Letter No. MIDC/SEEPZ++/1474 issued by MIDC agreeing to change the allottees name from M/s. Bhakti Impex to M/s. Starlite Jewels Pvt. Ltd.	08.11.2002
Letter No. MIDC/SEEPZ++/298 handing over the possession of unit No.203 to Starlite Jewels Pvt. Ltd.	08.04.2003
Possession letter duly indicating taking over by M/s. Starlite Jewels Pvt. Ltd.	10.04.2003
Receipt bearing Nos.273778 for Rs.104,56,300/-	28.06.2002
Receipt No.274364 for Rs.62,73,780/-	09.08.2002
Receipt No.266167 for Rs.41,82,520/-	16.04.2003
Original Letter No. MIDC/Seepz++707 of MIDC informing that they have no objection to grant mortgage of Unit No.203 and confirming that gala and land appurtenant thereto are not subject to any encumbrance, charge or liability.	12.08.2003
Original Letter No. EMS UNIT: 119SEEPZ:5532/2203/-04 of Asst. Development Commissioner, SEEPZ, SEZ giving permission to mortgage the superstructure of unit No.203 for availing financial assistance.	21.10.2003
Letter of hypothecation of bills for Rs.6 crores.	08.11.2006
Memorandum	25.11.2004
Memorandum	14.12.2005
Extension Memorandum	14.02.2007
Letter of Guarantee	08.11.2006

Date of its creation: 07.02.2008.

Copy of the Certificate dated 21.10.2003 and 16.07.2014 issued by the Registrar of Companies certifying creation of the registration of the charge in favour of the Union Bank of India and Invent

Securitization & Reconstruction Pvt. Ltd. acting in its capacity as Trustee of Invent/1314/P6 Trust is annexed as **(Exhibit 'D' (Colly) Pg. 73-79 to CP)**.

Copies of Valuation Report in respect of the properties mentioned hereinabove are hereto annexed as **(Exhibit 'E' Pg. 80-106)**.

8. Thereafter, it is submitted by the Financial Creditors that as the Corporate Debtor failed to maintain the necessary financial discipline and the account of the Corporate Debtor was classified as a Non Performing Account (NPA) with effect from March 31, 2008. The Corporate Debtor was liable to repay the loan amount Rs.41,08,63,314.07 (Rupees Forty-one crores eight lakhs sixty-three thousand and three hundred fourteen and paise seven only) **(Exhibit C at pages 66-72)**
9. The Financial Creditor submitted that to facilitate recovery of the outstanding dues the predecessor in title of the Financial Creditor also instituted recovery proceedings under the Debts Recovery and Bankruptcy Act, 1993 and the SARFAESI. Further while matters stood thus, by an Assignment Agreement dated July 16, 2014 Union Bank of India assigned all its rights, title and interest in the financial facilities advanced to the Corporate Debtor to the Financial Creditor.

Submissions made the Corporate Debtor:

10. The preliminary objection raised by the Corporate Debtor is on the issue of maintainability. The Corporate Debtor submits that the petition is barred by law of limitation as the Financial Creditor

has filed the petition after 14 years of the last communication which itself is barred under section 238A of IBC r/w Article 137 of the Limitation Act.

11. Further it is the submission of the Corporate Debtor that the Balance Sheets attached by the Petitioner in the pleadings does not amount to acknowledgement of liability under Section 18 of the Limitation Act and thus cannot be used to extend the limitation period to file the captioned Company Petition after 14 years. The Corporate Debtor has relied on the Judgment of *Bishal Jaiswal, supra*, the Hon'ble Supreme Court held that the Balance Sheet must be read as a whole along with the notes and an entry in the Balance Sheet will not amount to an acknowledgement if it is qualified by a note. Therefore, the same cannot be considered as an acknowledgement of debt and it will not lead to extension of limitation under Section 18 of the Limitation Act.

12. It is the case of the Corporate Debtor that the Corporate Debtor's Account was declared as NPA on 31.03.2008 and a Notice under Sec.13(2) of SARFAESI (hereinafter referred to as the "**S.13(2) Notice**") was issued on 03.04.2008. Copy of the said Notice is annexed as **Exhibit-PP** to the CP. Further, the Respondent had replied to the said S.13(2) Notice, vide its Advocate's letter dated 31.05.2008 which the Applicant has refrained from annexing the same to the Company Petition and has committed *suppression veri*. It is submitted that the Corporate Debtor has at no point in time admitted to the debt and default as alleged by the Petitioner. It is further submitted that the last communication between the

Applicant and Corporate Debtor regarding the alleged debt amount occurred in 2008 which is 14 years ago and is beyond the period of limitation as mentioned above.

13. Further, it is stated by the Corporate Debtor that the Applicant has already filed an Original Application bearing O.A No. 37 of 2008 in the Hon'ble Debts Recovery Tribunal for the same alleged debt and the Original Lender i.e. Bank of India had taken possession of the factory of the Corporate Debtor along with fully functional Plant and Machinery under the said DRT proceeding which had the potential to yield Rs. 5 Crore in 2008 which could have satisfied the claim of the Petitioner.
14. It is the submission of the Corporate debtor that confiscation of the factory of the Corporate Debtor has led to the shutting down of the operations of the Corporate Debtor and thus crippling the Corporate Debtor. Further it is also submitted by the Corporate Debtor that they have also paid Rs. 25 Lakhs to the Original Lender i.e. Union Bank of India and have also given multiple proposals under OTS Schemes.
15. The Corporate Debtor has further stated that the amount to be payable to the Union of India is disputed and has relied on the Independent Auditor's Report by Jain Anil and Associates annexed by the Petitioner at **Exhibit MM** of the Company Petition
16. The Corporate Debtor has stated that the Petitioner has failed to fulfill the requirements of Section 7(3) as they have not furnished

record of default with the Information Utility or any evidence of default.

17. The Corporate Debtor has relied on the case of *Vidarbha Industries Power Limited v. Axis Bank Limited*, wherein the Supreme Court has held that the Adjudicating Authority while examining the existence of debt and default by a Respondent in an Application for initiation of Corporate Insolvency Resolution Process (CIRP) filed under Section 7 of the IBC, 2016 (Code), has the discretion to admit or not admit such application. The Court held that Section 7(5)(a) of the Code confers a discretionary power on the Authority to admit an application filed by the Financial Creditor for initiation of CIRP and such power is required to be exercised with caution.

Submissions made by the Financial Creditors by way of Affidavit in Rejoinder:

18. As regards the contention that the Company Petition is barred by limitation, it is submitted by the Financial Creditor that the Corporate Debtor has submitted had executed debit balance confirmation dated 19.06.2007 annexed as Exhibit Y (colly) and inter alia admitted their liability relating to various credit facilities.
19. It is submitted by the Financial Creditor that the Corporate Debtor in its financial statement and balance sheets filed for the period from 31st March 2006 to 31st March 2018 in its balance sheet, under the head "Loan Funds" relating to secured loans following amounts are shown as due and payable by the Corporate Debtor

as secured loan to its secured creditors including Union Bank of India. The said Financial Statement including Balance sheet and other documents as on 31.03.2018 are attached in Form No. AOC4 annexed as **Exhibit MM** to the CP.

20. The Balance Sheets of the Corporate Debtor reveal that the debt in question has been consistently acknowledged by the Corporate Debtor. An acknowledgement of debt as on 31.03.2006 can be found at page 19 of the Affidavit in Rejoinder, an acknowledgement of debt as on 31.03.2007 can be found at page 48 of the Affidavit in Rejoinder, an acknowledgement of debt as on 31.03.2008 can be found at page 87 of the Affidavit in Rejoinder, an acknowledgement of debt as on 31.03.2011 can be found at page 117 of the Affidavit in Rejoinder, an acknowledgement of debt as on 31.03.2014 can be found at page 146 of the Affidavit in Rejoinder and an acknowledgement of debt as on March 31.03.2017 can be found at page 175 of the Affidavit in Rejoinder. The present Company Petition was filed on 05.09.2019 and, in the circumstances aforesaid, is well within the prescribed period of limitations.
21. The Financial Creditor submits, that the debt in question has been admitted by the Corporate Debtor in the Affidavit in Reply itself. The Corporate Debtor contended that the Balance Sheets of the Corporate Debtor from 31.03.2008 itself clarified that the debt was disputed as revealed from the notes to the balance sheet the relevant extract of which is reproduced below:

“The Company has not provided Loss on account of exchange difference on amount payable in foreign currency loan received from Union Bank of India (which is in dispute) as per the Reserve Bank of India’s reference rate as on 31.03.2008 by not applying Accounting Standard AS-11 issued by the Institute of Chartered Accountants of India and to the extent profit reflected in profit and loss account is”

A similar caveat is found in the balance sheets of the Corporate Debtor for the years ended 31.03.2011, 31.03.2014 and 31.03.2017. However, below the said caveat is an explicit admission of the debt by the Corporate Debtor which reads as under:

“...The preparation of statement regarding payment of dues / outstanding of the Union Bank of India comes to Rs.5,12,84,978/- are based on the generally accepted accounting principles. The captioned amount is arrived at without adjudicating / considering the views/ objections raised against the dues payable. Hence the said amount is not actual payable amount at present.”

A similar admission is found in the balance sheets of the Corporate Debtor for the years ended 31.03.2011, 31.03.2014 and 31.03.2017

22. It is further submitted by the Financial Creditor that from time to time the Corporate Debtor in their balance sheets, under the head "Current Liabilities and Provision" and "Schedules" relating

thereto, the Corporate Debtor has also made the provision relating to "in overdrawn balance with Union Bank of India"

23. It is submitted that the Petitioner has relied on the judgement of the Hon'ble Supreme Court in the matter of *Asset Reconstruction Company v. Bishal Jaiswal and Anr.* [2021 SCC online SC 321] (hereinafter referred to as "Bishal Jaiswal" in support of their argument that an entry in Balance Sheet of the Respondent (Corporate Debtor) would amount to acknowledgement of liability and it would extend the period of limitation u/s. 18 of the Limitation Act. Accordingly, they relied on entries in Balance Sheets of the Financial Years of 2005-2006, 2007-2008, 2010-2011, 2013-2014, 2016-17 at page Nos. 18, 48, 87, 117, 146 and 175 respectively of the Affidavit in Rejoinder dated 20.09.2022 and an entry in the Balance Sheet for FY 2017-18 is at pg.No.274 of the Company Petition dated 05.09.2019 filed by the Petitioner (hereinafter referred to as the 'Balance Sheets')
24. It is submitted by the Financial Creditor that they have placed on record extracts from Credit Information Bureau India Ltd. at Exhibit NN (pages 288 to 303) of the Petition in compliance of Section 7(3) of the IBC. Further, is submitted that the copy of the Utility report of the Corporate Debtor obtained from the NESL site is hereto annexed and marked as Exhibit D of the Rejoinder.

Findings:

25. Heard the Ld. Counsel for the Financial Creditors and the Ld. Counsel for the Corporate Debtor and perused the records.

26. It is the contention of the Corporate Debtor's that the Petition is barred by limitation and the outstanding debt is disputed. In this regard, we have perused the records and, it is prima facie clear that the Corporate Debtor has acknowledged the debt in its Balance sheet dated 31.03.2006, 31.03.2007, 31.03.2008, 31.03.2011, 31.03.2014 and 31.03.2017; further the perusal of the balance sheets makes it is clear that the debt is owed by the Corporate Debtor and the present petition is not time barred.
27. The Counsel for Petitioner through his arguments articulated the existence of debt and default which are corroborated from the records annexed to the Petition.
28. The Financial Creditor has proposed the name of **Mr. Indrajit Mukherjee**, Registration No. IIBI/IPA-001/IP-P01533/2018-2019/12450, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
29. We have also considered the facts of the case in the light of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

30. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
31. It is, accordingly, hereby ordered as follows: -
- (a) The Petition bearing **CP (IB) 3951/MB/2019** filed by **Invent Assets Securitisation & Reconstruction Pvt. Ltd.**, acting in its capacity as Trustee of Invent/1314/P6 Trust, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Starlite Jewels Pvt. Ltd. [CIN: U36911MH2002PTC136637]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, regarding the following:
- (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:
- - (i) 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;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1)

of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IB Code.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Indrajit Mukherjee, Registration No. IIBI/IPA-001/IP-P01533/2018-2019/12450**, having address at Flat No.705, A-wing, Deep CHS, DN Nagar, Andheri (West), Mumbai - 400053, Email:indrajit_mukherjee@sumedhamanagement.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)

09.02.2023
Priyal