

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

C.P. (IB) No. 1383/NCLT/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

TJSB Sahakari Bank Limited

...Financial Creditor / Applicant

V/s

Misa Services Private Limited

...Corporate Debtor / Respondent

Order Dated: 5th December 2019

Coram: Mr Rajesh Sharma

Hon'ble Member (Technical)

Mr Bhaskara Pantula Mohan

Hon'ble Member (Judicial)

For the Applicant: Yashika Chhatani (Practising Company Secretary)

For the Respondent: None present

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 1383/NCLT/MB/2019 filed by **TJSB Sahakari Bank Limited**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Misa Services Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The application is filed claiming a total default of ₹4,47,83,000/- (Rupees Four Crore Forty Seven Lakh and Eighty Three Thousand Only). The application is filed by Mr Shyam Anikhindi, Chief Manager, of the Financial Creditor duly authorised to file this application vide Resolution dated 01.03.2019.

3. The Applicant submitted that it took over the Cash Credit facility and Bank Guarantee facility from the Axis Bank and sanctioned Cash Credit of ₹1,20,00,000/- (Rupees One Crore and Twenty Lakh Only) and Bank Guarantee of ₹2,00,00,000/- (Rupees Two Crore Only) to the Corporate Debtor vide Sanction Letter No. 47/07 dated 27.05.2017 and Disbursement Orders dated 27.05.2017. The Applicant and Corporate Debtor entered into Facility Agreement dated 09.08.2017 in respect of the said credit facility, and Indenture of Mortgage dated 08.10.2017 secured the credit facilities. The Applicant has also filed Promissory Note; Deed of Guarantee; Letter of lien and set off; Letter of Continuity and Deed of Hypothecation in support of its claim. Copies of the documents mentioned supra are annexed to the application.
4. It is submitted that the Corporate Debtor passed Board Resolution dated 12.12.2016 in respect of the credit facilities sanctioned by the Applicant and further authorised its Directors, Mr Ranjit Jagtap and Mr Ramesh Aoundhakar, who signed the Facility Agreement dated 09.08.2017 on behalf of the Corporate Debtor. Copy of Board Resolution dated 12.12.2016 is annexed to the application.
5. It is further submitted that the said credit facility was repayable on-demand or at expiry of 365 days from the date of the first withdrawal from the said credit facility, whichever is earlier, unless renewed. It is submitted that the said credit facilities were latest renewed vide Sanction Letter and Disbursement Order both dated 25.08.2018. Copies of the documents mentioned supra are annexed to the application.
6. The Applicant submitted that the Corporate Debtor confirmed and acknowledged the said debt vide "Acknowledgment of Debt and Letter of Confirmation of Balance and Security" dated 31.08.2018. Copy of the said letter is annexed to the application.

7. The Applicant submitted that the Corporate Debtor exceeded the limit of the said credit facilities and continuously overdrawn the said facilities after the expiry of validity period. Therefore, the Applicant sent a Notice dated 02.02.2019 and requested the Corporate Debtor to regularise its loan account. However, upon failure of the Corporate Debtor to regularise the said loan facility, the Applicant again sent a Notice dated 26.02.2019 to the Corporate Debtor and it's guarantors calling upon them to pay the outstanding loan dues of ₹4,42,87,791/- (Rupees Four Crore Forty Two Lakh Eighty Seven Thousand Seven Hundred and Ninety One Only). The Applicant further issued Notice dated 01.03.2019 under Section 13(2) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 and intimated that Account of Corporate Debtor is classified as Non – Performing Asset on 28.02.2019 and further called upon the Corporate Debtor to pay the debt amount along with interest amounting to ₹4,47,93,488/- (Rupees Four Crore Forty Seven Lakh Ninety Three Thousand Four Hundred and Eighty Eight Only). Copies of the documents mentioned supra are annexed to the application.
8. The Applicant has annexed Statement of Account of Corporate Debtor prepared in its Books of Accounts for period 09.08.2017 to 08.03.2019, reflecting ₹4,14,93,310/- (Rupees Four Crore Fourteen Lakh Ninety Three Thousand Three Hundred and Ten Only) as outstanding balance due from Corporate Debtor. The last payment was made by the Corporate Debtor to the Applicant on 31.01.2019. Bank Certificate dated 02.04.2019 under Bankers Books Evidence Act, 1891 is also annexed. The Applicant has further annexed Certificate of Registration for Modification of Charge for Corporate Debtor reflecting the name of Applicant as Charge Holder.
9. The Applicant filed present Application on 04.04.2019. The Applicant was directed to serve Court Notice to the Corporate Debtor vide our Order dated 10.06.2019 and 07.11.2019. The

Applicant has filed its affidavit of service proving the service of court notice upon Corporate Debtor. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor chose not to file any objections in its defence.

10. No one appeared on behalf of the Corporate Debtor on the date of hearing. We heard the arguments of the Applicant and perused the records.
11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than ₹1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant as on the date of filing of this Application. The Corporate Debtor has also admitted the financial debt vide Acknowledgment of Debt and Letter of Confirmation of Balance and Security dated 31.08.2018. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount. Further, the Corporate Debtor has failed to appear before this Bench even after having service of notice of hearing. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor.
12. The application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.
13. The Applicant has proposed the name of Mr Ritesh R. Mahajan, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00048/2017-18/10132] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the Application.

14. The application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 7 of I&B Code, 2016, filed by **TJSB Sahakari Bank Limited**, Financial Creditor / Applicant, against **Misa Services Private 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 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 Ritesh R. Mahajan**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00048/2017-18/10132]** 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.
15. 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 WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

5th December 2019