

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

CP (IB) - 2641/I&B/MB/2019  
Under Section 7 of the I&B Code, 2016

**In the matter of**

Rattan India Finance Pvt. Ltd.  
5<sup>th</sup> Floor, Tower-B, Worldmark 1, Aerocity,  
New Delhi- 110 037

.... Petitioner/

Vs.

Sneh Sadan Traders & Agents Limited  
1<sup>st</sup> Floor, Lansdowne Road, Mumbai -  
400039

..../Corporate Debtor

**Order delivered on: 22.10.2019**

**Coram:**

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)  
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Shyam Kapadia, Vinod Kothari, Priyanka Shah,  
Reshmi Nair, Advocates

For the Corporate Debtor:, Kazi Khalid, Advocate i/b C. K. Legal

***Per: Shri Bhaskara Pantula Mohan, Member (J)***

**ORDER**

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by Rattan India Finance Pvt. Limited (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process of Sneh Sadan Traders & Agents Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default in repayment of the loan agreement and credit facilities entered into both the parties.

2. The Petitioner is a finance company incorporated on 27/07/1995 bearing Company Identification Number U65100DL1995PTC071198 and has filed this petition through its authorised person named Mr. Krishna Bubna.

3. The Corporate Debtor is a company incorporated on 24/05/1980 bearing CIN U74999MH1980PLC022661, having

Authorised Capital of Rs. 20,00,000/- and a Paid-Up Share Capital of Rs. 8,50,900/-.

4. The counsel for the petitioner submits that the Corporate Debtor approached him for availing a Loan Facility to the tune of Rs. 100 Crores against the pledge of equity shares of Cox & Kings Ltd. and Exeego One Tours and Travel Ltd. for the purpose of inter alia general corporate purpose.

5. The counsel for the petitioner further mentioned that a Loan Facility Agreement was executed on 28/02/2018 between both the parties for a total amount of Rs. 100,00,00,000/- (One Hundred Crores Only) which was granted to the Corporate Debtor for a period of 24 months with rate of interest @13.50% p.a. (Monthly Rests) and in case of the default a penal interest @2% p.a. over and above the applicable rate of interest would be levied from the due date till the date of actual payment.

6. The petitioner submitted that in and around February, 2019, the market price of shares of Cox & Kings fell steeply and thereby the value of pledged shares fell below the stipulated asset cover ratio and consequently, the trigger event occurred and Article 8.6.2 came into play the details of which are made available at Annexure E. Article 8.6 is dealing with the "Required Listed Share Cover" which runs as follows:

*"8.6.1. The Obligators hereby, jointly and severally, agree, undertake and covenant to ensure that, the Listed Share Cover is equal to or more than the Required Listed Share Cover at all times from the Initial Drawdown Date till the Final Settlement Date.*

*8.6.2. Upon the occurrence of any Listed Share Cover Trigger Event, the Lender shall provide to the Borrower, a written notice (the "**Listed Share Cover Trigger Event Notice**") of the occurrence of such Listed Share Cover Trigger Event, in the form and format as provided in Annexure-9 of this Agreement. Upon receipt of the Listed Share Cover Trigger Event Notice, the Obligators shall (and shall ensure that the Pledgor or any other shareholder of CKL shall, as may be applicable), take either of the following steps ("**Listed Share Cover Trigger Event Conditions**") to the satisfaction of the Lender, immediately and*

*in no event later than one (1) Business Day from the Listed Share Trigger Date:*

*(a) prepay the Restoration Prepayment. Amounts along with the Prepayment Premium in accordance with the requirements of ARTICLE 5.5 of this Agreement, so as to ensure that the Listed Share Cover is restored to the Required Listed Share Cover, subsequent to such prepayment, as shall be acceptable to the Lender; or*

*(b) create first and exclusive charge by way of pledge over such additional number of CKL Shares (“Top-up Pledged CKL Shares”), as may be required so as to restore the Listed Share Cover to the Required Listed Share Cover, as shall be acceptable to the Lender. For the avoidance of any doubt, it is hereby clarified that quantum of the Top-up Pledged CKL Shares to be pledged on every Listed Share Cover Trigger Event shall be such that the Listed Share Cover is restored to the level of the Required Listed Share Cover, immediately subsequent to the pledge of such Top-up Pledged CKL Shares.*

*8.6.3. Further, the Obligators shall cause the Pledgor (or such other shareholders as per ARTICLE 8.6.2. of this Agreement), within a period of three (3) days from the Listed Share Trigger Date, to file all requisite forms by the Pledgor with the Registrar of Companies as per the requirements of the Act, for perfection of the pledge created over the Top-up Pledged CKL Shares, in favour of the lender and shall submit the proof of registration of such charges with the Lender.*

*8.6.4. For the avoidance of doubt, any movements in Listed Share Value of the Pledged CLK Shares between the Listed Share Trigger Date and the first Business Day falling immediately subsequent to Listed Share Trigger Date shall be disregarded for the purposes of determining compliance with the requirements of this ARTICLE 8.6 of this Agreement and it is clarified that for the purposes of determination of such compliance, the Listed Share Cover on the first Business Day falling immediately subsequent to the Listed Share Trigger Date shall be calculated using the relevant Listed Share Value as of the Listed Share Trigger Date.”*

7. Later, the petitioner vide its letters dated 19/02/2019, 20/02/2019 and 22/02/2019 (Annexure L) called upon the Corporate Debtor and the pledgor to provide additional security and fulfil their obligations in terms of this clause 8.6 of the Loan Facility Agreement, failing which the same shall amount to an event of default. But the Corporate Debtor failed to act on the notice received.

8. Therefore, the petitioner issued a Default notice dated 26/03/2019 recalling Loan together with all other monies due and payable pursuant to the Loan Agreement in favour of the Corporate Debtor and also notified them about the Lender's right to proceed to sell the pledged shares on any day after the expiry of one day from the date of recall notice.

9. The petitioner mentioned that the Corporate Debtor admitted the fall in value of the pledged shares and requested the petitioner for change in re-payment schedule of the loan facility agreement vide letter dated 05/04/2019 to which the petitioner duly responded suggesting a revised repayment schedule vide its letters dated 09/04/2019 and 15/04/2019.

10. The petitioner contended that despite of the opportunity given by and the assurances given to the petitioner, the Corporate Debtor failed to comply with its obligations under the Loan Agreement and continued to be in default thereof.

11. The petitioner mentioned that on account of continuing default, they called upon the Corporate Debtor and pledgors by its letter dated 28/06/2019 to pay a sum of Rs. 60,23,40,881.83/- being the total outstanding amount of the loan including interest and other dues.

12. The details regarding the date and the days of defaults along with calculation thereon with respect to the facilities granted by the Financial Creditor to the Corporate Debtor are submitted by the petitioner.

13. The counsel for the petitioners mentioned that the invocation of shares by the them has been duly adjusted against the

outstanding amount and it is only for the remaining amount that the petitioner is before this Tribunal.

14. Corporate Debtor's written reply contends about the falsity of this petition and that this Bench is being misled by the petitioner as they have not come with clean hands. The Corporate Debtor agrees to the Loan Agreement that was entered between them dated 28/02/2019 and that the shares were pledged in favour of financial creditor.

15. The main contention made by the Corporate Debtor is that the petitioner invoked the pledge shares in lieu of the unpaid amount, and the said invocation of the pledges shares was not intimated to them and therefore, he mentioned that the entire liability of the Corporate Debtor stands extinguished and there remains no cause of action for the petitioner to file the present petition and therefore, it must be dismissed.

16. Also, the counsel appearing on behalf of the Corporate Debtor on 14/10/2019 i.e. on the date of final hearing, requested for amicable settlement between the parties which was refused by the petitioner but later the corporate debtor himself accepted the liability as well as default and therefore, this court is pleased to pass the following order:

### **ORDER**

17. We have heard the petitioner at length, perused the documents and evidences placed on record by both the parties and after going through the submissions made by the Corporate Debtor, this Bench finds that there was an express Loan Agreement entered between both the parties which is admitted by both the parties. A total amount of Rs. 100,00,00,000/- was disbursed by the petitioner in favour of the corporate debtor. Therefore, both the parties shared a relationship of creditor and debtor.

18. Further, the statements of accounts produced on record prove that there was a disbursement of amount by the financial creditor in favour of corporate debtor. The amount in default is Rs. 60,36,66,738/- payable to the Financial Creditor by the Corporate Debtor including the interest agreed by both the parties.

19. After perusing all the documents on record, we have come to the conclusion that there is a default on the part of the corporate debtor in making the payment towards the liability to the Petitioner. Despite repeated requests and reminders in form of notices, the Corporate Debtor failed to repay the dues.
20. Also, it is to be noted that the claim under this petition is above Rs. 1,00,000/- and fulfils all the conditions necessary under Section 7 of the Insolvency and Bankruptcy Code, 2016, therefore, it deserves to be admitted.
21. Also, on the final date of hearing i.e. on 14/10/2019, the corporate debtor himself admitted the liability as well as default. Therefore, the petition deserves to be admitted.
22. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
- (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (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.

- (II) 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.
- (III) 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.
- (IV) That the order of moratorium shall have effect from 22.10.2019 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints, Mr. Alok Kumar Agrawal, having office at 605, Suncity Business Tower, Golf Course Road, Sector 54, Gurugram, Haryana -122 002 and having Registration No. IBBI/IPA-001/IP-P00059/2017-18/10137 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

23. Accordingly, this Petition is admitted.

24. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

**Sd/-**

**Shyam Babu Gautam**  
**Member (Technical)**

**Sd/-**

**Bhaskara Pantula Mohan**  
**Member (Judicial)**