



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

C.P. (IB) No.202/BB/2022
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Canara Bank,
Head Office At No.112
J C Road
Bangalore 560002

... Financial Creditor/Petitioner

VERSUS

Kanva Fashions Limited
No.861,Kanva Sri Sai Complex,
Opp Modi Hospital
West of Chord Road
2nd Stage,Rajajinagar
Bengaluru 560086

... Corporate Debtor/Respondent

Order delivered on: 20th July, 2023

Coram: 1. Hon'ble Justice Ramalingam Sudhakar, (President)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Santhosh S Nagarale
For the Respondent : None

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This present Company Petition has been filed on 18.08.2022 by **CANARA BANK** (for brevity 'Financial Creditor') under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against



KANVA FASHIONS LIMITED(hereinafter called as ‘Corporate Debtor’),on the ground that it has committed default for total amount of Rs.114,38,26,770.26/-(Rupees One Hundred & Fourteen Crores Thirty Eight Lakhs Twenty Six Thousand Seven Hundred & Seventy Rupees & Paise Twenty Six Only).

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

I. The Corporate Debtor namely M/s Kanva Fashions Limited is a company incorporated on 07.07.1999 with CIN:U18109KA19999PLCO25423 having its registered office at No.861,Kanva Sri Sai Complex,Opp. Modi Hospital, West of Chord Road, 2nd Stage, Rajajinagar, Bengaluru 560086, which falls within the territorial jurisdiction of this Adjudicating Authority .The Authorised Capital of the Respondent/Corporate Debtor is Rs.40,00,00,000/- and the Paid -Up Share Capital is Rs. 33,40,59,093/-as per the Company Master Data attached at pg. no. 823-824 of this application.

II. Details of credit facilities sanctioned by the Financial Creditor from time to time is as under:

Sl.No.	Date of Sanction	Amount
1	20.12.2013	Rs.6,00,00,000/-
2	08.01.2013	Rs.10,50,00,000/-
3	12.03.2015	Rs.5,00,00,000/-
4	30.06.2016	Rs.22,50,00,000/-
5	10.08.2015	Rs.11,50,000/-
6	26.04.2016	Rs.13,50,000/-
7	30.06.2016/ 31.12.2016	Rs.88,92,265/-

III. The Corporate Debtor has executed collateral security and Letter Evidencing deposit of Title Deed in favour of the Financial Creditor on 29.06.2016. Pursuant to the aforesaid Loan Agreement the Corporate Debtor executed several documents namely common hypothecation agreement dated 12.08.2010, 09.06.2011 and supplemental common hypothecation agreement dated 25.08.2011.However the Corporate



Debtor has not repaid the loan amount. The account of the Corporate Debtor was classified as a NPA on 31.07.2019.

- IV.** The Financial creditor filed an original application before the DRT vide OA No 428/2020; which is pending before the DRT for arguments. For the credit facilities availed, the Corporate Debtor had created equitable mortgage by depositing the title documents with the financial creditor.
- V.** It is stated that, the properties in the name of the company has been attached by the ED in Original Complaint No.1419 of 2021 vide PAO no8/2020 dated 24.09.2020,2/21 dated 26.02.2021.Further, Government of Karnataka Revenue Department (Special Cell), vide Notification No.RD10GRC2020(P-1)dated 03.09.2020 published in The New Indian Express Newspaper on 08.09.2020, in exercise of the powers conferred by sub-sec 2 of section 3 of Karnataka Protection of Interest of Depositors in Financial Establishment Act,2004, has attached the immovable properties believed to belonging to M/s Kanva Souharda Credit Co-operative Ltd, in its own name or in the name of other person from and out of deposits collected by M/s Kanva Souharda Credit Co-operative Ltd., etc.
- VI.** On scrutiny of the details of the properties attached as per above orders vis a vis the properties mortgaged to the Respondent Bank, it is observed that properties under Serial Nos.5,16,17,18,19 and 20 of the Notification dated 03.09.2020 are the properties mortgaged to the Respondent Bank creating security interest for the credit facilities availed by M/s. Kanva Fashions Ltd, and Sri.N.Nanjundaiah, Respondents No.7.
- VII.** The Deputy Registrar of Cooperative, as arbitrator, has by invoking Sec 44 of KSSA Act,1947 has attached certain properties, it is observed that properties under Serial Nos.6,7 & 8 of the order DRD/KARASOU NO./02-37 (A)/2019-2020 dated 23.04.2020 are the properties mortgaged to the respondent bank and security interest was created for the credit facilities availed by Respondent No.7.



3. Shri. Santhosh S. Nagarale, learned Counsel for the Financial Creditor attended, whereas none appeared for the Corporate Debtor. We have carefully perused the materials available on record and the extant provisions of the Code and the Rules made there under.
4. Notice for admission was issued on 15.12.2022. However, on 14.02.2023, this Tribunal noticed that, the proof of service filed by the Petitioner vide Diary No.624 dated 02.02.2023 with tracking report showed an endorsement 'item returned addressee left'. Therefore, on 14.02.2023 an opportunity was granted to the Petitioner to make substituted service through Newspaper publication, due to the failure to deliver the notice. However, on 14.03.2023, despite substituted service by publication in two daily leading newspapers, nobody attended on behalf of the Corporate Debtor nor any objection was filed. Therefore the matter was decided to be proceeded against the Corporate Debtor on an **Ex-parte** basis.
5. It is seen that in the Form No.1 filed with the Application under section 7 of IBC, 2016 the date of default is not mentioned in the relevant column; and instead, date of classification as NPA being 31.07.2019 was mentioned. The relevant part of Form No 1 Part IV is reproduced hereunder:-

2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED(ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<i>Amount claimed to be in default Rs.1143826770.26 (Rupees One Hundred & Fourteen crores, Thirty Eight Lakhs Twenty Six Thousand Seven Hundred & Seventy Rupees & Paisa Twenty Six only) as on 31.03.2022. The account of the Corporate Debtor was classified as a NPA on 31.07.2019 and thereafter, the Financial Creditor filed an original Application before the DRT vide OA No.428/2020. The said OA is pending before the DRT and is now fixed for arguments.</i>
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6. Accordingly, this Adjudicating Authority vide its Order dated 18.04.2023, observed as under:

"3. In this regard, the NeSL has sent e-mail dated 11.04.2023 in respect of the Respondent stating as under:



“In respect of C.P.(IB) No.202/2022- Canara Bank vs Kanva Fashions Pvt Ltd.(PAN AABCK8082E),Canara Bank has filed default in NeSL-IU, but the Default Authentication Invitation e-mails sent to the Form C email id and MCA email id of the Debtor have bounced back. Even the Authentication Invitation Letter sent by us to the Debtor by Registered Post Acknowledgement Due has also been returned undelivered. As such the Authentication Categorization Process could not be completed and RoD could not be issued in this case.

4.From the above, it is seen that NeSL is not able to generate the Form D which shows the Date of Default in respect of the Corporate Debtor.

5. Further as per Form 1 of the C.P., in Part –IV no date of disbursement of Loans and date of default has been mentioned. Only date of classification of account as NPA is mentioned as 31.07.2019 and it is stated that an Application has been filed by the Petitioner before the Debt Recovery Tribunal vide No.428/2020 and the same is pending before it.

6. Accordingly, the Petitioner is directed to furnish the details regarding the date of disbursement of various loans with relevant Ledger accounts copies and the date of default; and the explanation as to how the limitation is satisfied considering the date of filing of the C.P is 18.08.2022; within one week.

7. Order Reserved, Subject to the above compliance.”

7. The above compliance was made vide diary no 2842 dated 31.05.2023 by *inter alia* stating as under:-

- 1) “It is submitted that the Financial Creditor has filed the above application to initiate corporate Insolvency resolution process under section 7 of Insolvency and Bankruptcy Code,2016 on 18.07.2022. The notice was issued to the Corporate Debtor and the same has been returned undelivered with Shara “ITEM RETURNED ADDRESSEE LEFT” and also paper publication was taken in compliance of the order by the Hon’ble Tribunal.*
- 2) The matter was listed on 18.04.2023 and the Hon’ble Tribunal was pleased to hear the matter and reserved for orders subject to furnishing the details regarding the date of disbursement of various loans with relevant ledger accounts copies and date of the default and the explanation as to how the limitation is satisfied considering the date of filing of the CP is 18.8.2022.*
- 3) Date of disbursement of various loans and date of default is given below.*

SL NO	Account Number	Date of initial Disbursement	Date of Default	Date of NPA
1	445261005259	12.08.2010	1.05.2019	
2	445773008019	30.06.2016	1.05.2019	



3	445773008015	15.05.2015	15.05.2019	31.07.2019
4	445773007997	26.02.2013	26.05.2019	
5	445773008004	11.01.2014	11.05.2019	
6	4456033008287	28.07.2015	28.05.2019	
7	445768000130	29.04.2016	29.05.2019	
8	445603008307	30.06.2016	31.05.2019	

As on the date (25.05.2023), the aggregate amount due from the CD to the applicant financial creditor is Rs.136,43,82,667.86 (Rupees One Hundred and Thirty Six Cores Forty Three Lakhs Eighty Two Thousand Six Hundred and Sixty Seven Rupees & Eighty Six Paise)

- 4) *It is submitted that the aforesaid petition was filed on 18.07.2022 and the same was registered with filing number as 2903111008172022 and the same was registered on 25.11.2022 after due compliance of the office objection as C.P(IB) 202/ 2022. It is submitted that the account of the Corporate Debtor was classified as a NPA on 31.07.2019 and thereafter, the Financial Creditor filed an original application before the DRT vide OA No 428/2020. In reference to the limitation, the Hon'ble Supreme Court vide its order dated 10.01.2022 in SUO MOTU WRIT PETITION (C) NO.3 OF 2020 clarified the following,*

"it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings".

In view of the above stated exclusion of more than 21 months for the purpose of limitation, it can be seen that the Company Petition (which was filed on 18.07.2022) was in fact filed within the limitation period (the date of default being various days in May 2019 and date of NPA being 31.07.2019)

- 5) *Status of OA filed before DRT: OA No.785/2020 was filed before Hon'ble DRT II Bangalore, by the applicant financial creditor against the CD and others on 15.06.2020. The same was transferred to Hon'ble DRT I Chennai and renumbered as TA No.130/2022. The same is yet to be decreed, it now stands posted to 30.5.2023 for arguments. It is to be noted that the applicant financial creditor is not seeking/ claiming any extension / exclusion on limitation period on the basis of the said OA.*

Relevant ledger accounts are annexed this Memo

WHEREFORE It is humbly prayed that this Hon'ble Tribunal may be pleased to allow the application and initiate corporate insolvency



resolution process under Section 7 of the Insolvency and Bankruptcy Code, 2016 in the interest of justice and equity.”

8. Heard the counsel and perused the record available.
9. The present petition is filed by Canara Bank under section 7 of the IBC, 2016 to initiate Corporate Insolvency Resolution Process against Kanva Fashions Limited on the ground that the respondent has committed default for a total amount of Rs.114,38,26,770.26 (Rupees One Hundred & Fourteen Crores, Thirty Eight Lakhs Twenty Six Thousand Seven Hundred & Seventy Rupees & paisa Twenty Six only) as on 31.03.2022
10. The Petitioner Bank has clarified the issue regarding the date of default and the satisfactions of limitation vide its explanation furnished on 31.05.2023. It has relied upon the Judgement of Hon’ble Supreme Court i.e. Order dated 10 th January 2022 passed in M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 specifically excluding the period of 15th March 2020 to 28th February 2022. The Hon’ble Supreme Court has observed as under:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021,27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-Judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply....”



- 11.** In the instant case, as per the clarification given above, the Date of Default for various loan tranches is between 01.05.2019 and 31.05.2019, whereas, the NPA date is 31.07.2019. Accordingly, the limitation date would be between 01.05.2022 and 31.05.2022 for the 8 different tranches of loan mentioned above. Therefore, following the direction given in Para II of the above quoted Judgment of the Hon'ble Apex Court, the balance period of limitation remaining as on 03.10.2021 shall become available with effect from 01.03.2022. Here, the balance period of the limitation remaining between 03.10.2021 and the different dates of May, 2022 will therefore be available with effect from 01.03.2022. Since the Petition has been filed on 18.08.2022, therefore, it is well within the limitation period allowed in accordance with the Hon'ble Apex Court Judgment.
- 12.** In the given facts and circumstances, the present petition **CP (IB) 202/BB/2022** being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- the petition is **admitted** in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- (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
 - (b) any court of law, tribunal, arbitration panel or other authority;
 - (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (d) 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;
 - (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;



(f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

(g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

13. In Part III of Form 1, Mr. Madhugiri Venkatarayappa Sudarshan , Registration No. IBBI/IPA-002/IP-N00561/2017-18/11707 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 24.05 2022 has been filed along with the Petition.

14. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Madhugiri Venkatarayappa Sudarshan there is nothing adverse against him. In view of the above, we appoint Mr. Madhugiri Venkatarayappa Sudarshan, bearing Registration No. IBBI/IPA-002/IP-N00561/2017-18/11707, registered address at No.984/13,8th Main, Geiringer II Phasse, Bangalore-560085,Mob. 9620300691, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs 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.

16. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report,



certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

17. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd/-

**RAMALINGAM SUDHAKAR
(PRESIDENT)**

-Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**