

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

CP(IBC)/05/KOB/2024

(Under Section 7 of the IBC, 2016)

In the matter of Davani Silks Private Limited

MEMO OF PARTIES:

T S JAYAPRAKASH

1/964, Nanjappa Nagar, Olavakkode P.O,
Palakkad, Kerala 678002

... Petitioner No.1/ Financial Creditor

JAMES THOMAS

Maleparambil House, Athirampuzha P.O,
Kottayam Dt., Kerala 686562

... Petitioner No.2/ Financial Creditor

-Vs-

DAVANI SILKS PRIVATE LIMITED

VIII/260A, Amritha tower Velloorkunnam,
Market Po Near Velloorkunnam Signal
Junction, Muvattupuzha Ernakulam 686673

... Respondent/Corporate Debtor

Order delivered on: 30.05.2024

Coram:

Hon'ble Member (Technical)

Shri. Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant

:

Mr. Arun Kamalolbhavan, PCS

For the Respondent : Mr. Arun Johny, Advocate

ORDER

Per Coram

1. The petitioners have filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **DAVANI SILKS PRIVATE LIMITED**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application sets out the details of the Financial Creditors from which it is evident that the Financial Creditors are individuals and ex directors and shareholders of the Corporate Debtor. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number: U52609KL2016PTC047096 and having its registered office at VIII/260A, Amritha tower Velloorkunnam, Market PO, Near Velloorkunnam Signal Junction, Muvattupuzha, Ernakulam 686673. As per Part III of the application, the Financial Creditors have proposed the name of one Mr. Narender Reddy Banala, IBBI Registration Number: IBBI/IPA-003/ICAI-N-00376/2021-2022/13910 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of Rs. 1,37,02,706/- as on 30.11.2023. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- 1) Directors Loan agreement dated 24.09.2020 and 21.10.2020 between CD and TS Jayaprakash
- 2) Directors Loan agreement dated 23.09.2020 and 24.11.2020 between CD and James Thomas
- 3) Notice to initiate CIRP to CD
- 4) Reply to the notice of CIRP from CD
- 5) Certificate from CA regarding disbursement of loan from James Thomas
- 6) Nesl Certificate for TS Jayaprakash and James Thomas as on 06.02.2024 and 03.02.2024 respectively.

4. Brief fact of the case is:

- i. The present application is filed by TS Jayaprakash and James Thomas, financial creditors and ex directors of CD, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Davani Silks Private Limited.
- ii. It is stated that the CD was incorporated to deal in textile business. Due to non-compliance and mismanagement the shareholders through EGM appointed present directors

including Mr Padmakumar Nair, representative of shareholders. As funds were required for working capital requirement, directors/shareholders including petitioners who were ex directors entered into MOU with CD to fund the operations. It is stated the company is again in bad financial state and no shareholder has promised any further investment and investment made by petitioners are not repaid as well. 4 loan agreements were executed between petitioners and CD for total principal amount of 125 lakh and 35 Lakh each petitioner. The CD has failed to pay the interest from June, 2022.

- iii. It is stated that as on 30.11.2023, CD is in default of Rs. 1,37,02,706/- under the loan accounts. The applicant has submitted the default with NESL, information utility. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.
 - iv. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
 - v. The application was filed by the FC's on 08.01.2024 and states that the petition is filed within the period of limitation under the IBC.
5. The respondent side CD does not dispute the debt and default on account of loan made towards working capital requirement by the petitioner/financial creditors who were ex directors. it is stated

that there was financial fraud on the company by promoters and as many as 16 complaints are filed before various police station including investigation under section 213 of the Companies Act, 2013. It is also stated that there are other directors who also have pumped in money to CD which remains unpaid, all of which are reflected in the financial statements of CD for period FY2022-2023. It is also stated that the CD is also facing proceedings per forceful dispossession of business premises by the landlord.

6. Heard the submissions, and perused the documents placed on record. This is a joint application made under section 7 IBC by 2 financial creditors/ex directors of CD, who have provided directors loan to the CD via loan agreements. The debt amounts to Rs. 1,37,02,706/- as on 30.11.2023 crosses the threshold limit stipulated under the IBC, 2016. The date of default of debt is stated as 30.11.2023 on account of default on repayment of loan and interest since June, 2022 to the petitioner financial creditors. The petition is filed on 08.01.2024 and falls within the period of limitation under the law.
7. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as

defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor. And also, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions as envisaged under the code, we believe that this application, as submitted by the Applicant-Financial Creditor, deserves to be admitted under Section 7(5) of the IBC, 2016.

8. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
 - A. The petition bearing CP (IBC)/5/KOB/2024, by Mr. TS Jayaprakash and Mr. James Thomas, joint Financial Creditors, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **DAVANI SILKS PRIVATE LIMITED**, (CIN: U52609KL2016PTC047096), the corporate debtor is **ADMITTED**.
 - B. There will be a moratorium under section 14 of the Code.
 - C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31

of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

- D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- E. The Financial Creditor has proposed the name of one Mr. Narender Reddy Banala, IBBI Registration Number: IBBI/IPA-003/ICAI-N-00376/2021-2022/13910, email: **bnreddy.acs@gmail.com**, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India

- (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.
- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, 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 one week from the date of receipt of this order, in default of which coercive steps will follow.
- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).
- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means 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 Tribunal within seven days from the date of receipt a copy of this order.

9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
10. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 30th day of May, 2024.

Rohit/LRA