

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP(IB)/795/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

J.C Flowers Asset Reconstruction Private Limited

[CIN: U74999MH2015PTC264081]

...Financial Creditor

v/s.

Somerset Estate Private Limited

[CIN: U70102MH2008PTC181222]

...Corporate Debtor

Order Delivered on 07.03.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Nausher Kohli a/w Ms. Anamika
Singh and Ms. Grishma Dalvi i/b
Indus Law, Ld. Counsel.

For the Corporate Debtor:

Mr. Karun Lal, Ld. Counsel .

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by J.C Flowers Asset Reconstruction Private Limited ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Somerset Estate Private Limited., the Corporate Debtor by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 21,27,75,584.54/- (Rupees Twenty-One Crores Twenty-Seven Lakhs Seventy-Five Thousand Five Hundred Eighty Four and Fifty Four Paise Only) as on 30.04.2023. The Petition is filed on 06.09.2023. The date of default as Specified in Part IV of the Petition is 15.12.2018. The date of NPA is 31.03.2019. The total outstanding amount as on 30 April 2023 is provided herein below:

Facility	SBL-Term Loan
Principal Outstanding	9,39,30,337.00
Interest(@10.35%)	7,93,25,303.67
Penal Interest	3,95,19,943.87
Total Outstanding	21,27,75,584.54

Submissions of the Financial Creditor:

2. The Financial Creditor submits that, YES Bank Limited ("Assignor") had granted a Secured Business Loan - Term Loan of Rs. 13,84,40,000/- (Rupees Thirteen Crores Eighty-Four Lakhs Forty Thousand Only) ("Facility") to the Corporate Debtor i.e Somerset Estate Private Limited and one Ms. Anupama Agarwal ("Borrower") as co-borrowers ("Co- Borrowers").

Relevant Dates and Events:-

- i. A Sanction Letter dated 28.06.2017 was issued by the Assignor in favour of the Co Borrowers and sanctioned the said facility.

- ii. The Co-Borrowers and the Assignor entered into a Loan Agreement dated 29.06.2017 to define the terms and conditions of the said Facility. Various documents were executed and securities were created to secure the repayment of the Facility. The same have been set out below for convenience.
 - a. Mortgage by Deposit of Title Deeds;
 - b. Demand Promissory Note dated 29.06.2017 was provided by the Co-Borrowers to the Assignor, jointly and severally promising to pay on demand an amount of Rs. 13,84,40,000/- (Rupees Thirteen Crores Eighty-Four Lakhs Forty Thousand Only) together with interest thereon from issuance date at 10.50% payable with monthly/quarterly rests;
 - c. Declaration for Submission of Post-Dated Cheques dated 29.06.2017 whereby postdated cheques [Cheque No. 000243 to 000247 and 000249] were drawn by the Co- Borrowers in favour of the Assignor to secure repayment of the Facility;
 - d. Declaration cum Indemnity dated 29.06.2017 provided by the Corporate Debtor whereby it agreed and undertook to indemnify and keep the Assignor fully indemnified, saved and harmless of, from and against any loss, damage, expense, risk and all consequence that might arise on account of any non-performance or breach by the Co-

Borrowers of any terms, clause, conditions of any document governing the Facility.

- iii. After availing the Facility, the Co-Borrowers started committing default in the payment obligations since 15.12.2018. Owing to consistent default committed, the account of the Corporate Debtor was classified as Non-Performing Asset on 31.03.2019.
- iv. In view of the default committed, the Assignor issued a Demand Notice dated 10.06.2019 to the Co-Borrowers under Section 13 (2) of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 ("SARFAESI Act") inter alia calling upon the Co-Borrowers to repay various credit facilities granted by the Assignor to the Co Borrowers including the Facility.
- v. Despite issuance of the said Demand Notice, no payments were made by the Co-Borrowers. The Assignor accordingly issued a Loan Recall Notice dated 01.07.2021 to the Co-Borrowers inter alia calling upon them to jointly and severally pay Rs.31,13,77,934/-(Rupees Thirty One Crores Thirteen Lakhs Seventy Seven Thousand Nine Hundred and Thirty-Four) (*due under various credit facilities sanctioned by the Assignor to the Co-Borrowers including the present Facility*) together with default interest @2% from date of default till realization within 7 days of issuance of the said notice.
- vi. Subsequently, a letter dated 15.09.2021 was addressed by the Borrower to the Assignor *inter alia* proposing a One Time Settlement related to the amounts outstanding under various loans availed by Somerset Estate

Private Limited i.e. Corporate Debtor including the Facility ("OTS Proposal").

- vii. By way of a letter dated 25.10.2021 addressed by the Assignor to the Borrower, the Assignor *inter alia* accepted the OTS Proposal on such terms and conditions as more specifically set out therein. Pursuant to this, the Co-borrowers made a part payment of Rs.50,00,000/- (Rupees Fifty Lakhs Only), which has also been confirmed by the Co-Borrowers by their letter dated 28.10.2021 addressed to the Assignor. Hence this petition.
- viii. The Assignor assigned its debts/ financial assets including the Facility granted to the Corporate Debtor along with all rights, title, interest, and underlying securities to the Financial Creditor by the Assignment Agreement dated 16.12.2022.

Submissions of the Corporate Debtor:

- i. The Corporate Debtor denies all and singular statements, averments, contentions and submissions made by the Financial Creditor.
- ii. The Corporate Debtor states that the Facility is allegedly a part of an over-arching loan which was granted by the Assignor to one Vadraj Cement Limited ("VCL").
- iii. The present matter is with regard to a loan transaction entered into between the Respondent/Corporate Debtor herein, and Yes Bank, which was part of the larger Credit facilities that was advanced by the Yes Bank to Mr. Vadraj Cement Ltd.

- iv. Due to financial difficulties that were plaguing the Cement Industry, it was decided that Mrs. Anupama Agarwal would avail a loan against Property from Yes Bank with the sole purpose of regularizing the loan account of M/s. VCL.

Findings

3. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

3.1. This bench notes that the Corporate Debtors entire submissions are qua disbursal of the bank loan of one M/s Vadraj Cement Limited and their subsequent dealings with the bank. It is evident from the record that the present transaction before us is disbursal of an independent loan executed through a separate loan agreement with the Corporate Debtor which is a distinct legal entity and cannot be equated with the alleged loan advanced to M/s Vadraj Cement Limited by Yes Bank. Therefore, this bench is of the considered view that plea raised by the Corporate Debtor has no substance and finds no merits in the contentions of the Corporate Debtor.

3.2. Based on the documents placed on record it is clearly evident, that the Corporate Debtor acknowledged its liability in respect of dues payable to the Financial Creditor in the One Time Settlement (OTS) proposal vide letter dated 15.09.2021 and admittedly the Corporate Debtor has utilized the said facilities/loan. Further the Corporate Debtor had addressed a letter dated 28.10.2021 intimating that the upfront payment of Rs. 50 lakhs have been credited in favour of the Financial Creditor. This tribunal is of the considered view that the OTS proposal and upfront part payment of debt by

the Corporate Debtor falls within the definition of the ambit of 'acknowledgement of debt'.

4. Even otherwise the factum of existence of financial debt and its default stands proven on record. It has also been established that the petition is within time. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor.
5. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

6. The Petition bearing CP (IB) No.795/MB-IV/2023 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by J.C Flowers Asset Reconstruction Private Limited ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Somerset Estate Private Limited., the Corporate Debtor is **Admitted**.
 - a) There shall be a moratorium under section 14 of the IBC, in regard to 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, -
- (v) 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;
 - (vi) That 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 Tribunal 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 IBC, as the case may be.
- (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) The bench hereby appoints **Mr. Pramod Dattaram Rasam**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00722/2017-2018/11259** and email- **pdrasam@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in 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 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.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- (i) The 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) A copy of this Order be sent 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
07.03.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)