NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

17. C.P.(IB) -64(MB)/2023

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **20.04.2023**

NAME OF THE PARTIES: The Federal Bank Ltd

V/s.

M. P. Enterprises & Associates Limited.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Arjun Sathees i/b Indialaw LLP, counsel appearing for the Financial Creditor is present through virtual hearing.

C.P.(IB) -64(MB)/2023

Heard the counsel appearing for the Financial Creditor none appeared for the Corporate Debtor nor any reply is filed by the Corporate Debtor.

After hearing the counsel and upon perusing the materials available on record this bench is convinced that this is a fit case for admission. Accordingly, the above Company Petition is **admitted**.

Detailed order will follow;

Sd/-	Sd/-
MADHU SINHA	H. V. SUBBA RAO
Member (Technical)	Member (Judicial)

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IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT- III

C.P. No. 64/IBC/MB/2023

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

The Federal Bank Limited

Having head office at: Federal Towers, Bank Junction, Aluva, Ernakulam, Kerala : 683101.

……*Financial Creditor*

Vs

M/s. M.P Enterprises & Associates Limited

(CIN:U34999PN1998PLC012981)

Registered office at: Second Floor, Chiranjeev Apartments, Karve Road, Pune, Maharashtra: 411038.

…….*Corporate Debtor*

Order pronounced on: **20.04.2023**

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

For the Petitioner: Adv. Mr. Arjun Sathees i/b Indialaw LLP

For the Respondent: None appeared.

ORDER

The above Company Petition is filed by the Federal Bank Limited, (hereinafter referred to as "**Financial Creditor"**) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. M.P

Enterprises & Associated Limited (hereinafter referred to as called as "**Corporate Debtor"**)by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called "**Code**" read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of **Rs. 4,07,65,837/-.**

BRIEF FACTS OF CASE ARE AS FOLLOWS

1. The Financial Creditor was approached by the Corporate Debtor in the year 2020 for availing certain credit facilities. Based on the representations and assurances of the Corporate Debtor, the Financial Creditor sanctioned a Term Loan Facility as "Commercial Vehicle Term Loan" for Rs. 5,00,00,000/- (hereinafter referred to as "**Term Loan**") upon such terms and conditions as mentioned in the Sanction Letter dated 17.03.2020. The Financial Creditor also issued Demand Promissory Note dated 19.03.2020 to the Corporate Debtor in order to formalise the said transaction.

2. The Financial Creditor to prove the existence of the debt claimed under section 5(8) of the Insolvency and Bankruptcy Code, 2016 have submitted the documents as follows:
    a. Copy of Sanction Letter dated 17.03.2020.
    b. Copy of Term Loan Agreement dated 19.03.2020.
    c. Copy of Demand Promissory Note dated 19.03.2020.

d. Statement of Accounts as on 12.12.2022 along with certificate under the Bankers' Book of Evidence Act, 1981.
e. Copy of Notice issued under SARFEASI dated 29.08.2022.
f. Copy of Notice under Section 138 of the Negotiable Instruments Act, 1881 dated 21.10.2022.
g. Copy of the Balance Sheets of the Corporate Debtor.
h. Copy of OTS proposal by the Corporate Debtor 21.09.2022.

3. The Petitioner states that the Corporate Debtor failed to adhere the payment obligations prescribed under the said Term Loan. Consequently, owing to the default committed by the Corporate Debtor, the Financial Creditor issued a Notice dated 13.07.2021 under the SARFAESI Act. Thereafter certain payments were made by the Corporate Debtor.

4. However, the Corporate Debtor yet again defaulted in repayment of the loan instalment on 24.06.2022. Due to continuous default, the account of the Corporate Debtor was categorized as NPA in the books of the Financial Creditor on 22.08.2022.

5. Since, the Corporate Debtor failed to regularize its account, the Financial Creditor was constrained to issue Notice dated 29.08.2022 under the SARFAESI Act. Thereafter, the Corporate Debtor submitted a One-Time Settlement (OTS) Proposal in respect of its debt to the Financial Creditor vide its letter dated 21.09.2022. Further, The Corporate Debtor vide Letter dated 17.10.2022 and 03.11.2022 furnished reply the SARFAESI Notice.

6. The Financial Creditor after due-consideration and deliberations rejected the OTS Proposal of the Corporate Debtor vide Letter dated 26.10.2022. Therefore, in view of the above facts the Corporate Debtor is liable to pay Rs. 4,07,65,837/- (Rupees Four Crores Seven Lakhs Sixty-Five Thousand Eight Hundred Thirty-Seven Only.) as on 24.12.2022. Hence, the present petition.

7. Heard Mr. Arjun Sathees Counsel appearing for the Financial Creditor and perused the material available on record. The matter has been listed from time to time on board. The Counsel for the Corporate Debtor not only failed to file Reply after the issuance of Notice of Service dated 28.02.2023 but also failed to comply the Conditional Order of this Tribunal dated 28.02.2023. This clearly indicates that the Corporate Debtor has no representation to form in the present case. In view of such factual position, the matter was heard ex-parte on its merits.

8. During the arguments, the Counsel for the Financial Creditor invited the attention of this Bench to document annexed as Exhibit S - *Entry No. 7* [relevant page -238 (Volume II)] evidencing the Creation of Charge amounting to Rs. 5 crores on the Corporate Debtor created on 19.03.2020. Further, the admission of the liability by the Corporate Debtor can be corroborated from the One Time Settlement (OTS) proposal sent by the Corporate Debtor on 21.09.2022 (annexed as Exhibit N as Page no. 187-191). However, this OTS proposal was rejected by the Financial Creditor and no

amicable settlement could be reached in the present case. The Learned Counsel for the Financial Creditor successfully demonstrated and proved the existence of debt and default. Since, the Corporate Debtor did not choose to file any reply, the claim of the Financial Creditor remained undisputed. The date of default is 24.06.2022 and the Company Petition being filed on 27.01.2023 is within limitation. The Financial Creditor have also suggested the name of Mr. Rajeev Mannadiar as Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.

9. As a consequence, keeping the aforesaid facts in mind, it is found that the Financial Creditor has not received the outstanding debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Financial Creditor, we are of the conscientious view that this Petition deserves '**Admission**' by passing the following:

ORDER

a. The above Company Petition No. (IB) 64 (MB)/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Santoshi Barrier Films India Pvt Ltd.

b. This Bench hereby appoints **Mr. Rajeev Mannadiar** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00212/2017-

2018/10412 (email id- rajeev@integroip.com) as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. 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.

f. 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.

g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Accordingly, this Petition is admitted.

SD/-	**SD/-**
MADHU SINHA **MEMBER (TECHNICAL)**	**H.V. SUBBA RAO** **MEMBER (JUDICIAL)**

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