

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

CP (IB)1777/MB/C-IV/2019

Under Section 7 of the I&B Code,
2016

In the matter of

**AMERICAN EXPRESS BANKING
CORP.**

...Financial Creditor

v/s.

**DHANVANTARI MILK PRODUCTS
PRIVATE LIMITED**

...Corporate Debtor

Order Delivered on 16.09.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Adv. Amir Arsiwala.

For the Respondent: Adv. Mehul Thakker.

Per: Rajasekhar V. K., Member (Judicial)

ORDER

1. This is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by the Financial Creditor, namely American express Banking Corp. against the Corporate Debtor, namely Dhanvantari Milk Products Private Limited to initiate Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Corporate Debtor failed to make payment of Rs.44,40,859.50 (Rs.30,11,950+Rs.14,28,909.50) as principal

amount. Dates of default are 20.10.2018 and 16.01.2019. The Petition was filed on 03.05.2019.

2. In Part IV of Form 1 against the column "Total Amount of debt granted," the Financial Creditor has stated that, there is an outstanding debt of Rs. 44,40,859.50, which comprises of Rs.30,11,950/- with reference to card No. 3769-400135-31002 and Rs.14,28,909.50 with reference to card No. 3769-400504-61006 upto the date of default, as indicated in the following table. The details of credit facilities were availed by the Corporate Debtor from the Financial Creditor as per part IV of Form 1 follows:

Sr. No.	AEBC Card No.	Amount (Rs.)	Date of Default
1	3769-400135-31002	30,11,950.00	20.10.2018
2	3769-400504-61006	14,28,909.50	16.01.2019
	Total	44,40,859.50	-

3. The Financial Creditor further stated Corporate Debtor was bound by the American Express Corporate Purchasing Card Buyer initiated Payments Card Agreement. A copy of the said agreement has been annexed at pages 22-27 of the Petition.
4. The Financial Creditor stated that the Corporate Debtor defaulted on the repayment of principal amount Rs.44,40,859.50 on

20.10.2018 and 16.01.2019, the due date for repayment. It was submitted during the course of arguments that the Financial Creditor has waived off the interest component.

5. In its reply dated 08.08.2019, the Corporate Debtor has submitted that it is active and procuring milk from about 22,000 farmers from the nearby rural area and around 50 employees there earlier but due to unfavorable market prices for butter/SMP, the prices down by 50%-60% in last 24 months. Due to this market condition, many of the customers suffered heavy losses, hence the Corporate Debtor could not recover payments in respect of supplies made to them, which affected its profitability and liquidity.
6. The Corporate Debtorsubmitted that, there was decrease in demand from distributors for almost one year which resulted into downfall in sales of various milk products. The Corporate Debtor further submitted that the company has sanctioned subsidy of Rs.5/Kg on production of SMP from Government of Maharashtra (around Rs.5.00 Crore), however this subsidy has not yet been received due to unavailability of funds with Government of Maharashtra.
7. The Corporate Debtor further stated that while there is no dispute with regard to the claim raised by the Financial Creditor. The Corporate Debtor is also not in position to commit to any repayment taken from the Financial Creditor on account of dire financial distress and lack of sufficient funds.
8. We have heard the arguments of both sides and perused the records.

9. The Petition is filed by Mr. Manoj Adlakh, Chief Executive Officer of American Express Banking Corp. duly authorised by a General Power of Attorney dated 30.11.2016.
10. The Financial Creditor has stated that as on 20.10.2018 and 16.01.2019, Rs.44,40,859.50/- towards principal amount is due and payable by the Corporate Debtor to the Financial Creditor. The Ld. Counsel for Financial Creditor undertakes to waive off any interest in the matter. An amount of Rs.44,40,859.50 was disbursed by the Financial Creditor to the Corporate Debtor.
11. The Hon'ble Supreme Court in the matter of ***Innoventive Industries Limited V. ICICI Bank &Anr.[(2018) 1 SCC 407]***, has held that the provisions of section 7 become applicable as soon as financial debt is established and there is an existence of a default. The Hon'ble court had observed that the moment the Adjudicating Authority is satisfied that a default in repayment of debt had occurred, the process of insolvency is to be triggered unless the application is incomplete.
12. The affidavit in reply of the Corporate Debtor the statement of the counsel appearing on behalf of the Corporate Debtor to the effect that the Corporate Debtor admitting the liability and its current inability to repay the debt, also establishes the existence of debt and default.
13. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC; the application of the Financial Creditor is complete; an amount of more than Rupees One Lakh is due and payable and in default and no disciplinary proceedings are

pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.

14. The Financial Creditor has proposed the name of Ms. Jovita Reema Mathias registration No. IBBI/IPA-002/IP-N00337/2017-18/10941 as Interim Resolution Professional of the Corporate Debtor with her consent in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with declaring that no disciplinary proceedings are pending against her.

ORDER

15. It is, accordingly, hereby ordered as follows:

- (a) The petition bearing **CP (IB)1777/MB/C-IV/2019** filed by the **American Express Banking Corp.** under section 7 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Dhanvantari Milk Products Private Limited** (CIN:U01122PN2013PTC149297), the Corporate Debtor is **admitted**. We further declare moratorium under section 14 of the IBC with consequential directions, as mentioned below:
- (b) 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,-

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;

(ii) 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 CIRPor until this Adjudicating

Authority 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) **Ms. Jovita Reema Mathias**, Registration No. IBBI/IPA-002/IP-N00337/2017-18/10941 having address at 506, Inizio Building, Cardinal Gracious Road, Chakala, Andheri (E), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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.

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- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses towards issue of public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email **within two days** from the date of this Order.
- (j) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days**.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)
16.09.2019

Sd/-

RAJASEKHAR V.K.
Member (Judicial)