



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**Company Petition No. (IB)-662 (ND)/2022**

**IN THE MATTER OF:**

**Santoshi Finlease Private Limited**

**... Petitioner**

**Versus**

**Mothers Pride Dairy India Private Limited**

**... Respondent**

**AND IN THE MATTER OF IA. No. 1695/ND/2023:**

**State Bank of India**

Stressed Asset Management Branch – I,  
Jawahar Vyapar Bhawan, 1 Tolstoy Marg,  
Janpath, New Delhi

**... Applicant**

**VERSUS**

**1. Santoshi Finlease Private Limited**

A-11, Ground Floor, Nirman Vihar,  
New Delhi-110092

**... Respondent No. 1**

**2. Mothers Pride Dairy India Private Limited**

G-41, Ground Floor,  
West Patel Nagar  
New Delhi-110008

**... Respondent No. 2**

**Order Delivered on: 12.06.2023**

**SECTION: Section 7 and Section 65 of IBC 2016**

**CORAM**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Vinod Chaurasia; Adv. Anand Prakash  
in IA- 1695/2023, Adv. Sumant Batra with  
Adv. Prafful Saini in in IA-1695/2023

**For the Respondent** : Adv. Anurag Ojha, Adv. Gautam Barnwal



## ORDER

### PER: SH. L. N. GUPTA, MEMBER (T)

The IA No. 1695 of 2023 has been filed by the State Bank of India (hereinafter referred to as “**Applicant Bank**”) against the Respondents M/s Santoshi Finlease Private Limited (R-1) and M/s Mothers Pride Dairy India Private Limited (R-2) under Section 65 of IBC 2016, read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- a) *That this Hon’ble Tribunal may be pleased to allow this Application;*
- b) *That this Hon’ble Tribunal may be pleased to reject the petition filed by the Respondent herein under section 7 of the Insolvency and Bankruptcy Code, 2016 with exemplary cost; and*
- c) *Pass any other order/directions that this Hon’ble Tribunal may deem fit and proper in the facts and circumstances as mentioned above in the present matter.”*

2. The (IB) Petition No. 662(ND)/2022 is filed by M/s Santoshi Finlease Private Limited (R-1 in the IA-1695/2023) under Section 7 of IBC, 2016 for initiating the CIR process against the Corporate Debtor namely, M/s Mothers Pride Dairy India Private Limited (R-2 in the IA-1695/2023).

3. As the facts of both IA No. 1695 of 2023 (**hereinafter, “Application”**) and (IB) Petition No. 662(ND)/2022 (**hereinafter, “Petition”**) are overlapping, for the sake of convenience, they are taken up together for adjudication.



4. The Applicant Bank/SBI has filed the IA No. 1695 of 2023 to seek dismissal of the Section 7 petition filed by M/s Santoshi Finlease Private Limited against M/s Mothers Pride Dairy India Private Limited (**hereinafter, “Corporate Debtor”**) on the ground that the said petition has been filed with malicious and fraudulent intent. In support of its contention, the Applicant Bank has stated the following:

4.1 The promoters of the Corporate Debtor Sh. Anant Kumar Chaudhary and Smt. Shalini Chaudhary, holding - 90% of the shares resigned from the Board and transferred their entire shareholding to one Mr. Navneet Jain. Further, Sh. Anant Kumar Chaudhary and Smt. Shalini Chaudhary left the country and changed their residential status to NRI and started living in Hong Kong.

4.2 The Corporate Debtor has changed its management without obtaining prior permission/NOC from the Applicant Bank. As per MCA Master Data, Sh. Navneet Jain and Sh. Sushil Kumar Singh are the present Directors of the Corporate Debtor.

4.3 In order to revive the Corporate Debtor, Director Shri Navneet Jain approached companies having good credentials like Mother Dairy, Amul, Paras ITC, etc. to get vending jobs. A Memorandum of Understanding was executed on the 14th of March 2018 between Mothers Dairy Fruit & Vegetable Private Limited and the Corporate Debtor, wherein the former agreed to start its poly-pack milk operations in its brand on a Sales and Purchase Agreement model and principal-to-principal basis.



4.4 In 2019, the then Directors of the Corporate Debtor entered into an investment arrangement with a group of individuals (family members) namely: Ms. Seema Mittal, Mr. Kaushal Mittal, Mr. Yug Mittal and Mr. Rishik Mittal (“**Mittal Family Members**”) and all of them were Directors of the Corporate Debtor from 01.07.2019 to 23/24.09.2019.

4.5 During the said period of 01.07.2019 to 23/24.09.2019, the Mittal Family Members constituted the majority on the Board of the Corporate Debtor, and during the same period, the alleged Board resolution of the Corporate Debtor dated 30.07.2019 (as referred to in the Section 7 petition) was passed and alleged Loan Agreement dated 17.08.2019 (as referred to in the Section 7 petition) was executed between the Petitioner and the Corporate Debtor. One Mr. Kaushal Mittal passed the alleged Board Resolution dated 30.07.2019 on behalf of the Corporate Debtor, who is also the Director of Respondent No. 1 (i.e., the Petitioner of Section 7 Petition) from 02.08.2005 till today.

4.6 While Mr. Yug Mittal (the then Director of the Corporate Debtor and an existing Director of the Petitioner i.e., Santoshi Finlease Pvt. Ltd.) executed the alleged Loan Agreement on behalf of the Corporate Debtor, one Ms. Kriti Mittal executed the alleged loan agreement on behalf of the Petitioner Company i.e., Santoshi Finlease Pvt. Ltd.

4.7 Based on an application filed by the Ex-Director, Smt. Shalini Chaudhury, CD Mothers Pride Dairy India Private Limited was admitted into CIRP by way of the order dated 13.11.2019 passed by this Adjudicating Authority and the CIR process (hereinafter, “**Earlier CIRP**”) was commenced.



4.8 During the “Earlier CIRP” of the Corporate Debtor, claims were invited and collated by the RP and accordingly, the constitution of the CoC varied over the period of the CIRP. During the CIRP, the claims of the Respondents (Santoshi Finlease Private Limited) and its sister concern (Santoshi Hyvolt Electricals Private Limited) were filed as Financial Debt. Accordingly, they were in the list of financial creditors, without having a right to vote, being a related party to the Corporate Debtor. During the first few meetings, the Mittal Family Members attended the CoC meetings, as part of “Suspended Management/ Suspended Directors”.

4.9 On an appeal filed by one of the Directors of the CD, Sh. Sushil Kumar Singh, the Hon'ble NCLAT vide its order dated 05.08.2022 set aside the order dated 13.11.2019 passed by the Adjudicating Authority, and accordingly, the Corporate Debtor was out of the CIRP.

4.10 Thereafter, the SBI, the sole secured financial creditor re-initiated SARFAESI action and arranged for a fresh valuation of the properties of the CD, and for redirection of CMM/DM orders which were issued 03 years back. Reserve Price for e-auction under SARFAESI was approved at Rs.28.68 crore on 08.02.2023. SBI took the physical possession of the plant on 22.02.2023, upon obtaining orders of CMM/DM, and also revived the OA-1039 of 2019 before the Hon'ble DRT, Delhi.

4.11 The Section 7 petition filed by the Petitioner is nothing but an attempt to stall the recovery proceedings under SARFAESI Act 2002. As such the Applicant (SBI) has already lost 03 years' time since the Corporate Debtor was under the CIR process in November 2019.



5. The Petitioner of Section 7 Petition/R-1 in the present IA i.e., Santoshi Finlease Pvt. Ltd. has filed its reply and stated the following:

5.1 Applicant Bank has failed to show any collusion between the parties. It is a bald allegation without any documentary evidence. It is alleged by the Applicant that the Loan Agreement dated 17.08.2019 was signed by Mr. Yug Mittal in the capacity of Additional Director (who was not the Director of Petitioner at the time of signing of the said Agreement) on behalf of the Corporate Debtor/R-2 in the present IA, under the Board Resolution signed by Mr. Kaushal Mittal, who was Additional Director in the CD company and also the Director in the Petitioner company during the relevant time.

5.2 It is also submitted that at the time of default, Mr. Kaushal Mittal and Mr. Yug Mittal along with all other Directors of the Mittal family had resigned and had no control over R-2/CD, and the agreement continued without any amendments by the incoming Director after 26th of September 2019 and upon incoming Director's request to release the money from the Corporate Debtor.

5.3 The Applicant Bank wants to get its own house in order and for it would not like the present CIRP to be triggered as Applicant had committed several financial irregularities/delinquencies and the same were brought before this Hon'ble Tribunal in IAs No. 3340/2020, IA/4296/2020 filed in the CP (IB)/2122/2019 by the then IRP but could not be adjudicated, as those IAs became infructuous due to the effect of order dated 05.08.2022 of the Hon'ble NCLAT.



5.4 The Applicant herein has wrongfully alleged that during the first few meetings of the CoC, the Mittal family members attended the meetings as part of Suspended Management/Suspended Directors. It is submitted that Mittals never attended any COC meeting as Suspended Management/Suspended Directors.

6. The R-2/Corporate Debtor - Mothers Pride Dairy India Pvt. Ltd. has filed its reply and written synopsis in the main petition IB-662(ND)/2022 and has stated that -

6.1 The Mittals have claimed in their petition and affidavits that they were not shareholders of the Corporate Debtor i.e., Mothers Pride Dairy India Pvt. Ltd. (hereinafter referred to as “**Mothers Pride**”) However, Mittals allegedly have shareholding certificates, which were mailed to the then IRP in CP IB No. 2122/2019.

6.2 The Corporate Debtor/Mothers Pride Dairy India Pvt. Ltd. was under the complete control of Mittals. The only non-Mittal Director i.e., Shri Navneet Jain was never called for any board meeting and everything was decided by Mittals. All the records of Mothers Pride were with Mittals. Even the registered office of Mothers Pride was under the control of Mittals and the same is also reflected in the alleged loan agreement dated 17.08.2019 too, as the registered offices of both the borrower and lender are the same. Mr. Yogesh Mittal also admits that he was in possession of Mothers Pride in his email dated 26.08.2019 [Annexure R4, Page 45 of Reply to IA 1695/2023 by Mothers Pride].



6.3 The present petition is collusive between Mittals and Petitioner/ alleged FC/Petitioner. The alleged Loan Agreement dated 17.08.2019 was signed by Shri Yug Mittal on behalf of Mothers Pride and by Ms. Kriti Mittal on behalf of Petitioner/Santoshi Finlease. Effectively, Mittals gave the alleged loan to Mittals. It is pertinent to note that the same Mr. Yug Mittal has filed the present petition on behalf of the Petitioner.

6.4 The alleged loan documents annexed by the Applicant are Forged, as the alleged loan agreement never existed in the records of Mothers Pride. Even after the Order dated 05.08.2022 passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins) 135/2020, when Mothers Pride got revived from insolvency in CP IB 2122/2019, the present Directors took records from the RP, wherein the alleged loan agreement was non-existent.

6.5 The sole intention of Mittals is to take over Mothers Pride by hook or crook. They tried to do so immediately after signing the term sheet. At that time, Mothers Pride was in financial distress, and Mittals took complete control without complying with the terms of the Term Sheet dated 19.06.2019.

6.6 Again, during Mothers Pride's CIRP in CP IB 2122/2019, at first instance, the then IRP denied admitting Mittals' claim, however, the same was later admitted for the best reason known to IRP and Mittals. Moreover, Mittals through the petitioner's sister concern Santoshi Hyvolt Pvt. Ltd. attempted to take over Mothers Pride by filing a resolution plan, which also failed. This is the third attempt to achieve indirectly what could not be achieved directly so far.



7. The Applicant Bank/SBI has also filed its Written Submissions stating the following:

7.1 Apparently, disputes arose over some issues between the Mittal Family Members and the Other Group on account of the alleged concealment of material facts. It is stated by the Petitioner [Refer page 6 and para 9 of the Additional Affidavit dated 03.03.2023 filed by the Petitioner] that owing to the dispute concerning misrepresentation, Mr. Yogesh Mittal was forced to file a police complaint in the month of August 2019 against Mr. Anant Choudhary, Mrs. Shalini Choudhary, Mr. Vikas Yadav and Mr. Navneet Jain. The CD claims that disputes arose because the Mittal Family did not invest the agreed amount.

7.2 The case of the Petitioner is that CD/Mothers Pride borrowed a sum of Rs.5,00,00,000/- from the Petitioner/Santoshi Finlease under the loan agreement dated 17.08.2019, which CD failed to repay, hence the Section 7 Petition is filed. It is pertinent to note that the loan agreement dated 17.08.2019 was executed between the Petitioner and the CD during the period from 01.07.2019 till 23/24.09.2019 when the Mittal Family was in control of CD. In other words, Mittal Family, being in control of CD, decided to borrow from Petitioner Company (in control of the Mittal Family). Mr. Yug Mittal, who has filed the present Petition on behalf of the Petitioner signed the said loan agreement on behalf of CD, and his sister Ms. Kriti Mittal (it was admitted by Petitioner's counsel during the hearing that Ms. Kriti Mittal is the sister of Mr. Yug Mittal) signed the loan agreement on behalf of the Petitioner Company. The CD has denied the existence of any such loan agreement in its record. The alleged Board Resolution of the CD dated



30.07.2019 [Refer pages 39 and 40 of the Company Petition C.P. (IB) No. 662/ND OF 2022 filed by the Petitioner] certified by Mr. Kaushal Mittal of Mittal Family. Mr. Kaushal Mittal has been the Director of the Petitioner (M/s. Santoshi Finlease) since 02.08.2005.

7.3 The “Earlier CIRP” was initiated against CD vide order dated 13.11.2019 passed by this Adjudicating Authority in C.P. No. IB 2122(ND)/2019. The Petitioner attempted to take over the CD through its sister concern, Santoshi Hyvolt Electricals Private Limited, which submitted a resolution plan for the CD. [Refer to the minutes of the 9th Meeting of the CoC, @Annexure A6 (Colly) of the IA 1695 of 2023 (Page 124)]. The Applicant Bank/SBI did not accept any resolution plan. The CIRP was eventually terminated as the CIRP order was set aside by Hon’ble NCLAT vide its order dated 05.08.2022.

8. We have gone through the documents placed in IA No. 1695/2023 and petition IB-662(ND)/2022 and heard the submissions of the Applicant Bank (SBI), the Petitioner of the Section 7 Application (Santoshi Finlease Pvt. Ltd./R-1), and the Corporate Debtor (Mothers Pride India Pvt. Ltd./R-2).

9. By filing the present application, the Applicant Bank has sought dismissal of the Section 7 petition filed by M/s Santoshi Finlease Private Limited against M/s Mothers Pride Dairy India Private Limited on the ground that the said petition is filed with malicious and fraudulent intent. In order to examine the intent of filing the Section 7 Petition, we first refer to the transaction alleged to have taken place between the parties vide the



Agreement dated 17.08.2019. The relevant extracts of the said Agreement read thus:


**ANNEXURE-4**

**28**

**INDIA NON JUDICIAL**

**Government of National Capital Territory of Delhi**

**e-Stamp**



सत्यमेव जयते

Certificate No. : IN-DL40071350217046R

Certificate Issued Date : 17-Aug-2019 11:50 AM

Account Reference : IMPAOC (SH)/ dishimp17/ KK DOOMA COURT/ DL-DLH

Unique Doc. Reference : SUBIN-DLDSLHIMP1785558247953187R

Purchased by : MOTHERS PRIDE DAIRY INDIA PVT LTD

Description of Document : Article 5 General Agreement

Property Description : Not Applicable


Consideration Price (Rs.) : 0  
(Zero)

First Party : MOTHERS PRIDE DAIRY INDIA PVT LTD

Second Party : SANTOSHI FINLEASE PVT LTD

Stamp Duty Paid By : MOTHERS PRIDE DAIRY INDIA PVT LTD

Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



----- Please write or type below this line. -----

**Loan Agreement**

Between

M/s Mother Pride Dairy India Pvt. Ltd. and M/s Santoshi Finlease Pvt. Ltd.  
 For MOTHERS PRIDE DAIRY INDIA PVT LTD. For Santoshi Finlease Pvt. Ltd.

*yug mittal*

Director

*Kaushal*

Director

**TRUE COPY**

Statutory Alert

1. In accordance with the provisions of Section 17(1)(b) of the Indian Stamp Act, 1899, the stamp duty on this document has been paid electronically through the e-stamp portal of the Government of National Capital Territory of Delhi.

2. The e-stamp is valid only if the document is signed by the parties in the presence of a Notary Public or a Magistrate.



THIS LOAN AGREEMENT ("Agreement") is made at the place and on the date as stated in the schedule 1 hereunder written ("the Schedule 1") BETWEEN M/s Mothers Pride Dairy India Private Limited with Regd Office at A 11 Nirman Vihar Delhi 110092 represented by its Director **Mr. Yug Mittal** duly Authorized by Board Resolution dated 30<sup>th</sup> July 2019 (copy enclosed) as stated in the Schedule 1 hereinafter referred to as "the Borrower" (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include his / her / its / their respective heirs, administrators, executors, legal representatives, Successors, executors administrators, legal representatives of the First part

And

M/s Santoshi Finlease Private Limited, a Company incorporated under the Companies Act 2013 having its Registered office at A 11 Nirman Vihar Delhi 110092, represented by **Ms Kriti Mittal** duly authorized by Board Resolution dated 01<sup>st</sup> July 2019 and an office at the address mentioned in Schedule 1, hereinafter referred to as the "Lender", which expression shall, unless it be repugnant to the subject or context thereof, shall mean and include its successors, transferees and assigns, of the Other Part.

The Borrower and the Lender shall hereinafter be referred to individually as "Party" or collectively as "Parties".

**WHEREAS**

1. The Lender is engaged in the business of finance and lease to companies.
2. The borrower is engaged in carrying on bonafide business activities.
3. The borrower is a Body Corporate, competent to execute this Agreement. The borrower has taken all necessary corporate approvals and other actions for execution of this Agreement and availing this Loan from the Lender; and the execution hereof constitutes legal, valid and binding obligations of the Borrower; and that there are no suits, actions or proceedings against the Borrower pending before any court of law, which might affect the Borrower in performance of the obligations hereunder.



**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS UNDER:**

1. The Borrower had approached the Lender for an unsecured Loan amount as stated in Schedule 1 (the unsecured loan amount hereinafter shall be referred to as 'the loan' or "Loan" or "Loan Amount") on the terms, conditions and the purpose as stated / contained in this Agreement and / or in the Borrower's request for the loan. The Borrower hereby confirms that the funds are for Business purpose.
2. The Lender hereby grants to the Borrower and the Borrower agrees to avail from the Lender, a financial assistance of a loan Amount on the terms and conditions contained in this Agreement. The Tenure, interest rate ("Interest") and the schedule of repayment in respect of the Loan shall

*Yug Mittal*  
Director

*Kriti Mittal*  
Director



**TRUE COPY**



be as specified in Schedule 1 as set out herein or as may be amended in accordance with this agreement from time to time.

3. The Borrower has requested the Lender to disburse the Loan in the manner specified in Schedule 3 hereto.

4. Fees

The Borrower agrees to pay to the Lender the fees as set out in Schedule 2. The Borrower hereby authorises the Lender to raise the bills for these charges together with applicable taxes on due date of repayment of loan.

5. Repayment In consideration of the Lender extending the "Loan", the Borrower shall repay the Loan along with Interest in accordance with the Repayment Schedule set out in Schedule 1 of this Agreement. The Borrower hereby confirms having perused, understood that the interest is applied on the principal on a daily basis and agreed to the method of computation of interest and the effective or Annualized rate of interest as stipulated in Schedule 1. The Borrower further agrees to repay the principal amount along with interest as per schedule hereto and shall also pay overdue interest arising out of the default in repayment, any other charges such as Bank charges, pre-payment charge etc., as per schedule 1 together with Goods and Services tax and all other statutory taxes and levies as be applicable from time to time.

6. Pre- payment

a) The Borrower shall not prepay / foreclose any portion of the outstanding loan amount either in part or full during the Lock-in period ("Lock-in Period") as set out in Schedule 2 of this agreement.

b) The Borrower may exercise the option of pre-payment post Lock-in-period, where applicable, subject to the Borrower complying with the following conditions and at the absolute discretion of the Lender. The Lender may accept pre-payment together with pre-payment charges / foreclosure charges as specified in Schedule 2, hereto and such charges is payable by the Borrower together with applicable taxes.



7. Event of Default

The happening of the following events shall constitute an event of default ("Event of Default")

a) Any non-compliance by the Borrower of the terms & conditions of this Agreement or any other agreement entered into in respect of this Loan or any other financial assistance availed of by the Borrower from the Lender;

b) Any breach of this Agreement by the Borrower;

c) Non adherence to the Repayment Schedule;

(i) The borrower shall insure the repayment of the loan by due date failing which, the borrower shall approach the banker State Bank of India from whom the borrower has already taken term loan to ratify this loan or any amount which is payable to the lender not limited to the interest, penal interest, charges, fees, taxes or any other levies.

(ii) That it shall be the responsibility of the borrower to get the same ratified by the State Bank of India.



For MOTHERS PRIDE DAIRY INDIA PVT. LTD.

*Yugendra*

Director

For Santoshi Finlease Pvt. Ltd.

*Kritika*

Director

TRUE COPY

XXXX

XXXX

XXXX

XXXX




contact details provided to the Lender, and further acknowledges that the same shall not be considered as unsolicited calls/SMS/mails from the Lender.



The Borrower have read the entire Agreement, constituting the above clauses including the Loan details and the terms of repayment, the fees and charges payable as clearly enumerated in the schedule to this Agreement. The Borrower further confirm that the entire Agreement is filled in their presence and that the contents provided herein is explained in the language understood by the Borrower. The Borrower further confirm having executed the Agreement, received a copy of the same and agree to remit the dues in terms of the Schedule hereunder.

Signed on this date of 17<sup>th</sup> August 2019

For Mothers Pride Dairy India Private Limited

For MOTHERS PRIDE DAIRY INDIA PRIVATE LIMITED  
  
Yug Mittal Director

DIN: 08234002

Place: Delhi

Date: 17/08/2019

For Santoshi Finlease Private Limited

For Santoshi Finlease Pvt. Ltd.  
  
Kriti Mittal Director

DIN: 08166122

On perusal of the Loan Agreement (ibid), it is observed that Mr. Yug Mittal signed the Loan Agreement on behalf of Mothers Pride Dairy Private Limited (i.e., the Corporate Debtor), while Ms. Kriti Mittal signed the loan agreement on behalf of Santoshi Fin lease Private Limited (i.e., the Petitioner). During the course of hearing, Ld. Counsel appearing for M/s Santoshi Finlease Pvt. Ltd. fairly admitted that Ms. Kriti Mittal is the sister of Mr. Yug Mittal.

10. It is further contended by the Applicant Bank/SBI that Mr. Yug Mittal, who signed the loan agreement dated 17.08.2019, was Director in both Companies (i.e., the Petitioner as well as the Corporate Debtor). In order to substantiate its contention, the Applicant Bank/SBI has annexed the Master



data of both Companies. The Master data of Mothers Pride Dairy India Private Limited is given below:

### Company Master Data

CIN	U74999DL2014PTC272213
Company Name	MOTHERS PRIDE DAIRY INDIA PRIVATE LIMITED
ROC Code	RoC-Delhi
Registration Number	272213
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Private
Authorised Capital(Rs)	250000000
Paid up Capital(Rs)	226418500
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	30/09/2014
Registered Address	G-41, Ground Floor, West Patel Nagar Delhi New Delhi DL 110008 IN
Address other than R/o where all or any books of account and papers are maintained	D-190, Sector-63, Noida UP 201301 IN
Email Id	nazim@mnkassociates.com
Whether Listed or not	Unlisted
ACTIVE compliance	ACTIVE compliant
Suspended at stock exchange	-
Date of last AGM	30/09/2018
Date of Balance Sheet	31/03/2018
Company Status(for efilling)	Active

### Charges

Charge Id	Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status
	Immovable property or any interest therein; Movable property (not being pledge)	285000000	22/12/2015	-	OPEN

### Directors/Signatory Details

DIN/PAN	Name	Begin date	End date	Surrendered DIN
01942242	SEEMA MITTAL	01/07/2019	23/09/2019	
01951454	KAUSHAL MITTAL	01/07/2019	24/09/2019	
02926950	SUSHIL KUMAR SINGH	13/04/2018	-	
06484586	NAVNEET JAIN	10/07/2017	-	
ACBPJ9235B	NAVNEET JAIN	05/06/2019	-	
08234002	YUG MITTAL	01/07/2019	23/09/2019	
08240393	RISHIK MITTAL	01/07/2019	23/09/2019	

The Master data of Santoshi Finlease Private Limited is as given below:



### Company Master Data

CIN	U65100DL2005PTC139248
Company Name	SANTOSHI FINLEASE PRIVATE LIMITED
ROC Code	RoC-Delhi
Registration Number	139248
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Private
Authorised Capital(Rs)	20000000
Paid up Capital(Rs)	20000000
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	02/08/2005
Registered Address	A-11, GROUND FLOOR, NIRMAN VIHAR, NEW DELHI DELHI East Delhi DL 110092 IN
Address other than R/o where all or any books of account and papers are maintained	D- 190 Sector - 63 Gautam Budhha Nagar Uttar Pradesh UP 201301 IN
Email Id	hyvolt@hyvolt.in
Whether Listed or not	Unlisted
ACTIVE compliance	ACTIVE compliant
Suspended at stock exchange	-
Date of last AGM	30/09/2022
Date of Balance Sheet	31/03/2022
Company Status(for e filing)	Active

### Charges

Charge Id	Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status
No Charges Exists for Company/LLP					

### Directors/Signatory Details

DIN/PAN	Name	Begin date	End date	Surrendered DIN
01951454	KAUSHAL MITTAL	02/08/2005	-	
08234002	YUG MITTAL	16/08/2021	-	

11. On perusal of the Master Data of both Companies (ibid), it is observed that both Mr. Kaushal Mittal and Yug Mittal are Directors in both Companies namely, M/s. Santoshi Finlease Private Limited (Petitioner of the Section 7 Petition) and M/s. Mother Pride Dairy India Private Limited (CD/Respondent of the said petition), on the following dates:

Sl. No.	Name of Director	Name of Company	Tenure
1.	Mr. Yug Mittal	Santoshi Finlease Private Limited	16.08.2021 to till date
		Mothers Pride Dairy India Private Limited	01.07.2019 to 23.09.2019
2.	Mr. Kaushal Mittal	Santoshi Finlease Private Limited	02.08.2005 to till date
		Mothers Pride Dairy India Private Limited	01.07.2019 to 24.09.2019






From the Master Data of both the Companies, it is further observed that the Books of Accounts of both the Companies are kept at the same address i.e., D-190 Sector 63 Gautam Budhha Nagar, U.P - 201301.

12. As noted earlier, the Loan Agreement was reportedly signed by and between the Section 7 Petition parties on 17.08.2019 and on that date, we notice that Mr. Kaushal Mittal was Director concurrently in both the Petitioner Santoshi Finlease Private Limited as well as the Corporate Debtor Mothers Pride Dairy India Private Limited. Sh. Yug Mittal had signed the loan agreement on behalf of the Corporate Debtor Mothers Pride Dairy India Private Limited. Thus, it is observed that one family member (Kriti Mittal/Sister) on the Petitioner's side and the other (Mr. Yug Mittal/Brother) on the Respondent's side signed the said loan agreement dated 17.08.2019, based on which the Petitioner has been claiming its Financial Debt in CP (IB) No.662/ND/2022. Thus, it is seen that there is merit in the submission made by the Applicant Bank and the Corporate Debtor that it was a Mittal-to-Mittal Transaction.

13. At this stage, we would further like to refer to Schedule 1 of the Agreement (ibid) to ascertain the Tenure of the loan. The Schedule 1 of the Agreement is reproduced below, for the sake of convenience:



<b>Schedule 1</b>	
Loan Agreement No.	: SFL/01/2019-20
Agreement Date	: 17-08-2019
Name and Address of the Lender	: A 11 Nirman Vihar Delhi 110092
Name and Address of the Borrower	: A 11 Nirman Vihar Delhi 110092
Purpose of Loan	: Business Loan
Loan Amount	: Not more than Rs. 5,00,00,000/- (Rupees five cores)
Annualized / Effective Rate of Interest	: 18% per annum (Interest payable quarterly or on due date of repayment of principal loan which-ever is earlier.
<b>Tenure</b>	: <b>08-07-2019 to 31-10-2019</b> <b>Extendable not after 31-12-2019 subject to additional penal interest @ 4% p.a.</b>
Jurisdiction of Court	: New Delhi
Signed on this date of 17 <sup>th</sup> August 2019	
For Mothers Pride Dairy India Private Limited	For Santoshi Finlease Private Limited
 For MOTHERS PRIDE DAIRY INDIA PVT. LTD.  Director Director DIN: 08234002	 For Santoshi Finlease Pvt. Ltd. Kriti Mittal Director Director DIN: 08166122

On perusal of the above, it is seen that the original tenure of the Loan was for a short period from 08.07.2019 to 31.10.2019, which was extendable up to 31.12.2019 subject to additional penal interest @4% per annum. We further notice that though the Tenure of Loan from 08.07.2019 to 31.10.2019, the Agreement was signed on 17.08.2019, which depicts that the Loan was given back-dated effect.

14. We further observe that if Mr. Kaushal Mittal (who was the Director on the Board of both the Companies during the tenure of the loan) and Mr. Yug Mittal (who was the Director on the Board of the Corporate Debtor during the tenure of the loan) were serious about the recovery of their loan amount, (since the members of Mittal family were in management on both sides) they could have either made the payment or alternatively terminated the said Loan Agreement. Rather, both Mr. Kaushal Mittal and Mr. Yug Mittal along



with two other Mittals chose to resign from their respective Directorship of the Corporate Debtor. The relevant resignation letters of Mr. Kaushal Mittal and Mr. Yug Mittal are reproduced thus:

**Resignation Letter**

Date: 23.09.2019

To,

The Board of Directors,

Mothers Pride Dairy India Private Limited

A-11, Ground Floor, Nirman Vihar, Shakarpur,

New Delhi East Delhi DL 110092 IN

Sir(s)/Ma'am,

I, Yug Mittal, S/o Mr. Yogesh Mittal, R/o: A-11, Opp. Universal Public School, Nirman Vihar Shakarpur East Delhi 110092 having DIN: 08234002, do hereby tender my resignation from the post of Directorship of the above named company due to other pre-occupations.

Kindly accept my resignation with immediate effect and do the needful at the earliest possible.

Thanks & Regards

*Yug Mittal*  
Yug Mittal  
Director

DIN: 08234002



Date: 24.09.2019

To,

The Board of Directors,

Mothers Pride Dairy India Private Limited

A-11, Ground Floor, Nirman Vihar, Shakarpur,

New Delhi East Delhi DL 110092 IN

Sir(s)/Ma'am,

I, Kaushal Mittal, S/o. Mr. Vijender Kumar Mittal, R/o: B-2 First Floor, Preet Vihar Shakarpur East Delhi 110092 Having DIN: 01951454, do hereby tender my resignation from the post of Directorship of the above named company due to other pre-occupations.

Kindly accept my resignation with immediate effect and do the needful at the earliest possible.

Thanks & Regards

  
Kaushal Mittal

Director

DIN-01951454

The resignation letters (ibid) reflect that Mr. Yug Mittal resigned from the Directorship of CD/Mothers Pride Dairy India Private Limited on 23.09.2019 and Mr. Kaushal Mittal resigned from the Directorship of CD/Mothers Pride Dairy India Private Limited on 24.09.2019, noticeably within one month of the filing of Section 7 petition bearing C.P. (IB)-2122/2019 on 30.08.2019 in the matter of "M/s Shalini Choudhary Vs. Mothers Pride Dairy India Private Limited", which was admitted by this Authority on 13.11.2019.



15. Nevertheless, we would still like to examine, who was responsible for the default of the alleged loan amount of the Petitioner Company. In this context, when we refer to Part IV of the CP (IB)-662/ND/2022, we notice that the Petitioner has relied on 15.11.2019 as the “date of default”. Further, the justification/intent for choosing this date of default is mentioned by the Petitioner in its Written Submissions, which reads thus:

*“6. As per clause 7(d) of the said loan agreement dated 17.08.2019 (page 30 of main petition) in ‘Event of default’ includes **“Insolvency, winding up, dissolution of the Borrower and the inability of the Borrower to repay their debts”**.”*

*(Emphasis Placed)*

16. For examination of this contention, we refer to the term “Default” as defined under Section 3(12) of IBC 2016, which reads thus:

*“(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be”*

On perusal of the definition of default, as given above, it is observed that the “default” can take place, only if the *debt becomes due and payable and is not paid by the Debtor/Corporate Debtor*.

17. As already noted above, the earlier (i.e., the first) Section 7 petition bearing C.P. (IB)-2122/2019 - “Shalini Choudhary vs. Mothers Pride Dairy India Private Limited” was filed on 30.08.2019, which was admitted by this Adjudicating Authority on 13.11.2019 and a Moratorium under Section 14 of IBC 2016 was enforced. During the period of the Moratorium, no payment could have been made by the Corporate Debtor to the Petitioner. Since the



default is said to be committed when the debt becomes “due and payable”, even if the debt was “due” on 15.11.2019, it was “not legally payable” on 15.11.2019 on account of the Moratorium enforced under Section 14(1) of IBC, 2016. **Hence, for the purpose of Section 7 Petition, the date of 15.11.2019 cannot be accepted as the date of default.**

18. As already noted in para 13, the Loan Agreement was valid for tenure from 08.07.2019 to 31.10.2019, and we have also seen in para 11 that Mr. Yug Mittal and Mr. Kaushal Mittal were Directors in the Corporate Debtor during that period. **Therefore, it won't be wrong to conclude that the “default” took place during the Directorship Tenures of Mr. Yug Mittal and Mr. Kaushal Mittal themselves.**

19. **Since the alleged loan was disbursed and defaulted during the Directorships of Mr. Kaushal Mittal and Mr. Yug Mittal in the Corporate Debtor, who are the “Current Directors” in the Petitioner Company M/s Santoshi Finlease Pvt. Ltd., and at whose behest the Petition (IB)-662(ND)/2022 under Section 7 has been filed, it is evident that the petition is not filed with an intent of seeking resolution of the Corporate Debtor rather it is for causing injury to the Corporate Debtor M/s Mothers Pride Dairy India Private Limited by its own Ex-Directors.**

At this juncture, we refer to the Judgement of the Hon'ble Supreme Court **dated 24.11.2006** passed in the matter of “**West Bengal State Electricity Board Vs Dilip Kumar Ray**” in **Civil Appeal 5188 of 2006**, wherein the term “malicious” has been discussed. The relevant extract of the Judgement is reproduced below: –



*“Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral - wickedness in disposition or in conduct – not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive.”*

20. In terms of the Judgement (supra), we are of the considered view that both the essential conditions required under Malice i.e., an intentional act and an act with wrongful motive are present in the instant case. **Hence, it is concluded that the Section 7 petition (IB) Petition No. 662(ND)/2022 is filed with malicious intent.**

21. At this stage, we also refer to the Judgement of Hon’ble NCLAT dated 05.01.2023 passed in the matter of **“Wave Megacity Centre Private Limited vs. Rakesh Taneja & Ors.”** in Company Appeal (AT) (Insolvency) No. 918 of 2022, wherein the following was held:

*“15. When finding recorded by the Adjudicating Authority is that **Section 10 Application has been initiated fraudulently and maliciously, even if there is debt and default, the Adjudicating Authority is not obliged to admit Section 10 Application. Section 10 and Section 65, which are part of the same***



***statutory scheme needs to be read together to give effect to the legislative scheme of the Code. In event CIRP is initiated by a corporate applicant fraudulently with malicious intent for any purpose other than the resolution of insolvency, holding it that it is obligatory for the Adjudicating Authority to admit Section 10 Application, will be contrary to the statutory scheme under Section 65. In event conditions under Section 65 are fulfilled, Section 10 Application can be rejected, even if debt and default is proved. Thus, Section 65 has to be read as enabling provision to reject an application even on proving of debt and default Section 10 Application is not to be obligatorily admitted....”***

*(Emphasis Supplied)*

22. In our considered view, the aforesaid observations are squarely applicable to a petition filed under Section 7 with malicious and fraudulent intent. As it is already concluded in Para 20 above that the present Section 7 petition (IB) Petition No. 662(ND)/2022 is filed with malicious intent, **we allow the IA. No. 1695/2023 filed under Section 65 of IBC 2016 and dismiss the (IB)-662/2022.**

23. Further, in terms of the provision under Section 65 of IBC 2016, we impose a penalty of Rs.10,00,000/- (Ten Lakhs) only on the Respondent No.1 M/s Santoshi Finlease Private Limited, which shall be deposited in the Prime Minister's Relief Fund within 15 days from today and receipt to that effect shall be filed/uploaded on the DMS of this Tribunal.

24. A copy of this order be supplied to the parties. A copy be also sent by the Registry/Court Officer to IBBI for records.

**Sd/-**

**(L. N. GUPTA)  
MEMBER (T)**

**Sd/-**

**(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**