

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

CP (IB) No.924/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

INDUSIND BANK LTD.

[CIN: L65191PN1994PLC076333]

...Financial Creditor/Petitioner

V/s

**COX AND KINGS GLOBAL SERVICES
PRIVATE LIMITED**

[CIN: U63040MH2011PTC215069]

...Corporate Debtor/Respondent

Order pronounced on: 05/01/2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. B. Gopalakrishnan, Ld,
Counsel.

For the Respondent(s) : Mr. Nupur Shah a/w Ms.
Nidhi Shah i/b Mr. Amir
Arsiwala, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.924/MB-IV/2020 filed by IndusInd Bank Limited, the Financial Creditor/Applicant, through Mr. Vipin Jagawat, Vice President of the Financial Creditor vide its Specific Power of Attorney dated 27.01.2020, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Cox and Kings Global Services Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Corporate Debtor is engaged in the business of travels and tourism and foreign exchange for travel and tourism and was incorporated on 21/03/2011 under the Companies Act, 1956. The registered office of the Corporate Debtor is situated at Turner Morrison Building, 1st Floor, 16, bank Street, Fort, Mumbai, Maharashtra 400001. Therefore, this Bench has jurisdiction to deal with this petition.
3. The amount in default in respect of Loan facilities extended to Corporate Debtor by Financial Creditor is Rs.270,04,43,421/- and the date of default as mentioned in the petition is 15.01.2020. The details of which are stated below:

Nature of Credit facility-CCCL	Principal Outstanding (Rs.)	Late Payment & other Charges as payable by the Principal Debtor on 22.10.2019 (Rs.)	Total Claim amount as on 22.10.2019(Rs.)
Card Account 1 (478008000127)	188,47,23,923	24,40,19,189	212,87,43,112
Card Account 2 (478008000003 1005)	50,89,28,581	6,27,71,728	57,17,00,309
Total Amount	239,36,52,504	30,67,90,917	270,04,43,421

4. The case of the Financial Creditor is as under:

- i. The Corporate Debtor was granted credit facility by way of Corporate Card with Commercial Liability in the year 2015 for a sum of Rs.25,00,00,000 and over the years by the time it reached 2019 the facility was enhanced o the sum of Rs.350,00,00,000.
- ii. The Principal Borrower i.e. The Cox and Kings limited has authorised Mr. Subhash Nautiyal and Mr. Sagar Deshpande to use the Corporate Cards on or behalf of the Company as per the Resolution of the Finance Committee dated 06.03.2018.
- iii. The Principal Borrower, which is a listed Company notified the BSE that it defaulted in repayment of Commercial Papers aggregating to Rs.150,00,00,000/-.
- iv. The above-mentioned facilities namely the Corporate Card with Commercial facility were reviewed and the call was taken to reduce the existing credit facility of Rs. 350 Crore to Rs. 310 Crores and the said modified the sanction letter dated 19.06.2019 was issued.
- v. Thereafter, the Financial Creditor had sanctioned a Commercial Card with Company Liability facility to the tune of Rs. 310,53,00,000/- to the Corporate Debtor referred to as the “Principal Debtor” vide an IndusInd Bank Commercial Cards

Agreement dated 29.07.2019 marked and annexed as Exhibit “C-1” r/w Sanction Letter dated 19.06.2019 marked and annexed as Exhibit “C-2” in the petition.

- vi. The Corporate Debtor had issued Corporate Guarantee, guaranteeing the repayment of the entire Credit facilities sanctioned to the Principal Debtor to the amount of Rs.310,53,00,000 or the realizable value of the sale of Cox & Kings Global Services Pvt. Ltd, whichever is lesser. The copy of the letter of Continuing Guarantee dated 29.07.2019 as issued by the Corporate Debtor in favour of Financial Creditor is annexed and marked as Exhibit “D-1” in the petition.
- vii. The Hon’ble NCLT, Mumbai bench vide an order dated 22.10.2019 admitted an application filed u/s 7 of the IBC,2016 against Cox & Kings Ltd., (Principal Debtor) and appointed an IRP, thereby commencing the CIRP against the Principal Debtor.
- viii. The Corporate Debtor issued a Demand Promissory Note dated 29.07.2019 in favour of Financial Creditor and has agreed to pay a sum of Rs 310,53,00,000/- to the Financial Creditor. The copy of the same is attached to the Company Petition.
- ix. The copy of CRILIC Report dated 11.02.2020 shows the asset classification of the Principal Debtor as ‘Sub-Standard’ by the Financial Creditor the same is annexed to the petition.

- x. The Financial Creditor also submitted certificate u/s 2A(A) under Bankers Books Evidence Act issued by IndusInd Bank Limited which is attached to the Petition.
- xi. The Financial Creditor had filed this Company Petition under Section 7 Petition before this Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016 on 18.10.2021.
- xii. Based on facts and documents produced before this Tribunal along with the Company Petition, it is most humbly submitted that it is a fit case for admission and initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
- xiii. It is therefore most respectfully prayed that this Tribunal be pleased to pass appropriate orders initiating CIRP against the Corporate Debtor and all consequential directions as provided under the Code.

5. **The case of the Corporate Debtor is as under:**

- i. Mrs. Urrshila Ajit Kerkar, the promoter/shareholder of the respondent have filed his Affidavit in reply. The Corporate Debtor further submitted that there is no board of director in the Company of Corporate Debtor.
- ii. The Corporate Debtor filed reply and vehemently denied each and every allegation, contention, averments contained in the

petition and also submits that the petition is deserved to be dismissed on following grounds

- a. A petition filed u/s 7 of the Code is not maintainable when a claim for the same debt has been admitted by the Resolution Professional of the Principal Borrower.
 - b. The Financial Debt alleged to have been created is *Prima facie* a fraudulent and/or falsified transaction.
 - c. No evidence as to disbursement of amounts under the facilities for which the Respondent stood as surety has been produced.
- iii. With regard to contention A, the Corporate Debtor pleaded that the matter against the Principal Borrower i.e. Cox and Kings Limited was already admitted in CIRP and was initiated. Further the Financial Creditor also filed a claim before the Resolution Professional for the set of claims. In this case the Corporate Debtor is the Corporate Guarantor to the Credit facilities availed by Cox and Kings Limited.
- iv. With regard to Contention B, the Corporate Debtor submits that the petition u/s 7 cannot be admitted because of falsified and fraudulent transaction. The agreement itself a forged document and the respondent was not a party to the subject agreement. There is one factor which casts a shadow of doubt

on the genuineness of the subject agreement. The said have to be preceded by a Sanction Letter dated 19.03.2019. However, the undersigned copy of the Sanction Letter was sent to the Principal Borrower and the present Respondent only by email dated 22.07.2019. Therefore, the document cannot be said to have been executed on 19.06.2019. Importantly, even the document produced does not carry any entry under "Execution date".

- v. With regard to contention C, the Corporate Debtor pleaded that, its is submitted that even assuming that this petition is maintainable and that the Financial debt is not a fraudulent and/or falsified Transaction, the petition does not make out any case for the commencement of a CIRP against this respondent. This is because the elements of section 5(8), being a pre-requisite for the admission of a petition u/s 7 of the code, have not been satisfied.

6. **Rejoinder on behalf of the Financial Creditor:**

- a. The Financial Creditor states that, the contentions raised by the Corporate Debtor in its reply is liable to be rejected *in limine* since the promotor/shareholder has no authority and is not authorised by the BOD of the Corporate Debtor to represent the said company. therefore, the reply filed is without any authority. The promoter/shareholder has itself stated that there is no BOD

in the Company of Corporate Debtor , is itself an erroneous statement since the Corporate Debtor incorporated under the Companies Act and cannot run without a BOD. As per the MCA website it clearly shows that there are 2 directors in the Company.

- b. The Financial Creditor further submits that, the Corporate Debtor has completely misunderstood the provision of the Code. Therefore, the Financial Creditor has relied upon the following Case Law that the *Hon'ble NCLAT in Vishnu Kumar Agarwal v. Piramal Enterprises Ltd (2019)151 SCl 555 & State Bank of India vs. Athena Energy Ventures Pvt Ltd Company Appeal (AT) (Ins) No 633/2020 has held that a Financial Creditor can initiate CIRP against both the Principal Borrower and the Guarantor, be it personal and /or Corporate Gaurantor as the case may be.*
- c. With respect to the contentions in Para 10 is concerned, the Corporate Debtor has admitted the Liability as a Corporate Guarantor by stating that the Resolution Professional appointed for the Principal Borrower has found the claim of the Applicant Bank in order and has admitted the claim, therefore the Applicant cannot proceed against the Corporate Debtor.

- d. The Corporate Debtor has issued the Corporate Guarantee Since 2015 and is at present contesting the documents executed by the Corporate Debtor in its capacity as the Guarantor on the plea that the same is forged. The said contention and the time at which the above statement itself proves that allegation is far from the truth.
- e. The Financial Creditor further stated that there was no disbursement of amount from the applicant. The facility granted itself is termed as Commercial card with Company Liability which itself states that the Company which has availed the facility namely Cox and King Limited can use the card so issued for the purchase of tickets and other expenses, within the limits agree and is given to key managerial persons and employees as per the company's policy, and the company to which the facility is granted agrees to repay the said amount in terms of repayment schedule. it is submitted that as a result, it cannot be equated with a normal term loan or cash credit facility and in terms of the definition of the Corporate Guarantor u/s 5 (5A) of the IBC "Corporate Guarantor" means a corporate person who is the surety in a contract of guarantee to a Corporate Debtor.
- f. The Financial Creditor states that the dues arising out of the Commercial Card with Company Liability has been accepted as a financial debt by the Resolution Professional of the Principal

Debtor, CKL. further the fact that the amount due qualifies as a financial debt is borne out from the documents executed by the Principal Debtor. The terms and conditions of the above facility clearly points out that the said facility can be utilized by the Principal Debtor to extent of Rs.350 crores. The Principal Debtor through RP has accepted the fact that the above mentioned due comes with the category of a Financial Debt.

- g. The present Corporate Debtor has executed a Hypothecation Deed in favour of the applicant and has submitted the charge creation relevant from along with relevant documents to comply with the provisions of section 77 of the Companies Act, 2013 before the ROC. The Corporate Debtor cannot question the validity of the documents as this is not the appropriate forum to decide the allegations of fraud because the same is already under investigation of the EOW-Banking Unit 2 (Investigation).

Findings/Observations:

7. We have heard and prudently gone through the pleadings available on record. The Financial Creditor/Petitioner has granted/sanctioned the credit facility in favour of Corporate Debtor.
8. From the above observations it is inferred that, that the Corporate Debtor in its reply has admitted his liability.

9. From the contentions of the Corporate Debtor, it is observed that the Corporate Debtor has neither disputed nor disproved its liability. Mere denial of the debt does not wave the Corporate Debtor from its liability to pay the debts.
10. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount.
11. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
12. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the Corporate Debtor. The debt and default are constituted, and default amount is more than the threshold amount. Hence, the application filed by the Financial Creditor is complete in all respect.
13. The Financial Creditor has proposed the name of **Mr. Birendra Kumar Agrawal**, Registration No. IBBI/IPA-001/IP-P00564/2017-2018/11040, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

14. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

ORDER

This Application being CP (IB) No.924/MB-IV/2020 under Section 7 of I&B Code, 2016, presented by IndusInd Bank Limited, Financial Creditor/ Applicant against Cox and Kings Global Services Private Limited., Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- a) 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;

- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b) a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VI. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of I&B Code.
- VII. Mr. Birendra Kumar Agrawal, an Insolvency Professional registered with the Insolvency Bankruptcy Board of India having Registration Number IBBI/IPA-001/IP-P00564/2017-18/11040 is hereby appointed as Interim Resolution Professional to carry out 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.
- VIII. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp.

Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Manoj Kumar Dubey
Member (Technical)
05/01/2023.

Sd/-

Kishore Vemulapalli
Member (Judicial)