

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

**CP 1967 (IB)/MB/2019**

Under Section 7 of the I&B Code, 2016

In the matter of

**Creative Garments Private Limited**

...Financial Creditor/ Applicant

v/s

**Dilip Chhabria Design Private Limited**

...Corporate Debtor

**Order Dated 17.09.2019**

**Coram:** Hon'ble Member (Judicial) Mr V.P. Singh  
Hon'ble Member (Technical) Mr Rajesh Sharma

**For the Petitioner:** Adv. Anuj Desai.

**For the Respondent:** Adv. Husab Sayyed and Adv. Nadeem Shama.

*Per Rajesh Sharma, Member (Technical)*

**ORDER**

1. This application has already been admitted vide our order dated 17.09.2019 and IRP has been appointed vide the same order.
2. This is an application being CP 1967/2019 filed by, **Creative Garments Private Limited**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Dilip Chhabria Design Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). The Petition is filed on 27.05.2019.
3. This application is filed by Mr Dinesh Kumar, Senior Executive of the applicant, who is duly authorised to do so vide Board Resolution dated 21.05.2019.
4. The Applicant had extended an unsecured loan to the Corporate Debtor for ₹2.3 crore vide Loan Agreement dated 17.10.2014. The said Loan Agreement records that the amount was disbursed on

11.10.2013 with an interest chargeable at 15% p.a. payable quarterly. The Tenure of the loan was agreed as 12 months from the date of the said agreement.

5. The Applicant has claimed an amount of ₹4,08,33,220/- as due and payable and outstanding as on 31.03.2019. the date of default is mentioned in Form 1 as 22.09.2017.
6. The Applicant has produced letter of the Corporate Debtor dated 11.01.2014 stating that it had borrowed ₹2.3crore repayable with interest from the Applicant and had issued a cheque for the same amount as security. The Corporate debtor further issued 5 post-dated cheques towards payment of interest on the impugned loan. The Corporate Debtor further sent two letters dated 31.08.2015 to the Applicant again admitting its liability and issuing 3 post-dated cheques for repayment of the loan amount of ₹2.3crore and separate four post-dated cheques towards payment of interest. The Corporate Debtor vide its letter dated 11.04.2016 again admitted its liability in respect of the loan amount and issued 20 post-dated cheques to repay the same with interest, aggregating to ₹2,82,14,849/-, on or before further extended date of 30.09.2017.
7. The Applicant has produced Cheque Return Memos of the Bank of Maharashtra dated 12.05.2017 for three cheques together amounting to ₹46,80,708/-, issued by the Corporate Debtor for repayment of the loan and interest, for insufficient funds. The Applicant has sent notice dated 18.05.2017 under section 138 of the Negotiable Instrument Act, 1881 intimating the said dishonour of cheques and demanding payment of the loan of ₹2,93,53,698/- including interest till 18.05.2017. The said notice was replied to by the Corporate Debtor vide its letter dated 23.05.2017 stating therein that pursuant to some credit facilities availed by it from its banker, it is bound to take permission from the Banker before repaying any of the unsecured loans and the permission to repay the Applicant was refused by the banker of the Corporate Debtor. The Applicant sent various similar notices under section 138 of NI Act 1881 latest being notice dated 17.10.2017 for a total amount of ₹3,17,80,959/- to which the Corporate Debtor has replied

admitting that the said cheques were issued by one of authorised signatory.

8. The Applicant has also submitted a copy of its bank statement for the period 01.10.2013 to 19.10.2013 to show the disbursement of loan amount to the Corporate Debtor.
9. The Ld. Counsel for the Corporate Debtor has appeared before this Bench and has stated that it does not have authority to make any oral submissions. Enough opportunity has been provided to the Corporate Debtor to file its objections in previous hearings till today. However, in absence of any objections till today, it is taken that the Corporate Debtor does not have anything in its defence.
10. On perusal of the documents submitted by the financial creditor, it is clear that debt amounting to more than ₹2.3 crore is due and payable by the Corporate Debtor to the Applicant. The outstanding debt is even admitted by the Corporate Debtor in its various letter dated 11.01.2014, 31.08.2015 and 11.04.2016. As per the latest loan extension agree letter it was agreed between the parties that the loan shall be repaid on or before 30.09.2017. The post-dated cheques admittedly issued in discharge of the impugned loan and interest thereon have been dishonoured and the proof of the same is annexed to the application as Cheque Return Memo dated 25.09.2017 for an aggregate amount of ₹65,61,694/-. The outstanding amount that is admittedly in default is more than ₹1,00,000/-.
11. The application filed by the financial creditor is on proper form 1, as prescribed under the Adjudicating Authority Rules and application is complete.
12. The Applicant has proposed the name of Mr. Jitendrakumar Rambaran Yadav, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-00022/2017-18/10169] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that there are no disciplinary proceedings pending against him.

13. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form No 1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

**ORDER**

This petition filed under Section 7 of I&B Code, 2016, filed by **Creative Garments Private Limited**, against **Dilip Chhabria Design Private Limited**, for initiating corporate insolvency resolution process is at this moment **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 activity 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - 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. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
  - VI. That this Bench at this moment appoints Mr. Jitendrakumar Rambaran Yadav, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-00022/2017-18/10169] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is at this moment 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/-**  
**RAJESH SHARMA**  
Member (Technical)

**Sd/-**  
**V.P. SINGH**  
Member (Judicial)

**17<sup>th</sup> September 2019**