

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No. 790/MB-VI/2020

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

DBS BANK INDIA LIMITED

[CIN- U65999DL2018FLC329236]

Registered Office: Ground Floor Nos. 11 & 12

Capitol Point, Baba Khark Singh Marg

Connaught Place, New Delhi -110001.

...Financial Creditor

V/s

PARAKKOTT INVESTMENT INDIA PRIVATE LIMITED

[CIN- U67190MH2008PTC179535]

Registered Office: C-206, Ghatkopar Industrial Estate

L.B.S. Marg, Near Anacin Company, Ghatkopar (West)

Mumbai City-400086, Maharashtra

...Corporate Debtor

Reserved for Order on: 15.09.2023

Pronounced on: 17.10.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances:

Financial Creditor : Adv. Charles De Souza a/w Adv. Nikhil Rajani &

Mr. Shreyansh Desai i/b Deshpande & Co.

Corporate Debtor : Adv. Pulkit Sharma i/b Adv. Abhishek Adke

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. **Background**

1.1 This is an Application bearing C.P. (IB) No. 790/MB/C-VI/2020 filed by DBS Bank India Limited, the Financial Creditor (FC), on 26.02.2020 under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Parakkott Investment India Private Limited, the Corporate Debtor (CD). In this matter, the debt arises from sanction of credit facilities to M/s. J.J. Poly Impex Private Limited (Principal Borrower) for which the CD (who is a Corporate Guarantor) had provided guarantee for repayment of the debt in case the Principal Borrower defaulted. In view of the said Corporate Guarantee provided by the CD and default in repayment of the credit facilities by the Principal Borrower, a total amount of Rs.44,76,73,256.11/- fell due to the FC from the CD inclusive of principal amount of Rs.36,67,16,267.70/- with interest amounting to Rs.8,09,56,988.41/- as on 31.01.2020.

2 **Contentions of FC**

2.1 The FC has submitted a copy of the account statement for the period from 01.01.2019 to 31.01.2020, to evidence the outstanding balance amount of Rs.36,67,16,267.70/- i.e., the principal amount, arising from the grant of credit facilities.

- 2.2 According to the FC, the CD is one of the guarantors to it, having guaranteed repayment of the credit facilities to the tune of Rs.39,00,00,000/- sanctioned, granted and disbursed by it, to the Principal Borrower from time to time. The CD by executing Deed of Guarantee dated 29.01.2014, and thereafter, by a Supplemental Deed of Guarantee dated 10.02.2015, guaranteed to repay the FC in lieu of the credit facilities of the amount that may be found due and payable under the aforesaid financing facility along with interest and other monies payable thereunder along with all other costs, charges and expenses, in the event of default by the Principal Borrower.
- 2.3 It has been stated that, the FC under their facility letter dated 28.10.2013, bearing Ref No. CDT/ ADMIN / 614 / 2013, agreed to grant sanction and disbursed to the Principal Borrower, financial facilities for a sum of Rs.25,00,00,000/- to meet its Working Capital Facility requirement subject to the terms and conditions at or for the rate of interest therein mentioned. The CD accepted the terms and conditions as per the sanction letter for sanctioning an amount of Rs.25,00,00,000/- to the Principal Borrower, *vide* its Board Resolution dated 16.12.2013, thereby securing the credit facilities granted to the Principal Borrower.
- 2.4 It has been submitted by the FC that subsequently, at the request of the Principal Borrower, the existing Working Capital / Multiline facilities and Trade Financing facilities availed by the Borrower were revised, enhanced, varied and modified by the FC *vide* its Facility Letter dated

15.05.2014 bearing Ref No. CDT/ADMIN/286/2014; Facility Letter dated 20.06.2014 bearing Ref No. CDT/ADMIN/372/2014; Facility Letter dated 25.08.2014 bearing Ref No. CDT/ADMIN/490/2014; Facility Letter dated 08.11.2014 bearing Ref No. CDT/ADMIN/646/2014; and later, *vide* Facility Letter dated 02.02.2015 bearing Ref No. CDT/ADMIN/56/2015, thereby enhanced the existing limits of INR 250 million to INR 390 million. All the above were upon the terms and conditions agreed upon to meet the Working Capital requirement of the Principal Borrower for its business purposes.

- 2.5 Later, the FC *vide* its letter dated 27.07.2015, bearing reference No. CDT/ADMIN/593/2015 had amended and modified the terms and conditions of the Facility Letter dated 02.02.2015. A copy of the Resolution passed in the Board Meeting of the CD held on 05.02.2015, conveying acceptance of terms and conditions of sanction of credit facilities in the sum of INR 390.00 million, and according permission to create mortgage of immovable properties for securing repayment of credit facilities granted to the Principal Borrower, is annexed to the Application. The FC submits that Memorandum of Entry for recording mortgage by deposit of title deeds pertaining to 3 immovable properties dated 10.09.2015, was also executed for securing the revised credit facilities accorded to the Principal Borrower and the same is annexed to the Application.
- 2.6 The FC *vide* Facility Letter dated 18.12.2015 bearing Ref No. CDT/ADMIN/931/2015; Facility Letter dated 06.04.2016 bearing Ref No.

CDT/ADMIN/322/2016; and the Facility Letter dated 01.06.2017 bearing Ref No. CDT/ADMIN/524/2017, in principle, agreed to continue with the existing facilities granted, sanctioned and disbursed under the above referred Facility Letters and also agreed to extend the additional credit facilities.

- 2.7 A Board Resolution was passed in the meeting of the CD held on 05.06.2017, conveying acceptance of terms and conditions of sanction of credit facilities to the tune of INR 390.00 million and according permission to create mortgage of immovable properties for securing repayment of credit facilities granted to the Principal Borrower is annexed to the Application.
- 2.8 The FC has clarified *vide* its Rejoinder that Mr. Nitin Parmar, Assistant Vice President was authorised to file the present Application on behalf of the FC in view of the Power of Attorney executed by the FC dated 18.03.2019. On the basis of the above, the FC prays initiation of CIRP in respect of the CD.

3 **Contentions of CD**

- 3.1 The CD has contested the maintainability of the Application on the Following grounds-

- a) The application has not been filed by the Authorised Representative of the FC. The Power of Attorney annexed to the Application in the name of one Mr. Nitin Parmar *viz*, the Assistant

Vice President of the FC, is granted by DBS Bank Limited, an entity incorporated in Singapore, and not by DBS Bank India Limited i.e., the FC in the present Application. The CD further argues that the FC has not annexed any document in support of the change in the entity from DBS Bank Limited to DBS Bank India Limited. The Guarantee was also issued in favour of DBS Bank Ltd, Singapore and not DBS Bank India Limited. The CD further states that the Power of Attorney does not grant any specific power to Mr. Nitin Parmar to act as the authorised signatory to file the Application as it is dated 20.04.2015 i.e., prior to the commencement of the IBC.

- b) The CD challenges Part IV of the Application on the ground that it does not provide the date on which the default has occurred. There is no working computation of the amounts and the days of default in any tabular format. Only a single pager statement of account for the period of 01.01.2019 to 31.01.2020, is filed and referred to as working computation of the amounts and days of default, in tabular format, which cannot be acted upon by the Adjudicating Authority. The FC has failed to provide any document substantiating the purported amount in default sought for in the Application and, hence, the same is liable to be dismissed.
- c) The Deed of Guarantee dated 29.01.2014 and Supplementary Deed of Guarantee dated 10.02.2015 are insufficiently stamped as per the provisions of the Maharashtra Stamp Act, 1958; instead,

these have been executed as per the provisions of the Indian Stamp Act, 1899, as applicable to the State of Delhi.

d) The claim amount is in excess of the limit agreed in the Deed of Guarantees i.e., more than an amount of Rs.39,00,00,000/- as mutually agreed to by both the parties.

3.2 In view of the above grounds, the Application is liable to be dismissed, according to the CD.

4 **Analysis & Findings**

4.1 We have perused all the documents and pleadings and heard both the Counsel for the FC and the CD. The FC *vide* its Rejoinder filed on 12.05.2023, has submitted a copy of the Resolution passed by it on 06.01.2023, thereby providing evidence as to the lawful authorisation in the name of Mr. Nitin Parmar, who has filed the present Application. The FC has also annexed the order of the Reserve Bank of India (RBI) dated 04.02.2019, sanctioning the scheme of amalgamation of DBS Bank Limited (Transferor Company) with DBS Bank India Limited (Transferee Company), which came into force with effect from 01.03.2019. Clause (v) of Part VI of the said scheme reads as:

“Upon the scheme being effective,

v) Any security interest created in favour of or for the benefit of the Transferor Bank whether such security interest be over immovable, movable, tangible or intangible property, and

whether by way of mortgage, hypothecation, pledge, lien or any other form or mode of creation of security interest, and all guarantees, letters of comfort, letters of credit or similar instruments in favour of or for the benefit of the Transferor Bank, in each case in respect of the DBS India Branch Undertaking, shall without any further act, deed, instrument or thing, be transferred to and vested in the Transferee Bank or be deemed to have been transferred to and vested in the Transferee Bank, and shall continue to be in full force and effect and may be enforced as fully and effectually as if instead of the Transferor Bank, the Transferee Bank had been the beneficiary or a party thereto, and the benefit shall be available to the Transferee Bank as if such same were ab initio created in favour of the Transferee Bank and it shall not be necessary to obtain the consent of any person concerned therewith in any capacity whatsoever or of the person who created such security in order to give effect to the provisions of this Clause.”

Therefore, we find that this clause sufficiently answers the objection raised by CD with respect to the authority of the Deed of Guarantee executed in favour of DBS Bank Limited, (Transferor Company) being equally applicable to DBS Bank India Limited (Transferee Company) in pursuance of the scheme sanctioned by the RBI.

4.2 An account statement dated 12.02.2020, for the period of 01.01.2018 to 31.01.2020, has been filed by the FC stating the outstanding principal amount as Rs. 36,67,16,267.70/-. However, we agree with the CD that this statement does not convey any date of default. The CD has contended in Form 1, that the FC has failed to provide the date on which the default has occurred along with the working computation of the amounts and the days of default in tabular format. The Counsel for the FC argued that since the guarantee is one of continuing nature, the date of default is taken as 31.01.2020, till payment or realisation, i.e. a month before filing the present Application, and the same date mentioned in Part IV of Form 1 of the Application. However, on perusal of the notice of invocation of guarantee dated 04.07.2019, sent by the advocate for the FC addressed to the CD states that Rs. 418,098,141.69/- was due and payable to the FC, as on 30.06.2019, along with interest @12.05% p.a. till actual realisation. This notice against the Principal Borrower and the CD further makes it clear that appropriate legal proceedings for recovery of the said amount and enforcement of guarantee obligations, *inter alia*, against the CD herein including the Principal Borrower would be taken. Hence, we are inclined to take 30.06.2019, as the date of default as mentioned in the said notice. We are, therefore, satisfied that there is debt by the CD in respect of the claim made by the FC, which fell due from the CD within the definition of Section 3(11) of the IBC. Since there was non-payment of the debt, and it has become due and payable and not paid by

the CD to the FC, there exists default, and the default is more than one crore rupees in terms of Section 3(12) and Section 4 respectively of the IBC, this issue is found in favour of the FC.

4.3 The CD has contended that the Power of Attorney does not grant any specific power to the purported "authorised signatory" to file the Application before the Tribunal, as it is dated 20.04.2015 i.e., prior to the commencement of the IBC. If a Power of Attorney authorises the holder to perform certain actions, before or after the commencement of a law, it shall be a sufficient authority for the holder to do so. There is no bar in executing a Power of Attorney in favour of a person for dealing with any future matter or for taking recourse to any future law. Further, we find clear recital in Clause 11 of the Power of Attorney dated 18.03.2019, authorising Mr. Nitin Parmar, Assistant Vice President, grants him specific and proper authority to initiate proceedings before this Adjudicating Authority. Hence, this issue is found against the CD.

4.4 With regard to the claim amount being in excess of the limit agreed by both the parties in the Deed Of Guarantee, as argued by the CD, we find that Clause 5 of the Deed of Guarantee dated 29.01.2014, clearly states that *"the Guarantee shall not be considered as satisfied by any intermediate payment or satisfaction of the Guaranteed money and shall be a **continuing security** of the bank and shall cover all or any part of the Guaranteed Money which shall for the time being constitute the balance due or owing from the Counterparty to the Bank/s under the Agreement/s*

relating to the Transaction/s.” (emphasis supplied). Further, the Third Schedule of the Supplemental Deed of Guarantee clearly specifies that the Revised Credit Facility executed and agreed between the parties consist of *“Multiline limits of INR 390,000,000/- Million plus Fx facility of USD 500,000/- (equivalent to INR 32,000,000 considering exchange value of Rs.64.00/-).”*

Since we have already determined the date of default as 30.06.2019, we find no merit in the said objection of the CD that the claim is in excess of the threshold agreed and executed between them. Moreover, regardless of the agreement as to the interest component agreed between the parties, the Application is well above the threshold limit as discussed above.

- 4.5 Further contention of the CD relates to insufficient stamp duty as per the provisions of the Maharashtra Stamp Act, 1958, and inadmissibility of the Deed of Guarantee in view of deficient stamp duty, the Hon'ble Supreme Court in the matter of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr (2018) 1 SCC 407*, observed:

*“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility **or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long*

*as the debt is “due” i.e., payable **unless interdicted by some law** or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

(emphasis supplied).

As we have determined the date of default as above and when the default falls due beyond one crore rupees, CIRP is only to be triggered in respect of the CD under Section 7 of the IBC. There is no interdiction of law in the instant case and that the debt is clearly due and payable. A mere technical deficiency or insufficiency of stamp duty relating to the execution of Deed of Guarantee need not be looked into by the Adjudicating Authority in an Application under Section 7 of the IBC, as the proceedings are summary in nature. The Adjudicating Authority has no power to determine sufficiency or deficiency of stamp duty payable to any instrument while dealing with a proceeding under the IBC. Hence, this issue goes against the CD.

- 4.6 The CD has challenged Form 1 of the Application, especially Part IV thereof, stating that the date of default is not mentioned by the FC as also the working computation and default in tabular format are absent, which warrant dismissal of the Application on these counts. However, we have perused Clause 32 of the Deed of Guarantee dated 29.01.2014, which clearly stipulates that the Beneficiary (FC herein) shall not be under

obligation, *inter alia*, to make any demand of the Counterparty (CD herein) before exercising any of the rights, powers or remedies conferred upon it by the Deed of Guarantee. However, the FC *vide* Advocate's notice dated 04.07.2019 has invoked the guarantee in respect of the CD for the outstanding amount of Rs. 418,098,141.69/- with interest, which has not been replied to or paid by the CD. Having concluded that the amount was due, payable and not paid by the CD within the meaning of default u/s. 3(12) of the IBC, the next question remains is whether the non-recital of the date of default and the amount of default at Sr. Nos. 1 & 2 of Form 1 of Part IV of the Application, is fatal to the survival of the Application. It may be seen that the Central Government has prescribed Form 1 under sub-rule (1) of rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (AA Rules), which states that-

*“(1) The financial creditor, either by itself or jointly, **shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (emphasis supplied).***

Part IV of Form 1 under ‘Particulars of Financial Debt’, has two entries, such as ‘Total amount of debt granted date(s) of disbursement’ and ‘Amount claimed to be in default and the date on which the default

occurred (Attach the workings for computation of amount and days of default in tabular form)'. The authority of the Central Government to prescribe Form 1 flows from sub-section (2) of section 7 of the IBC, which states that:

*“(2) The financial creditor shall make an application under sub-section (1) in **such form and manner** and accompanied by such fee as may be **prescribed.**”* (emphasis supplied).

Hence, it can be seen that Form 1 has been devised by the Central Government for the purpose of facilitating filing of Applications under Section 7 of the IBC. Since the Applicants have the leverage to mention the date of default and the amount of default separately on any other page of the Application, as appendix/annexure or in other document than on Part IV itself of Form 1, it cannot be held to be mandatory but is only directory. We find that mentioning the date of default and the amount of default are essential in an Application under Section 7 r/w Rule 4 of the AA Rules. However, the above may be mentioned separately on any other page of the Application by telescoping from Part IV of Form 1. When the date of default and workings of computation amounts form part of the Application under rule 4(1) of the AA Rules, mentioning of the same in Part IV of Form 1 itself, is directory and not mandatory and it can be taken that the Application is filed in proper form. This issue again goes against the CD.

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- 4.7 Considering the facts and law as discussed above, this Bench is of the view that in such circumstances, it is imperative that the CIRP be initiated in respect of the CD. There exists a “financial debt” as defined under Section 5(8) of the IBC and default of the said debt on the part of the Corporate Debtor.
- 4.8 We therefore, find merit in the documents submitted and the arguments advanced by the FC in rebuttal to the reply filed and arguments advanced by the CD. The FC proved the existence of the debt and default and the debt remains unpaid. In view of the above, the present Application filed under Section 7 of the IBC to initiate CIRP in the matter of the CD deserves to be Admitted.
- 4.9 The Applicant has proposed the name of **Mr. Piyush Kisanlal Jani**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P01439/2018-2019/12164 and E-mail- capiyushj@gmail.com as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC and has also given his declaration in Form 2 dated 05.09.2019, having valid Authorisation for Assignment, stating that no disciplinary proceedings are pending against him.

ORDER

This Application being **C.P. (IB) No. 790/NCLT/MB/C-VI/2020** filed under Section 7 of the IBC by the FC for initiating CIRP in the case of Parakkott Investment India Private Limited, the CD, is **Admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution

plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints Mr. Piyush Kisanlal Jani, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P01439/2018-2019/12164 and e-mail - capiyushj@gmail.com as the IRP to carry out the functions under the IBC, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the CD 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.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

// Akshata //