

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No. 356/7/HDB/2020

U/s. 7 of the Insolvency and Bankruptcy Code, 2016,
Read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of:-

M/s. MUSADDILAL JEWELLERS PRIVATE LIMITED

Between:

State Bank of India
Having its Registered Office at:-
State Bank Bhavan, Madame Cama Road,
Nariman Point, Mumbai, Maharashtra - 400021

...Financial Creditor

And

M/s. Musaddilal Jewellers Private Limited
6-3-679, "ELITE PLAZA", Punjagutta,
Hyderabad, TG - 500082.

...Corporate Debtor

Date of Order: 07.01.2021

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/Counsel Present:

For the Financial Creditor: Mr. Saini Keshava Rao, counsel

For the Corporate Debtor: Mr. B. Chandrasen Reddy

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. Under consideration is Company Application filed by M/s. State Bank of India (in short, "Petitioner/Financial Creditor") against M/s. Musaddilal Jewellers Private Limited (in short, "Respondent/Corporate Debtor") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, IB Code, 2016) read with Rule 4 of the Insolvency and

Date of order: 07.01.2021

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, IB Rules, 2016).

2. The background facts of the case are as hereunder:

a) That the Total Debt Granted & Disbursed by State Bank of India

Nature of facility by SBI	Debt Granted Rs. In crores	Debt Disbursed Rs. In crores
Cash Credit vide CC A/c. No.30408405560	Rs.65 Crores	Rs.65 Crores

b) That the Date of Disbursement of Rs.65 crores mentioned above is with respect to the last Sanction that was done on 03.01.2018.

However, the dues as far as the Corporate Debtor is concerned, existed even prior to last date of Sanction and were taken into consideration for the purpose of calculation of final Outstanding Amount Due.

c) That as on 31.08.2020 the amount claimed to be in default is Rs.75,15,04,614.95/- which includes both the Principal Amount and Interest. The date of default is 21.05.2019 and the account of the Corporate Debtor was classified as NPA w.e.f. 29.05.2019.

3. The Financial Creditor filed the following documents to prove the existence of financial debt:

- i. Photocopy of Charge Certificates
- ii. Photocopy of Sanction Letter dated 26.06.2008
- iii. Photocopy of Letter of Arrangement (SMEI) dated 28.06.2008
- iv. Photocopy of Agreement of Loan Cum Hypothecation (SME-2) dated 28.06.2008

Date of order: 07.01.2021

- v. Photocopy of Letter of Arrangement dated 01.01.2010
- vi. Photocopy of Agreement of Loan for overall limit (C1) dated 30.01.2010
- vii. Photocopy of Agreement of Hypothecation (C2) dated 30.01.2010
- viii. Photocopy of Deed of Guarantee (C3) dated 30.01.2010
- ix. Photocopy of Letter of Arrangement dated 30.06.2010
- x. Photocopy of Supplemental Agreement of Loan for increase in the overall limit (C1A) dated 16.07.2010
- xi. Photocopy of Supplement Agreement of Hypothecation (C2A) dated 16.07.2010
- xii. Photocopy of Memorandum regarding extension of Mortgage by Deposit of Title Deeds covering enhanced limits and or creation of Equitable Mortgage on additional properties for existing limits and enhanced limit and additional facilities dated 16.07.20210
- xiii. Photocopy of Letter of Arrangement dated 21.03.2011
- xiv. Photocopy of Letter of Arrangement dated 29.10.2011
- xv. Photocopy of Supplemental Agreement of Loan for increase in the overall limit (C1A) dated 10.11.2011
- xvi. Photocopy of Supplemental Agreement of Hypothecation (C2A) dated 10.11.2011
- xvii. Photocopy of Letter of Arrangement dated 28.08.2012
- xviii. Photocopy of Supplemental Agreement of Loan for increase in the overall limit (C1A) dated 06.09.2012
- xix. Photocopy of Supplemental Agreement of Hypothecation (C2A) dated 06.09.2012
- xx. Photocopy of Letter of Undertaking by Borrower dated 29.04.2014
- xxi. Photocopy of Letter of Undertaking by Guarantors dated 29.04.2014
- xxii. Photocopy of Revival Letter dated 05.08.2015
- xxiii. Photocopy of Letter of Arrangement dated 03.01.2018
- xxiv. Photocopy of Revival Letter dated 05.01.2018
- xxv. Photocopy of Letter of confirmation of creation of Mortgage dated 05.07.2008
- xxvi. Photocopy of Letter of Arrangement dated 01.03.2019
- xxvii. CRILC Report as on 31.12.2019
- xxviii. Bankers Book of Evidence Act 1891

Date of order: 07.01.2021

- xxix. Photocopy of Letter dated 01.11.2019 by the Corporate Debtor addressed to the Financial Creditor along with its Balance Sheet
- xxx. Photocopy of Demand Notice 23.01.2020 by the Financial Creditor to the Corporate Debtor

Reiterating the above averments, the counsel for the Financial Creditor prayed to admit the petition.

4. Respondent filed counter, inter-alia, stating as under:-

- a) That the present Petition is not maintainable either in law or on facts on record as such the same is liable to be dismissed in limini.
- b) That the Financial Creditor is well aware of sequence of events that have occurred since demonetization and the Corporate Debtor and its Directors were falsely implicated in various cases at the behest of third parties. However the Corporate Debtor and its Directors are contesting the same. Nevertheless, the securities and immovable properties mortgaged with the Financial Creditor have not been diluted and in fact the value has appreciated much more specifically of the movable assets as on 29.02.2020.
- c) That the events leading to declaration of NPA are as under:
 - i. That the then Deputy Director of Income Tax, Unit II (2), Hyderabad filed complaint dated 07.12.2016 before the Jubilee Hills Police Station, Hyderabad alleging that the Corporate Debtor herein along with others indulged in illegal practices for the exchange of demonetized specified bank notes of Rs.500/- and 1000/- to the extent of Rs.100 crore

Date of order: 07.01.2021

after announcement of demonetization by the Government of India on 08.11.2016. Based on the aforesaid complaint, the Jubilee Hills Police Station registered an FIR No.755/2016 dated 07.12.2016 U/s.120(B), 420, 467, 471, 474, 477A and 109 IPC, 1860 read with Section 34 of IPC, 1860. Subsequently, the said FIR was transferred to the CCS Police, Hyderabad and a fresh FIRP No.263/2016 was registered on 11.12.2016.

- ii. That as sections 120-B, 420, 467 and 471 were invoked against the Corporate Debtor and other in the above mentioned FIRs, which are Scheduled Offences listed in para 1 of Part A of the Schedule appended to the Prevention of Money Laundering Act, 2002 – an Enforcement Case Information Report (ECIR) No. ECIR/11/HYZO/2016 dated 09.12.2016 was lodged by the Enforcement Directorate for investigation of the case under the PMLA, 2002.
- iii. That the Corporate Debtor along with other accused persons misused the various bank accounts of their companies in order to deposit unaccounted cash of an amount of Rs.111 crore immediately, after announcement of demonetization. The amounts so deposited into the Bank Accounts of the Corporate Debtor and other co-accused persons were transferred into the Bank Accounts of bullion dealers in

Date of order: 07.01.2021

order to purchase gold bullion. That the MJPL and other accused persons successfully layered the proceeds of crimes into gold bullion and distributed the same amongst themselves and various other jewelers.

- iv. That as a part of the investigation, Enforcement Directorate Hyderabad Zonal Office on 11.01.2017 and 12.01.2017 conducted searches U/s. 17(1) of PMLA, 2002 at the premises of the Corporate Debtor & co-accused, to search for the original gold bullion which the accused had purchased after demonetization. Pursuant to the said searches, gold bullion of only 1.038 kg was seized from following co-accused members.

Neel Sunder Tharad (D-4)		584.980 Grams
M/S Tibarumal Ramnivas Gems and Jewels. (D-6)		453.040 Grams
TOTAL		1038.020 Grams

- v. However, Bank Accounts including those of the Corporate Debtor were frozen for a total amount of Rs.64,22,065/-. Certain documents/records were seized from the premises of accused. Thereafter, in terms of Section 17(4) – Original Application (OA) No.69/2017 was filed and same was

Date of order: 07.01.2021

allowed by the Adjudicating Authority vide order dated 23.06.2017.

- vi. That the law enforcing agency i.e., Telangana State Police Authorities in this case concluded their investigation and filed Charge Sheet – CC No.38/2017 dated 30.11.2017 alleging that the offence was committed by the accused persons under sections 409, 420, 467, 468, 471, 474, 477(A), 201, 212, 109, 188, 120 – B of IPC read with Section 34 of IPC, 1860, before the Court of Hon'ble XII Additional Chief Metropolitan Magistrate, Hyderabad.
- vii. That since bullion/cash totaling to approximately Rs.98.28 lakhs only was seized by the Enforcement Directorate in this matter till 14.04.2019 as against the proceeds of crime amounting to Rs.111 crore, the balance of Rs.110 crore is yet to be recovered. The Enforcement Directorate in order to trace and recover the balance of proceeds of crime to the extent of Rs.110 crore, searched the premises of the Corporate Debtor on 15.04.2019. Gold jewellery weighing 145.8 kg – valued approximately at Rs.78 crore as per valuation made by the Enforcement Directorate and certain other documents were seized under a supposed belief that the same qualifies to be treated as proceeds of crime.

Date of order: 07.01.2021

- viii. That pursuant to the said search and seizure dated 15.04.2019, Deputy Director, Directorate of Enforcement filed Original Application 299/2019 dated 23.04.2019 before the Adjudicating Authority, PMLA.
- d) That the copies of the complaint, confession statements and all other documents are available with the Financial Creditor and who is also sailing along with the Corporate Debtor in the legal proceedings in order to prove that the Financial Creditor has got right over the secured assets and the entire stock which is Hypothecated to the Financial Creditor is under wrongful confinement of ED.
- e) That the Financial Creditor is more interested in recovery instead of providing rehabilitation and further removing all support systems leading to the death of the Corporate Debtor Company. In several correspondence exchanged between Corporate Debtor and Financial Creditor, the Financial Creditor has clearly expressed that "as the entire stock of the Corporate Debtor has been seized by the ED, the primary security available to the Bank for the cash credit limits of the Corporate Debtor is NIL and hence declared the account as irregular for the entire amount". From the above it can be inferred that it is only due to the external factors that lead the Corporate Debtor's business coming to a halt, but not due to the improper management nor due to dilution

Date of order: 07.01.2021

of the company's resources, accompanied by inadequate revenues, but purely attributable to the Enforcement Directorate for illegal seizure of stocks. The ED has taken the entire stock/saleable in both branches of the Corporate Debtor and now there is nothing to be called as a "going concern" as envisaged under IBC to initiate CIRP.

- f) That the present Company Petition against the Corporate Debtor is not maintainable, as it is one of the renowned jewelers in South India running successfully since 1899 and having its annual turnover of Rs.200 – 250 crores and average cash sale is 75% of the turnover and enjoying the highest credit cash facility of Rs.80 crores with the Financial Creditor and maintaining a very good track record from the past decades and holds very good reputation in the said industry and never defaulted in its account track and maintained very strict financial discipline. Inspite of demonetization in 2016, and subsequent amendments in the Income Tax Act regarding cash purchases, which has affected the gold/jewellery industry to a large extent as this industry is based on cash transactions, the Corporate Debtor Company was able to overcome the effect faster, due to the established brand image.
- g) That it is also not in dispute that the gold and jewellery was mortgaged to the Financial Creditor, Industrial Finance Branch, Somajiguda, Rajbhavan Road, Hyderabad and the charge was

Date of order: 07.01.2021

created in the year 2008 itself for providing financial assistance and other facilities to Corporate Debtor and the same can be substantiated from the charge creation report dt. 30.05.2019 of M/s. Musaddilal Jewellers Private Limited.

- h) That the Financial Creditor apart from filing the present Company Petition has also initiated SARFAESI proceedings simultaneously by classifying the Corporate Debtor's Company Account as NPA and issued Sec.13(2) Notice, for which the Corporate Debtor has issued reply notice and contesting the same, which amounts to double jeopardy. The very establishing the account of the Corporate Debtor as NPA itself is initiated by fraud and the consequential proceedings are null and void and the same are challenged before the appropriate court. More so, the liability shown in the demand notice as well as in Form - I is disputed.
- i) That the Financial Creditor after initiating the proceedings under the SARFAESI Act has filed the present Petition and the same is untenable, as there is a pre-existing dispute between the parties. At one instance the Financial Creditor is contesting the appeal before the Adjudicating Authority also by citing the orders of the Income Tax Commissioner and claiming the first charge over the movable assets of the Corporate Debtor and at other instance has initiated the proceedings under SARFAESI and provisions under IBC.

Date of order: 07.01.2021

- j) That once the adjudicating proceedings before the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS & PBPT ACT at New Delhi is disposed of in favour of both the parties herein, the entire exercise of initiating the present proceedings will be infructuous as the Financial Creditor would safeguard its interest after the attachment is lifted. Hence the present Petition is liable to be dismissed.
5. Counsel for the Petitioner filed written submissions inter-alia stating as under:-
- a) That for getting an Application U/s.7 of I&B Code, 2016, what a Financial Creditor has to establish U/s.7 is that:
- i. There is a debt which the Corporate Debtor is due and liable to pay to the Financial Creditor;
 - ii. That a default was committed by Corporate Debtor in making payment of the Debt amount;
 - iii. That, the Application is filed well within limitation.
- b) That a perusal of the entire counter filed by the Corporate Debtor would also establish that the Corporate Debtor had nowhere denied to have availed the financial facility from the Financial Creditor.
- c) That the Corporate Debtor in its counter had only taken two pronged defences, which are legally not tenable. The reason as to why these are not tenable is explained hereunder.
- d) That as to the preliminary objection that the Financial Creditor has already filed a suit under SARFAESI Act, the law is now well settled

Date of order: 07.01.2021

that, a Financial Creditor even if it invokes the provisions of SARFAESI Act, it is not barred from invoking the provisions of I&B Code, 2016. Mere filing of earlier Applications or OA before Debt Recovery Tribunal by Financial Creditor shall not be a bar on it from filing Section 7 Applications. This proposition of law has been upheld by the Hon'ble NCLAT in several judgements. In the latest Judgement passed by the Hon'ble NCLAT reported in the matter of "RAKESH KUMAR GUPTA, DIRECTOR, M/s GUPTA MARRIAGE HALLS PVT LTD V/S MAHESH BANSAL, INTERIM RESOLUTION PROFESSIONAL OF M/S GUPTA MARRIAGE HALLS PVT LTD", it was held by the Hon'ble NCLAT that pendency of actions under the SARFAESI Act or actions under the Recovery of Debts due to Banks & Financial Institutions Act, 1993 does not bar the filing of an application under Section 7 of the I&B Code, 2016 especially in view of Section 238 of I&B Code, 2016. By virtue of the Hon'ble NCLAT's judgement, the primary objection taken by the Corporate Debtor is not maintainable.

- e) The second objection taken by the Corporate Debtor is that proceedings are pending before SAFEMA, FEMA, PMLA, NDPS & PBPT Act at New Delhi, as such the present proceedings are not maintainable.

Date of order: 07.01.2021

- f) However, pendency of proceedings before any other forum or authority does not act as a bar upon this Adjudicating Authority from admitting Applications filed U/s.7 of I&B Code, 2016.
- g) That in view of the fact that the Financial Creditor had successfully demonstrated subsistence of debt, there being default committed by Corporate Debtor; and that the Application is filed well within limitation and further the Application is not faulty, the present Application needs to be admitted.
6. Heard both sides and perused the record.
7. On due consideration of averments and appreciation of evidence in the present case, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor regarding existence of 'financial debt' and occurrence of 'default'. The contention regarding pendency of other proceedings or regarding pre-existence of dispute do not create a bar in admission of application filed under section 7 of the Code. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed the name of IRP after obtaining his written consent in Form-2. In view of the above, this Adjudicating Authority is inclined to admit the petition.
7. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.
8. This Adjudicating Authority hereby appoint Mr. Padmasri Appana, having *IP Regn. No. IBBI/IPA-002/IP-N00220/2017-18/10672* (IRP) as the name proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. He is

Date of order: 07.01.2021

directed to submit a valid AoA within three (3) days of this order. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.

10. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:

- 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 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other

Date of order: 07.01.2021

authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

11. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
12. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
13. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
14. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
15. The Registry is also directed to send a copy of this order to concerned RoC for updating the status of the Corporate Debtor in the MCA website.
16. The address details of the IRP are as follows:-

Mr. Padmasri Appana,
Reg.No. IBBI/IPA-002/IP-N00220/2017-18/10672

Date of order: 07.01.2021

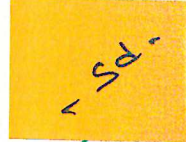
1-1-711/1, Gandhi Nagar,
Hyderabad – 500 080.
Email : padmaappana@yahoo.co.in

17. The present Petition bearing CP (IB) No.356/7/HDB/2020 is hereby
admitted.



Dr. Binod Kumar Sinha
Member Technical

SKRathi / Alekhyia



K. Anantha Padmanabha Swamy
Member Judicial