



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

CP (IB)/34/KOB/2022

(Under Section 7 of IBC, 2016 read with Rule 4 of the IBC (Application to Adjudicating Authority) Rule, 2016)

In the matter of:

TATA CAPITAL FINANCIAL SERVICES PRIVATE LIMITED, Tower A,
1101 Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai –
400 013, Maharashtra;

...Applicant/Financial Creditor

-Versus-

SIMTEL TRADING CORPORATION PRIVATE LIMITED, Regd. Office at
Cheraykkayath Building, Grace Home No. 8/700 R, Vayanasala Junction,
Thengode, Thrikkakara, Ernakulam – 682 030, Kerala. **(Set Ex-parte on
18.08.2022)**

... Respondent/Corporate Debtor.

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant's : Mr. Joseph Kodianthara Sr. Advocate
For M/s. Joseph & Koriyan Advocates.

For Respondent's : Nil

ORDER

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the



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Corporate Debtor, Simtel Trading Corporation Private Limited. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a private Limited Company with Corporate Identification Number U67100MH2010PLC210201. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U52390KL2012PTC031974 and with registered office at Cheraykkayath Building, Grace Home No. 8/700R, Vayanasala Junction, Thengode, Thrikkakara, Ernakulam, Kerala- 682030. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Vikky Dang Registration Number: IBBI/IPA-003/N-00359/2021-2022/13763 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 34,89,51,280.58/- as on 26.12.2018. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:
 - a. A letter of Guarantee dated 05.01.2016 executed by (i) Rajesh Kumar Madhoosodhanan (ii) Mr. Sheinekumar Krishnan Nair (iii) Mr. Bobby Abraham executed in favour of the Creditor guaranteeing the repayment of the amount under the Channel Finance Agreement dated 05.01.2016.
 - b. A letter of Guarantee dated 25.06.2018 executed by (i) Mr. Jossan Varghese (ii) Mr. Joby Varghese (iii) Mrs. Jasmine varghese executed in favour of the Creditor guaranteeing the repayment of the amount.



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- c. Deed of Hypothecation dated 05.01.2016 creating a charge by way of hypothecation on all book debts, receivables and stocks as also the machinery purchased and to be purchased out of the funds provided by the Creditor under the Loan Agreement dated 05.01.2016.
- d. Memorandum for creation of mortgage by deposit of title deeds dated 06.05.2015 executed by the Corporate Debtor in favour of the Creditor.
- e. Memorandum for creation of mortgage by deposit of title deeds dated 25.06.2018 executed by (i) Mrs. Jasmine varghese (ii) Mr. Jossan Varghese (iii) Mr. Joby Varghese in favour of the Creditor.

4. Brief fact of the case are:

- i. This Corporate Debtor approached the Financial Creditor for sanction of credit facility of Rs. 5 Crores in the nature of Channel Finance Facility and the same was sanctioned via letter dated 26.10.2015. Pursuant to the sanction letter the Channel Finance Agreement was executed on 16.11.2015 and this Financial Creditor disbursed the said Rs. 5 Crores. Mr. Shinekumar Krishna Nair and Mr. Rajesh Kumar Madhusoodanan extended personal guaranteed along with the Channel Finance Agreement for securing the loan.
- ii. Thereafter, the Corporate Debtor approached this Financial Creditor for an additional loan of Rs. 35 Crores. The Corporate Debtor offered to mortgage 2.5 Acres of land jointly owned by Mr. Jossan Varghese, Mr. Joby Varghese and Mrs. Jasmine Varghese and an additional personal guarantee from Mr. Bobby Abraham, Mr. Shinekumar Krishna Nair and Mr. Rajesh Kumar Madhusoodanan to secure the



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- said loan. The Financial Creditor vide Sanction Letter dated 28.12.2015 sanctioned the additional loan amount of Rs. 35 Crores.
- iii. Thereafter, the Corporate Debtor by letter dated 20.04.2016 requested to replace the 2.5 Acres of land belonging to the Mr. Bobby Abraham with a property belonging to the Corporate Debtor as mortgage for the Channel Finance Agreement. This Financial Creditor accepted this change in property via letter dated 20.04.2016 and further recorded the same by a Deed of Modification dated 06.05.2016. This Deed of Modification further recorded added mortgage over Corporate Debtor's 1 Hec, 1 Are 21 sq. Metre land by way Deposit of Title Deeds and Mortgage Declaration dated 06.05.2016. The Corporate Debtor also executed an undertaking cum indemnity dated 12.05.2016 confirming title to the said property and indemnifying the Finance Creditor of all loss in the event of defect in title. Thereafter, the Financial Creditor sanctioned the renewal via letter dated 22.12.2016. The Channel Finance Agreement was yet again renewed via sanction letter dated 21.12.2017. The Corporate Debtor executed an Amendment Agreement dated 25.01.2017 to record the modified mortgages and the renewal of the facility as above. The Channel Finance Agreement was again renewed via sanction letter dated 21.12.2017.
- iv. Further, by Addendum Sanction Letter dated 22.06.2018 the Corporate Debtor created additional security by mortgaging properties belong to Mr. Jossan Varghese, Mr. Joby Varghese, Mrs. Jasmine Varghese and thereafter provided the personal guarantee dated 25.06.2018 of Mr. Jossan Varghese, Mr. Joby Varghese, Mrs. Jasmine Varghese in favour of Corporate Debtor. Mr. Jossan Varghese, Mr. Joby Varghese, Mrs. Jasmine varghese created mortgages over the properties owned by them by depositing, Title Deeds and Memorandum for Recording creation of mortgage dated 25.06.2018.



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- v. The Corporate Debtor defaulted payment of the amount due as on 02.02.2018 and payable together with interest and therefore the Financial Creditor recalled the Channel Facility vide notice dated 13.02.2019 and was called upon to immediately pay a sum of Rs. 35,59,75,936/-. Thereafter, on 21.06.2019, the Financial Creditor initiated the Arbitration proceedings by appointing the Arbitral Tribunal. Consequently numbered as Arb. Ref. No. 1 of 2019. Consequently on 15.06.2019, Arbitral Award was passed in favour this Financial Creditor and the Corporate Debtor was ordered to pay a sum of Rs, 36, 14, 36, 001/- along with interest of 17.75% per annum from 11.03.2019.
5. In relation to the Corporate Debtor, it is seen that they have already been set *ex-parte* by this Tribunal vide order dated 18.08.2022 and till date no Application has been filed by the Corporate Debtor to set aside the said *ex-parte* order. In such circumstances, the matter was heard in the absence of the Corporate Debtor.
6. Heard the Counsel for the Financial Creditor and perused the documents placed on record. As per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby the applicant herein is a Financial Creditor. The balance sheet for the year ended March 31, 2017, which is attached to the application (Notes on Short-Term Borrowings, Page No. 259), makes it clear that the wholesale financing represents the sum due to the financial creditor for channel funding under the wholesale financial agreement the corporate debtor entered into with them.
7. The applicant also filed Arbitration Award dated 15.06.2020 passed in favour of the Financial Creditor and the Corporate Debtor was ordered to pay a sum of Rs. 36,14,36,001 along with the interest of 17.75% per annum



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from 11.03.2019. Even though originally petition is filed on the basis of loan outstanding amounts; now it culminated and stands on the strength of the Arbitration award- dated 15.06.2020.

8. Thus, it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.
9. So, in light of the case's facts, circumstances, and legal situation, we believe that this application, as submitted by the Applicant—Financial Creditor, must be admitted under Section 7(5) of the IBC, 2016.
10. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
 - a) The petition bearing CP (IB) No. 34/ KOB /2022, **Tata Capital Financial Services Private Limited**, the financial creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules 2016 for initiating CIRP against **Simtel Trading Corporation Private Limited**, (CIN: U52390KL2012PTC031974), the corporate debtor is **admitted**.
 - b) There will be a moratorium under section 14 of the Code.
 - c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of



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IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- e) The Financial Creditor has proposed the name of one **Mr. Vikky Dang** having Registration Number: IBBI/IPA-003/N-00359/2021-2022/13763 as **Interim Resolution Professional (IRP)** and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.
- f) During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate



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Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- h) The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).
- i) In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.

11. CP (IB) No.34/ KOB /2022 to come up on 23.12.2022 for progress report.

12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,



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13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD PRASAD
Digitally signed by SATYARANJAN
Date: 2022.12.01 14:31:02 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ
Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.12.01 15:27:36 +05'30'

P. Mohan Raj.
Member (Judicial)

Signed on this 1st day of December, 2022.

Supriya-P. s_